

12/91

PENNSYLVANIA DEPARTMENT OF HEALTH
HEAD INJURY ADVISORY COMMITTEE

Mrs. Dorothy Hampson*
8 Oak Ridge Road
Carlisle, PA 17013

Ms. Rita Cola Carroll
Main Line Rehabilitation Associa
Great Valley Shopping Center
Malvern, PA 19355

Mrs. Barbara Marte, RN, CRRN, CIRS
Genesis Health Service
148 West State Street
Kennett Square, Pa 19348

Christine Dentith.
Main Line Rehabilitation Associa
Great Valley Shopping Center
Malvern, PA 19355

Mr. Edward Spreha*
Office of Policy, Evaluation and
Development
Room 633 Health & Welfare Bldg.
Harrisburg, PA 17120

Ms. Carol Forrester Staz*
Executive Director
Pennsylvania Trauma Systems
Foundation
5070 Ritter Road, Suite 100
Mechanicsburg, PA 17055-4879

Mr. Terry Williard*
Rehabilitation Specialist
Department of Labor & Industry
1300 Labor & Industry Bldg.
Harrisburg, PA 17120

Linda Wilson
Pennsylvania Association of
Rehabilitation Facilities (PARF)
2400 Park Drive
Harrisburg, PA 17110

Mr. Joseph Geiger, Executive Director
Keystone State Head Injury Foundation
2400 Park Place
Harrisburg, PA 17109

Frank J. Martin, Executive Director
Head Trauma Family Network
8 Oak Ridge Road
Carlisle, PA 17013

Mr. Barry Becker
831 York Street
Hanover, PA 17331

Mr. Richard Armstead
Broomall and Orchard Lane
R.D. #4
Glen Mills, PA 19342

*No costs will be incurred by these members, therefore, no social security numbers are listed.



PENNSYLVANIA DEPARTMENT OF HEALTH
HEAD INJURY ADVISORY COMMITTEE
June 1990

Mr. Scott Berlucchi
Director of Planning and Licensure
Hospital Association of Pennsylvania
1200 Camp Hill By-Pass
Camp Hill, PA 17011
(Phone: 763-7053)

Al Condeluci, Ph.D.
Program Director
Independent Living Rehabilitation
United Cerebral Palsy
4638 Centre Avenue
Pittsburgh, PA 15213
(Phone: 412-683-7100)

Ms. Carol Forrester
Executive Director
Pennsylvania Trauma Systems
Foundation
5070 Ritter Road
Suite 100
Mechanicsburg, PA 17055-4879
(Phone: 697-5512)

Ms. Barbara Gleim
Health and Welfare Committee
Senate of Pennsylvania
851 Main Capitol Building
Harrisburg, PA 17120
(Phone: 787-6079)

Mrs. Dorothy Hampson
Family Network
R.D. 1, Box 245
Carlisle, PA 17013
(Phone: 717-249-4602)

Mrs. Jan A. Loeffler
Executive Director
Pennsylvania Association of
Rehabilitation Facilities (PARF)
2400 Park Drive
Harrisburg, PA 17110
(Phone: 657-7608)

Mrs. Barbara Marte, RN, CRRN, CIRS
Marketing and Product Director
Team Rehabilitation Inc.
101 Center Street
Kennett Square, PA 19348
(Phone: 215-444-1601)

Nathaniel Mayer, M.D.
Director
Drucker Brain Injury Center
Moss Rehabilitation Hospital
12th Street and Tabor Road
Philadelphia, PA 19141
(Phone: 215-329-5715)

Phillip W. Parrish
Executive Director
Health and Welfare Committee
Room 319, South Office Building
Harrisburg, PA 17120
(Phone: 787-4197)

Mr. Edward Spreha
Office of Policy, Evaluation and
Development
Room 633, Health and Welfare Bldg.
Harrisburg, PA 17120
(Phone: 787-6574)

Mr. Terry Williard
Rehabilitation Specialist
Department of Labor and Industry
1300 Labor and Industry Building
Harrisburg, PA 17120
(Phone: 787-4885)

PENNSYLVANIA DEPARTMENT OF HEALTH

**HEAD INJURY PROGRAM
INTERIM POLICIES**

INTRODUCTION

This document outlines the policies governing the implementation of the Pennsylvania Head Injury Program (PHIP). The program arises from the Emergency Medical Services Act, 35 P.S. Section 6934 (e), which created a catastrophic medical and rehabilitation fund. This program is initially planned to provide case management and other services for eligible Pennsylvania residents who have sustained a traumatic head injury that results in significant physical, cognitive and behavioral impairment.

REFERRAL/APPLICATION PROCESS

Referrals to PHIP may be made by any service provider or agency. A complete referral should include the patient's name, address, age or date of birth, date and nature of head injury, and the name of the person or agency making the referral. Thereafter, a PHIP information packet and application will be mailed to the patient or his/her representative by the Department's program.

On receipt of the completed application by PHIP, information necessary to determine eligibility, including medical records and other materials will be requested.

DIRECT PURCHASE SERVICES

Direct purchase services include those services for which a purchase order or a contract has been executed between a service provider and the Department of Health, and there exists a separate written authorization by the Department for services for the specific patient. Such services may include comprehensive evaluations of cognitive skills, learning abilities and other neuropsychologic functions, vocational skill level and assessment of family and other social support systems, and any test that may be used to determine a patient's classification or potential benefit from therapy. Residential or sheltered care for Priority I patients may also be purchased by the Department.

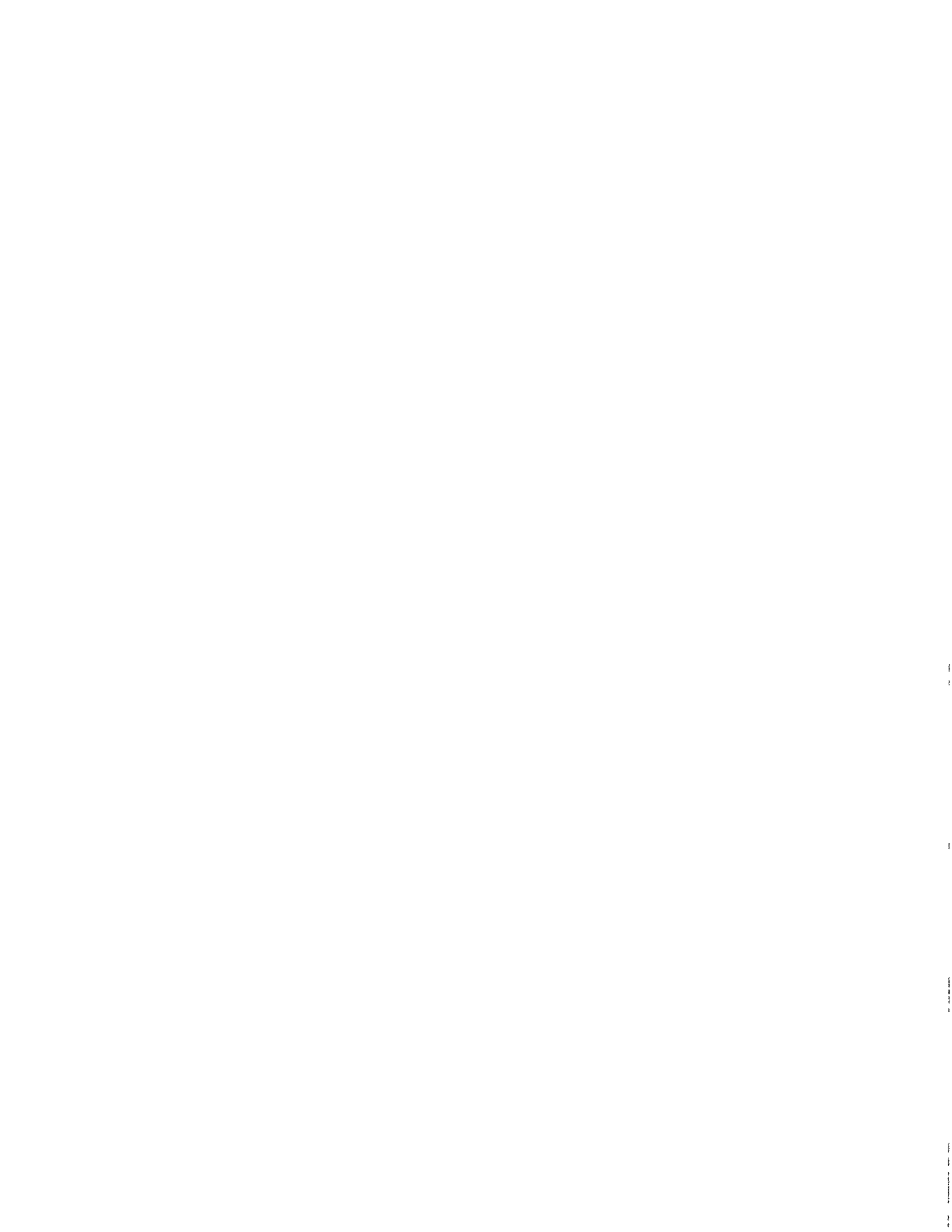
CASE MANAGEMENT SERVICES

Case management services include review of diagnostic information, referral services, service planning and coordination, consulting with families and service providers, and advocacy assistance to patients and their families to secure appropriate services.

ELIGIBILITY

Eligibility criteria include, but are not limited to, the following:

- (1) Commonwealth residents who have sustained a traumatic head injury on or after July 3, 1985 which results in physical, cognitive and/or behavioral impairment and for whom all alternative financial resources have been exhausted.
- (2) The patient sustained the head injury while a resident of Pennsylvania.
- (3) The patient's current condition is the result of a head injury.



- (4) The patient would be reasonably expected to benefit from the service, as determined in the sole discretion of the Department.

Patient will be considered ineligible for services if they are:

- (1) Patients with cognitive or motor dysfunction related to congenital or hereditary birth defects.
- (2) Patients suffering putative birth trauma and/or asphyxia neonatorum (hypoxic-ischemic-encephalopathy).
- (3) Patients with pre-existing organic or degenerative brain disorders.
- (4) Patients suffering from cerebral vascular accidents (CVA).

Eligibility will be determined without regard to sex, race, age, creed, color or national origin.

WAITING LISTS

Due to limited funding/staffing, the Department may need to maintain a waiting list for both case management and direct purchase services. Applicants will be served in an order determined by priority status (see "Priority Categories") and the date of receipt of their application. Priority I patients are always considered for services first.

SIMILAR BENEFITS FOR EVALUATION AND SERVICES

Direct purchase PHIP services are based on such sums appropriated by the Commonwealth of Pennsylvania, offset by third party revenues, family contributions and other fiscal resources. The latter includes other public human services agencies for which the PHIP patient is deemed eligible by said agency or agencies and any SSI/SSDI or other benefits available to the patient. The PHIP will be payee of last resort.

PRIORITY CATEGORIES

- (1) Order of Selection
 - (a) The order of selection sets forth the priority categories in which eligible patients will receive direct purchase services when, based on limited funding, the Department of Health has determined that it must restrict such services to a particular category or categories. In any event, the decision by the Department to not serve an individual or an entire priority category will reflect the Department's need to maintain the long term viability and fiscal integrity of the program.
 - (b) The order of selection applies only to direct purchase PHIP services with the exception of instances in which the Department determines, in its sole discretion, to pay for diagnostic services to determine eligibility or placement in a priority category, or diagnostic services to ascertain expectation of benefit from direct purchase services.
- (2) Priority Categories
 - (a) PRIORITY I - Eligible patients shall be classified by the Department as Priority I if they are considered a threat to themselves or others and require a 24-hour a day structured, supervised living environment in order to gain appropriate behavior control.

- (b) **PRIORITY II - Eligible patients shall be classified by the Department as Priority II if they require comprehensive residential or day rehabilitation services in order to function more independently in the community, but do not meet the criteria specified for Priority I.**
 - (c) **PRIORITY III - Eligible patients shall be classified by the Department as Priority III if they require ongoing rehabilitation services to maintain an appropriate level of functioning within the community, but do not meet the criteria specified for Priority I and II.**
 - (d) **PRIORITY IV - Eligible clients shall be classified by the Department as Priority IV if they do not meet criteria for Priorities I, II, and III.**
- (3) **All eligible patients shall be classified by the Department in a priority category at time of eligibility determination by the Department.**
 - (4) **If a patient's circumstances change after having been classified in a priority category, or when the Department of Health has determined that a patient has been mis-classified, the Department may change the patient's priority classification.**
 - (5) **The Department of Health reserves the right to determine how many priority categories will be served at any given time.**
 - (6) **Upon a decision by the Department of Health that it will not serve either an entire priority category or an individual or group of individuals within a priority category with direct purchase of services support, all eligible patients who have been so classified shall be notified in writing by the Department of that decision as soon as possible but no later than 30 days thereafter.**
 - (7) **The Department will review, on a quarterly basis, the potential for expanding services to patients in lower priority categories not currently being served at the time of such review.**

Referral may be made to:

**Pennsylvania Department of Health
HEAD INJURY PROGRAM
P.O. Box 90
Harrisburg, PA 17108
(717) 787- 2957**

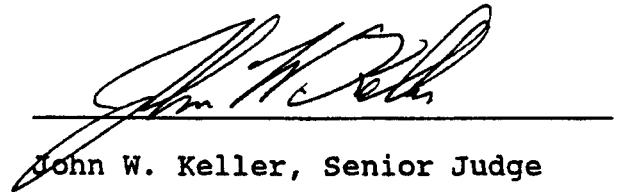


which may be properly raised in the course of a proceeding relating to the termination or curtailment of a Petitioners' Program services, although such issues may have been raised in the above-captioned matter.

4. The Respondents shall not apply the Program's 1992 transition policies to Petitioners.

5. Petitioner's counsel accepts the sum of \$2,000 in full and final settlement of their claim for attorney's fees and costs; same to be paid within 90 days of the date hereof.

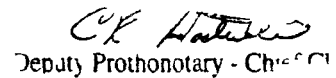
By the Court,



John W. Keller, Senior Judge

CERTIFIED FROM THE RECORD
AND ORDER EXIT

MAY 17 1995



Deputy Prothonotary - Chief Clerk

2/2/95

ZMT

Copy to [unclear]

[unclear]

[unclear]

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEITH T. MELENYZER, an :
incompetent, by D. KEITH :
MELENYZER, his guardian; :
KENNETH D. MEEK, an :
incompetent, by KAREN CONTE, :
his guardian; ROBERT :
SCHREIBER, an incompetent, :
by JUDY SCHREIBER, his mother :
and guardian; KEVIN GUESS, an :
incompetent, by DEBORAH GUESS, :
his mother and guardian; and :
JOHN RANSOM, an incompetent, :
by MARCELLA RANSOM, his :
guardian, :

No. 135 M.D. 1993

Petitioners

v.

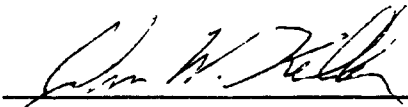
DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF PENNSYLVANIA, :
ALLAN S. NOONAN, SECRETARY, :
PENNSYLVANIA DEPARTMENT OF :
HEALTH; JOEL HERSH, DIRECTOR. :
DIVISION OF CHRONIC DISEASE :
INTERVENTION; and ELAINE M. :
TERRELL, PENNSYLVANIA :
HEAD INJURY PROGRAM MANAGER, :
Respondents :

Feb 2 1995

ORDER

NOW, this 2nd day of March, 1995, this Court's Order of
January 31, 1995 is hereby amended to provide that the parties
shall submit proposed orders with their briefs embodying the
specific form of relief to which petitioners are entitled.


The briefing schedule previously established is vacated. Briefs shall be filed on or before March 24, 1995. The parties may submit reply briefs not later than March 31, 1995.



John W. Keller, Senior Judge

CERTIFIED FROM THE RECORD
AND ORDER EX-1

MAR 2 - 1995


Deputy Prothonotary - Chief Clerk

1305

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEITH T. MELENYZER, an :
incompetent, by D. KEITH :
MELENYZER, his guardian; :
KENNETH D. MEEK, an :
incompetent, by KAREN CONTE, :
his guardian: ROBERT :
SCHREIBER, an incompetent, :
by JUDY SCHREIBER, his mother :
and guardian; KEVIN GUESS, an :
incompetent, by DEBORAH GUESS, :
his mother and guardian; and :
JOHN RANSOM, an incompetent, :
by MARCELLA RANSOM, his :
guardian, : NO. 135 M.D. 1993
Petitioners :

v. :

DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF PENNSYLVANIA; :
ALLAN S. NOONAN, SECRETARY, :
PENNSYLVANIA DEPARTMENT OF :
HEALTH; JOEL HERSH, DIRECTOR, :
DIVISION OF CHRONIC DISEASE :
INTERVENTION; and ELAINE M. :
TERRELL, PENNSYLVANIA : ARGUED: January 11, 1995
HEAD INJURY PROGRAM MANAGER, :
Respondents :

BEFORE: HONORABLE JOHN W. KELLER, Senior Judge

FEB 11 1995

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE KELLER

FILED: January 31, 1995

This matter came before the court on a petition to open default judgment filed by the Department of Health, Allan S. Noonan, Secretary of the Department of Health, Joel Hersh, Director of the Chronic Disease Intervention Division of the Department of

Health and Elaine M. Terrell, Pennsylvania Head Injury Program Manager, hereinafter, the Respondents. The litigation was commenced by the filing, on April 30, 1993, of a petition for review in the nature of a complaint in equity by five incompetents by and through their guardians and/or parents, hereinafter, the Petitioners. The Petitioners are all priority I patients and claimants under the Pennsylvania Head Injury Program eligible to receive \$125,000 per annum of funding for medical and rehabilitative care and case management services. They seek, inter alia, to preliminarily and permanently enjoin the Respondents from implementing transitional or interim policies dated September 11, 1992 which would terminate funding for any residential, day rehabilitation or case management services for any priority I patient who had received funding for two years. The policies also proposed the involuntary commitment of such priority I claimants to mental institutions or housing in nursing homes.

It appears from the briefs and oral arguments of counsel for all parties that they are in agreement that a petition to open a default judgment can prevail only if the following three factors coalesce: (a) the petition is promptly filed; (b) a meritorious defense can be shown; (c) there is a reasonable excuse for failure to file an answer. Mahanoy Area School District, v. Gutsie, 78 Pa. Commonwealth Ct. 95, 99 466 A.2d 1137 (1983). To determine whether respondents have successfully met the test established by Mahanoy, we must review the procedural steps that brought us to this stage of the proceeding. Those steps are hereinafter set

forth:

1. The Petition for Review in the Nature of a Complaint in Equity was filed on April 30, 1993, in this Court.

2. The Petitioners' Application for Emergency Special Relief in the nature of a preliminary injunction was filed on April 30, 1993.

3. The Respondents' Answer to Application for Emergency Special Relief was filed on May 4, 1993.

4. By stipulation of all counsel dated and filed May 4, 1993, the Petitioners' Application for Preliminary Injunction was resolved. It provided inter alia that the Respondents shall treat all priority I claimants equally and the same and they shall continue to be funded and receive the same services as they were receiving on and before April 30, 1993.

5. By Order of Court of May 4, 1993 the Application for Special Relief was marked "settled, discontinued and ended." The Order notes that the Stipulation in no way effects any rights or duties of the parties relating to the petition for review and concludes with: "[Respondents] are advised that they shall answer or otherwise plead to said petition within the time prescribed by the Pa. Rules of Civil Procedure."

6. By letter of May 11, 1993, counsel for the Respondents notified counsel for the Petitioners that on or before June 1, 1993, the Department of Health would be filing preliminary objections to the petition for review.

7. The Respondents caused the removal of the cause of action

to the U.S. District Court for the Middle District of Pennsylvania on or about June 1, 1993.

8. On June 7, 1993, Respondents filed a motion to dismiss the federal claims and a motion to remand the state claims to this court. Counsel for the Petitioners did not respond to opposing counsel's request for concurrence.

9. On June 18, 1993 counsel for Respondents requested an enlargement of time for the filing of a brief in support of the motion to dismiss. Opposing counsel concurred in the motion.

10. On June 18, 1993, Respondents' brief in support of the motion to remand was filed in the District Court.

11. Counsel for Petitioners failed to file a response to the motion to remand within 15 days of June 18, 1993 as required by local rules of the U.S. District Court. On August 31, 1993 the Honorable Sylvia H. Rambo issued an order directing Petitioners to file a brief in opposition to the motion on or before September 7, 1993 or the remand motion would be granted.

12. On September 9, 1993 Judge Rambo entered an order for remand of state claims noting that counsel for the Petitioners had advised her that he had no objection to the remand and did not believe any federal issue remained in dispute. The order also directed the parties to show cause why the case should not be dismissed.

13. Pursuant to the "stipulation of dismissal" of counsel for all parties an order was entered in the U.S. District Court on October 22, 1993 dismissing the federal case. The remaining claims

were remanded to this court.

14. On January 10, 1994 counsel for Respondents wrote to counsel for Petitioners stating:

Once again I ask your consideration in granting me additional time to respond to the portions of the complaint which remain in state court. I expect to file it within ten days and will presume your concurrence unless I hear from you otherwise. (Emphasis added.)

15. On November 28, 1994 this court entered an order noting the case has been dormant for an extended period of time and issuing a rule against the Petitioners to show cause why the action should not be dismissed for want of prosecution returnable within thirty days and directing a copy of the response be served on the Respondents.

16. On December 23, 1994 Petitioners' response to Rule to Show Cause, inter alia, requesting judgment be entered in their favor was filed. The proof of service dated December 22, 1994 indicates copies of the response were served on, inter alia, counsel for the Respondents who wrote the letter of January 10, 1994.

17. On December 23, 1994 the Petitioners' Praecipe to Enter Default Judgment was filed.

18. On December 28, 1994, pursuant to a Praecipe, Default Judgment was entered in favor of Petitioners and against Respondents.

19. On December 30, 1994 the unverified Petition to Open Default was filed. A copy of the "proposed answer" was attached together with the allegation that a verified answer would be filed

on January 3, 1994. The petition also alleges, inter alia, that counsel inadvertently failed to file an answer due to the demands of other cases and the office closing and related delays caused by "last winters weather" and that Petitioners failed to give ten days notice of an intent to enter a default as required by Pa. R.C.P. 237.1.

20. On January 3, 1994 Petitioners' response to the petition to open default was filed in which they denied that a "ten days notice" pursuant to Pa. R.C.P. 237.1 was required because of the existence of a written agreement for an extension of time specifying a time within which required action must be taken, i.e., counsel's letter of January 10, 1994. Under new matter it was alleged:

- a. Respondents failed to set forth a reasonable excusable explanation for their failure to timely answer.
- b. Respondents failed to set forth or allege meritorious defense.
- c. Respondents lack any meritorious defense.
- d. Respondents petition to open default was not verified.

21. On January 4, 1994 Respondents' answer to petition for review in the nature of a complaint in equity was filed. Parenthetically, we are constrained to observe that the Respondents' answer differs from the answer attached to their petition to open default in that paragraphs 13, 20 and 26 are expanded and paragraphs 17, 18, 19, 21 and 25 are changed from admitted to denied.

In our judgment there can be no question that Respondents' petition to open default, filed two days after the default judgment was entered constituted a prompt filing. No further consideration will be given to that factor.

We perceive the controlling issues in the case at bar to be:

1. Was the giving of a ten day notice pursuant to Pa. R.C.P. 237.1(a) a prerequisite to the Petitioners acquiring a valid judgment by default?
2. Did Respondents have a reasonable excuse for failure to file an answer?
3. Was a meritorious defense shown?

We will address these issues seriatim.

Counsel for the Respondents asserts that her petition to open should be granted because petitioners' counsel did not give the required ten-day notice in accordance with Pa. R.C.P. No. 237.1(a). That rule provides:

No judgment by default shall be entered by the prothonotary unless the praecipe for entry [of default judgment] includes a certification that a written notice of intention to file the praecipe was mailed or delivered to the party against whom judgment is to be entered and to his attorney of record, if any, after the default occurred and at least ten days prior to the date of the filing of the praecipe. If a written agreement for an extension of time specifies a time within which the required action must be taken and a default occurs thereafter, judgment by default may be entered by the prothonotary without prior notice under this rule. A copy of the notice of agreement shall be attached to the praecipe.

(Emphasis added.) It is not disputed that a copy of counsel's letter requesting a ten-day extension and presuming that absent a response there would be no objection by the Petitioners' counsel was attached to the praecipe.

Counsel for the Respondents argues, however, that because she wrote the letter without first having any discussion on this matter with the Petitioners' counsel, there was no mutual assent. She relies upon Southeastern Pennsylvania Transportation Authority v. Ray, 131 Pa. Commonwealth Ct. 179, 569 A.2d 1020 (1990). In that case, however, a mutuality of assent was found where, after receiving a letter requesting a reasonable period of time in which to respond from SEPTA counsel, counsel for Ray granted the request and specified a date certain for the filing of an answer.

The Respondents' counsel also relies upon Burkett v. Allstate Insurance Co., 368 Pa. Superior Ct. 600, 534 A.2d 819 (1987), in which the superior court concluded that no agreement between counsel existed. In that case the attorney for Allstate wrote a letter requesting "a reasonable extension of time within which to plead or otherwise move." Id. at 603, 534 A.2d at 823. Counsel for Burkett wrote back that he would "grant an extension of time until August 18, 1986 to answer the plaintiff's complaint. I will not grant any extension of time to otherwise move to plaintiff's Complaint." Id. The Burkett court noted that while an extension of time had been granted, that was not all that was

requested; rather, counsel had also requested an extension of time in which to "otherwise move to plaintiff's complaint." Noting that a preliminary objection would have also been a proper procedural step at that juncture of the case, and that Burkett's counsel had not agreed to an extension for such a pleading, the superior court determined that no agreement had been reached and that the trial court had erred in refusing to open the judgment. The letter drafted by counsel in this case is substantially different. First, no distinction was made as to what type of responsive pleading would be filed. Second, because the Petitioner's counsel did not answer the letter, his agreement to the ten day period in which an answer would be filed is assumed, by the very terms of the letter the Respondents' counsel, herself, drafted. Even if, however, we concluded that the two letters were similar, the superior court's decision in Burkett was vacated by a per curiam order of the Pennsylvania supreme court which reinstated the common pleas court's order denying the petition to open. See Burkett v. Allstate Insurance Company, 520 Pa. 94, 552 A.2d 1036 (1988).

The Petitioners' counsel relies upon Reilly Associates v. Durvea Borough Sewer Authority, 428 Pa. Superior Ct. 460, 631 A.2d 621 (1993). In that case requesting counsel wrote to the attorney for Reilly asking for a thirty day extension in which to file an answer, i.e., March 8, 1991. His letter contained the following language:

If you have an objection to this arrangement, please advise me immediately. I will infer from silence that you consent to this arrangement.

Id. at 463, 631 A.2d at 623. Counsel for Reilly did not respond; no answer was filed by March 8; and, on March 20 counsel praeciped for default judgment, which was granted. As the superior court noted in upholding the decision to deny the petition to open judgment, requesting counsel had disclaimed the need for a response letter and would not be heard to complain later when that action inured to his detriment. Unfortunately for the Respondents' counsel, the facts in Reilly are on all fours with the instant case and, accordingly, we must conclude that counsel for the Petitioners was not obliged to give notice prior to filing his praecipe for default judgment.¹

With regard to the second issue, counsel for the Respondents, with commendable candor, admits she inadvertently failed to file the required responsive pleading because of office closings and related delays due to the weather during the winter of 1994 and the demands of other cases. During oral argument counsel

¹ Petitioners also rely upon Kennedy v. Black, 492 Pa. 397, 424 A.2d 1250 (1981). In that case, however, requesting counsel repeatedly failed to make promised deadlines to file a responsive pleading and cavalierly assumed that opposing counsel would never praecipe for default judgment. We find that case to be readily distinguishable from the actions of respondents' counsel here. The court perceives no attempt by counsel to mislead her opponent, and counsel's genuinely apologetic and remorseful manner, while legally irrelevant, certainly serves to distinguish her behavior from that of the attorney in Kennedy.

also explained that the winter storms caused the computer to shut down and that this case "fell off" the computer "tickler" so she received no computer reminder to prepare and file an answer. Counsel also argued that Petitioners suffered no prejudice from her inadvertent failure to respond to the petition for review because the stipulation of May 4, 1993 had continued the funding of the Petitioners and maintained the status quo. Not surprisingly counsel for the Petitioners responded that "being too busy" and "last winter's storms" do not constitute a reasonable or excusable explanation for the failure to timely file an answer. In response to Respondents counsel's lack of prejudice argument he contends prejudice or lack thereof is not a factor in the equation for opening a default judgment and furthermore argues that a delay from January 20, 1994, the end of the last extension, to December 30, 1994, the date of filing the petition to open default, is prejudicial per se.

In Barron v. William Penn Realty Co., 239 Pa. Superior Ct. 215, 361 A.2d 805 (1976), the complaint was filed on January 31, 1974 and served on February 6, 1974. The insurer failed to enter an appearance on behalf of William Penn Realty Co., appellee. A default judgment was entered against appellee and in favor of Barron, appellant. A petition to open judgment was filed on October 11, 1974 averring only that the failure to enter an appearance was because of "an oversight and/or inadvertence ...". The court below ordered the judgment open on January 23, 1975. The Superior Court reversed the order of the lower court and reinstated

the default judgment observing: "A mere allegation of negligence or mistake will not, by itself satisfy this requirement; the moving party must advance in argument a factual basis to support his plea for relief." Id. at 218, 361 A.2d at 807.

In King, v. Fayette Aviation, 226 Pa. Superior Ct. 588, 323 A.2d 286 (1974), the complaint of King, appellants, was filed on October 28, 1971 and served on Fayette Aviation, appellees on November 1 and November 11, 1971. On November 9, 1971 a twenty day extension to prepare and serve an answer was granted appellees. On February 8, 1992 a judgment by default was entered in favor of appellants. Appellees' petition to open judgment was filed on March 9, 1972. A commissioner, who held a hearing on the petition, concluded that appellees' counsel's other court commitments established an adequate excuse to justify opening the judgment, and it was opened. The superior court ordered the judgment reinstated and held: " we cannot accept a 'burdens of litigation' explanation for a failure to prepare and file an answer for over three months." Id. at 591, 323 A.2d at 287. Similarly in Walters v. Harleysville Mutual Casualty Co., 417 Pa. 438, 207 A.2d 852 (1965), the supreme court affirmed the trial court's refusal to open judgment where the default judgment was entered one hundred days after service of the complaint, where several extensions of the time to plead had been granted the appellant and the excuse for the failure to file an answer was the busy trial and business appointments of the attorney for the appellants.

In Bildstein v. McGlinn, 320 Pa. Superior Ct. 416, 467

A.2d 601 (1983), the appellee Bildstein's complaint in trespass was filed on October 29, 1980 and served on November 20, 1980. The required notice of intent to enter a default judgment was received by the appellant on February 3, 1981. Default judgment in favor of appellee was entered on February 19, 1981. The petition to open judgment was filed on March 24, 1981. The superior court reversed the order denying the petition to open judgment, opened the default judgment and remanded the case for further proceedings. The superior court held, inter alia:

In determining whether a judgment by default should be opened, a court must ascertain whether there are present any equitable considerations in the factual posture of the case which require that it grant to a defendant against whom the judgment has been entered an opportunity to have his day in court and to have the case decided upon the merits. In so doing, the court acts as a court of conscience. ... The rules permitting the entry of default judgments "were designed to prevent a dilatory defendant from unreasonably thwarting plaintiff's efforts to establish a claim. They were not intended 'to provide the plaintiff with a means of gaining a judgment without the difficulties which arise from litigation.' " Shainline v. Alberti Builders, Inc., 266 Pa. Superior Ct. [129], 139, 403 A.2d, [577], 582 (1979).

Appellant's explanation for the default in entering an appearance was both reasonable and compelling. Prior decisions have held that the power to open a default judgment will usually be exercised where a default has been the result of a mistake or oversight by counsel. ... In Shainline ... the court reviewed the cases involving inaction by counsel and "distinguished between unacceptable mistakes and acceptable mistakes. On the one hand, it was said, a mistake maybe unacceptable because it involves the attorney's negligence or dilatoriness, a failure to act by one who knows its

implications, or a deliberate decision not to defend." Peoples National Bank of Susquehanna County, Pa. v. Hitchcock, 278 Pa. Superior Ct. [375], 382, 420 A.2d [589], 592 [(1980)]. Errors of counsel which indicate an oversight or mistake rather than a deliberate decision not to defend, have been found to constitute sufficient explanation to warrant the opening of a default judgment. ...

(Bildstein, 320 Pa. Superior Ct. at 419-24, 467 A.2d at 603-05

(citations omitted).)

In Ackerman v. Port Authority of Allegheny County, 323 Pa. Superior Ct. 375, 379-80, 470 A.2d 640, 643 (1984), the superior court reversed the lower court's refusal to open a default judgment and noted, inter alia:

However, appellant argues that case law holds that attorney oversight is permissible grounds for opening a judgment. On this issue the Supreme Court has said:

By the stipulation of facts submitted to the trial court and by his statement at the hearing, [counsel] admitted a less than careful and prudent concern for his client's affairs. Any person entrusting a matter to an attorney in this Commonwealth should be able to believe that the matter will be competently and diligently handled. As we stated when faced with a similar situation in Stephens v. Bartholomew, 422 Pa. 311, 312-313, 228 A.2d 617, 618 (1966), however, it would be "a shame to impose a large liability upon (appellant) because of the inexcusable neglect of his attorney, especially when (appellee) will not be prejudiced if he has a meritorious claim."

"Errors of counsel ..., which indicate an oversight rather than a deliberate decision not to defend, have been held to constitute

sufficient legal justification to open a default judgment. ...
Department of Transportation v. Nemeth, 497 Pa. 580, 584, 442 A.2d 689, 691 (1982). (Emphasis added.)

Cases which have rejected the excuse of attorney mistake are generally cases in which the attorney continued to delay filing an answer despite numerous extensions and requests by opposing counsel. Kennedy, or where counsel delayed filing an answer for an unduly long time, Wallingford-Swathmore School District v. Echternach, 68 Pa. Commonwealth Ct. 152, 448 A.2d 685 (1982) (delay of two and one-half years), or where counsel made a deliberate decision not to defend. Keystone Boiler v. Combustion & Energy Corp., 294 Pa. Superior Ct. 145, 439 A.2d 792 (1982).

We perceive from our consideration of the above cases an apparent trend away from a strict application of the doctrine that inadvertence, mistake, simple negligence, too busy, burdens of litigation, etc. are legally insufficient and inadequate excuses for failing to file a timely answer; rather, there appears to be the evolution of a balancing test which examines the nature and reasons for counsel's error, and the duration of the delay.

In the case at bar, the procedures followed by counsel for the Respondents and her communications with counsel for the Petitioners makes it abundantly clear the Respondents did at all times indeed intend to defend against the action of the Petitioners. This court's recollection of the winter of 1994 with

its snow and ice storms, the repeated closing of businesses, offices, schools and courthouses, power outages and shortages remains all too clear. We will take judicial notice of the fact that the winter storms of 1994 were disruptive to many offices including that of counsel for Respondents. Counsel for Petitioner is correct in his assertion that prejudice is not a factor in the equation for opening a default judgment. However, we cannot ignore the fact that the Petitioners have at all times since the inception of this litigation continued to receive all of the benefits originally granted them.

It is difficult to excuse a delay of almost a full year in filing an answer to the petition. The excuse and explanation of counsel for Respondents certainly does not rise to the level of being compelling. However, if this Court is to be "as a court of conscience," Bildstein, then we are constrained to conclude that the Respondents did have a reasonable excuse for the failure to file an answer; and we do so hold.

The final issue is whether a meritorious defense was shown by the Respondents.

In Ab v. Continental Imports, 220 Pa. Superior Ct. 5, 7, 281 A.2d 646, 647 (1971), the petition to open judgment alleged that the Defendant had a "valid defense and counter claim" but did not state upon what the defense or the counterclaim was based. The order of the court below opening the default judgment was reversed. The superior court held: "A mere technical defense is insufficient. ... The petition to open must not only allege a

meritorious defense, but such defense must be set forth in precise, specific, clear and unmistakable terms." Id. at 9, 281 A.2d at 648.

In Hofer v. Loyal Order of Moose of the World, 243 Pa. Superior Ct. 342, 348, 365 A.2d 1254, 1257 (1976), the appellee's petition to open judgment alleged: "7. The defendant, through its counsel, avers that it has and can develop a just, true and meritorious defense to plaintiff's cause of action generally and specifically insofar as the defendant denies that the plaintiff completed performance of the alleged contract according to the terms of said contract." Id. The order of the trial court opening the default judgment was reversed and the judgment reinstated. The superior court held: "It must be determined, however, if the quoted paragraph from appellee's petition was sufficient, under the case law, to present a valid defense." Id. Quoting Ab with approval, the superior court also held: "It can scarcely be maintained that the statement in appellee's petition, utterly devoid of underlying facts or details, meets this standard." Id.

In Kramer v. Philadelphia, 425 Pa. 472, 476, 229 A.2d 875, 877 (1967), the supreme court held: "Moreover, the city's bald assertion in its petition that it has a valid action over against the additional defendant does not meet the requirement of showing that a defense exists on the merits."

The Respondents' unverified petition to open default is totally devoid of any averment of the existence of a meritorious defense. The only hint that a defense exists appears in paragraph 17 where it is alleged: "A copy of the proposed answer is attached

to this petition; a verified answer will be filed of record on Tuesday, January 3, 1995." As previously noted, the attached "proposed answer" differs from Respondents' Answer to Petition filed four days later in that paragraphs 17, 18, 19 and 25 are changed from admitted to denied and paragraphs 13, 20 and 26 are expanded. Respondents' "proposed answer" and answer responded to Petitioners' paragraphs 28a-m, 29a-i, 30, 31, 32, 33, 37a-g, 38, 39a-e, 40 and 41 by averring: "The averments of this paragraph constitute a conclusion of law to which no response is required." We do not believe that all of these paragraphs plead by the Petitioners are indeed "conclusions of law". Under Pa. R.C.P. No. 1029 (b), those paragraphs and subparagraphs not constituting conclusions of law would be admitted. Respondents' "proposed answer" and answer conclude with paragraph 42 under New Matter alleging: "Petitioners have failed to state a claim upon which relief can been [sic] granted."

In Ab and Hofer, the superior court suggested it would be appropriate for a party seeking to open a default judgment by asserting a meritorious defense to attach a copy of his answer to his petition to open. That is what the Respondents have done here, and it is our responsibility to carefully review Respondents' "proposed answer" to ascertain whether a meritorious defense has been alleged.

We have with great care considered that "proposed answer", and we are compelled to conclude that it asserts no defense. At best, it appears to be a demurrer to the petition for

review. In our judgment, it and Respondents' petition to open default fail to allege a meritorious defense. Accordingly, we conclude that the petition to open default judgment must be denied.



JOHN W. KELLER, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEITH T. MELENYZER, an :
incompetent, by D. KEITH :
MELENYZER, his guardian; :
KENNETH D. MEEK, an :
incompetent, by KAREN CONTE, :
his guardian: ROBERT :
SCHREIBER, an incompetent, :
by JUDY SCHREIBER, his mother :
and guardian; KEVIN GUESS, an :
incompetent, by DEBORAH GUESS, :
his mother and guardian; and :
JOHN RANSOM, an incompetent, :
by MARCELLA RANSOM, his :
guardian, :

Petitioners

NO. 135 M.D. 1993

v.

DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF PENNSYLVANIA; :
ALLAN S. NOONAN, SECRETARY, :
PENNSYLVANIA DEPARTMENT OF :
HEALTH; JOEL HERSH, DIRECTOR, :
DIVISION OF CHRONIC DISEASE :
INTERVENTION; and ELAINE M. :
TERRELL, PENNSYLVANIA :
HEAD INJURY PROGRAM MANAGER, :

Respondents

ORDER

NOW, this 31st day of January, 1995, the Respondents' Petition to Open Judgment is denied. A hearing for the purpose of framing a final decree in equity, see Pa. R.C.P. No. 1511, is hereby scheduled for April 12, 1995, at 10:00 a.m., in Courtroom Number One, Fifth Floor, South Office Building, Harrisburg, Pennsylvania. Two weeks prior to the hearing, the parties shall submit relevant stipulations, if any, and briefs addressing specifically the relief to which Petitioners are entitled.

CERTIFIED FROM THE RECORD
AND ORDER EXIT

JAN 31 1995

CR [Signature]
Deputy Prothonotary - Clerk

[Signature]
JOHN W. KELLER, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEITH T. MELENYZER, an :
incompetent, by D. KEITH :
MELENYZER, his guardian; :
KENNETH D. MEEK, an incompetent, :
by KAREN CONTE, his guardian: :
ROBERT SCHREIBER, an incompetent, :
by JUDY SCHREIBER, his mother :
and guardian; KEVIN GUESS, an :
incompetent, by DEBORAH GUESS, :
his mother and guardian; and :
JOHN RANSOM, an incompetent, :
by MARCELLA RANSOM, his guardian, :
Petitioners :

v. :


DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF PENNSYLVANIA; :
ALLAN S. NOONAN, SECRETARY, :
PENNSYLVANIA DEPARTMENT OF HEALTH; :
JOEL HERSH, DIRECTOR, DIVISION OF :
CHRONIC DISEASE INTERVENTION; and :
ELAINE M. TERRELL, PENNSYLVANIA :
HEAD INJURY PROGRAM MANAGER, :
Respondents :

No. 135 M.D. 1993

O R D E R


NOW, December 28, 1994, pursuant to a praecipe to enter default judgment, judgment is hereby entered in favor of Keith T. Melenyzer, an incompetent, by D. Keith Melenyzer, his guardian; Kenneth D. Meek, an incompetent, by Karen Conte, his guardian; Robert Schreiber, an incompetent by Judy Schreiber, his mother and guardian; Kevin Guess, an incompetent, by Deborah Guess, his mother and guardian; and John Ransom, an incompetent, by Marcella Ransom, his guardian, Petitioners and against, the Department of Health of the Commonwealth of Pennsylvania; Alan S. Noonan, Secretary, Pennsylvania Department of Health; Joel Hersh, Director, Division of Chronic Disease Intervention; and Elaine M. Terrell, Pennsylvania Head Injury Program Manager, Respondents.

DEC 29 1994


C.R. Hostutler,
Deputy Prothonotary/Chief Clerk

CERTIFIED FROM THE RECORD
AND ORDER EXIT

DEC 28 1994


Deputy Prothonotary - Chief Clerk

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEITH T. MELENYZER, an :
incompetent, by D. KEITH MELENYZER, :
his guardian et al., :
Plaintiffs :

v. :

DEPARTMENT OF HEALTH OF THE :
COMMONWEALTH OF PENNSYLVANIA :
et al., :
Defendants :

No. 135 M. D. 1993

MAY 05 1993

O R D E R

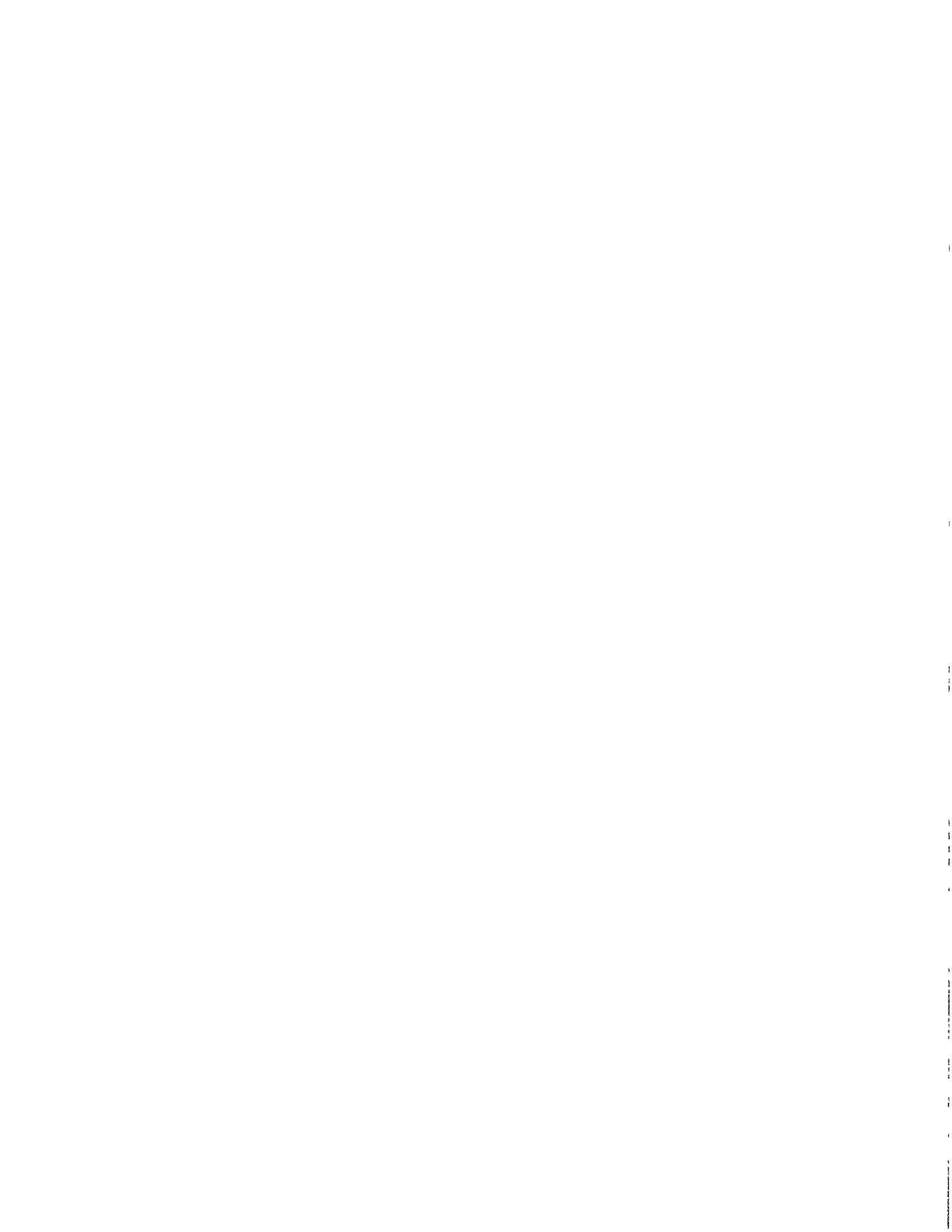
AND NOW, this 4th day of May, 1993, as a result of a settlement stipulation arrived at between the parties, plaintiffs' application for emergency special relief in the nature of a preliminary injunction is hereby marked "settled, discontinued and ended." A copy of said stipulation is attached hereto as Exhibit A and is incorporated by reference into this order.

The Court further notes that this stipulation applies only to the application for emergency special relief and in no way shall affect any of the rights or the duties of the parties relating to the Petition for Review in the nature of a Complaint in Equity. Defendants are advised that they shall answer or otherwise plead to said petition within the times prescribed by the Pennsylvania Rules of Civil Procedure.

James Gardner
JAMES GARDNER, Judge
REMOVED FROM THE RECORD
AND ORDER EXIT

MAY - 4 1993

CR Stutler
Deputy Prothonotary - Chief Clerk



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MELENYZER, ET AL. :
 :
 v. : NO. 135 M.D. 1993
 :
 DEPARTMENT OF HEALTH, ET AL. :

STIPULATIONS

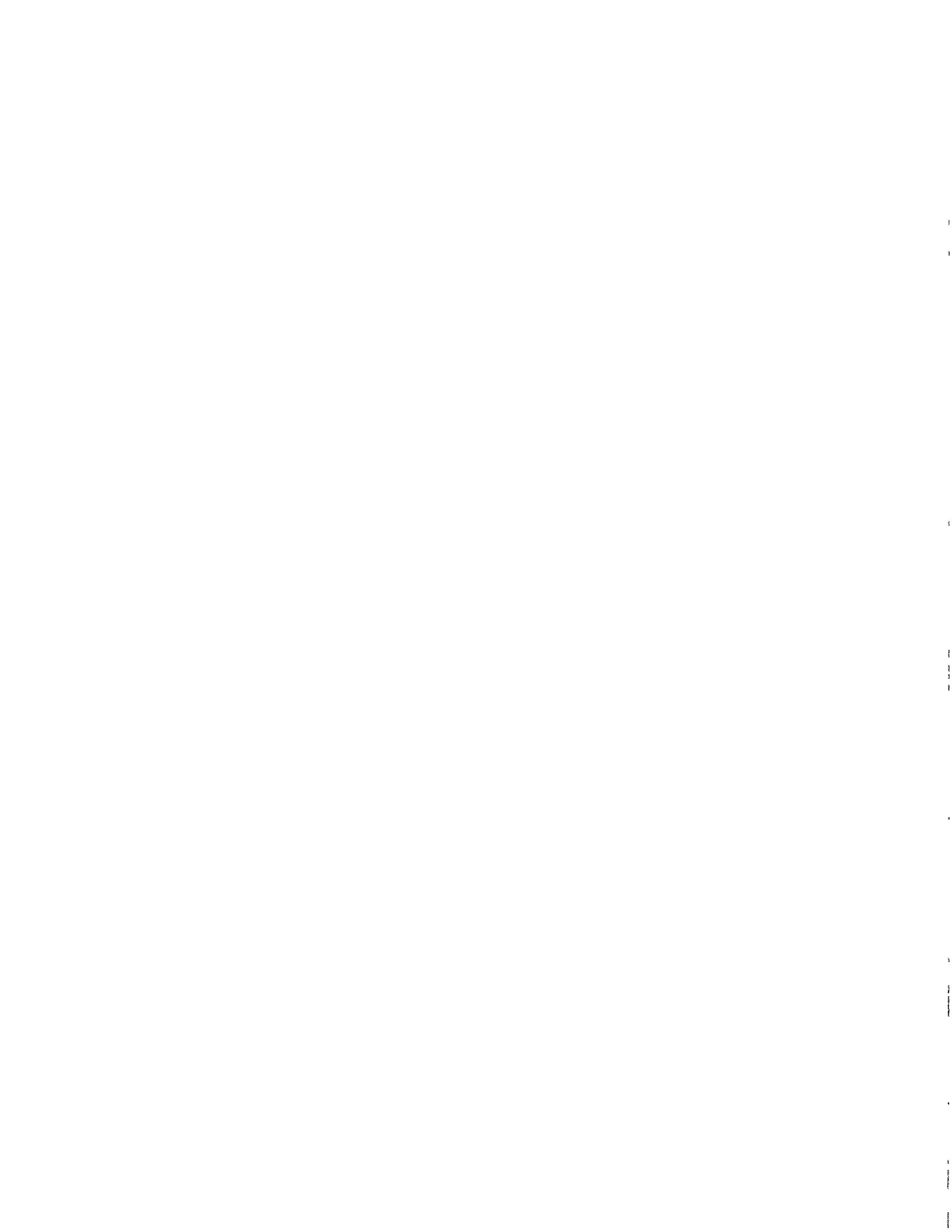
1. All Petitioners are classified as Priority I claimants by the Pennsylvania Head Injury Program (the "Program").

2. All Priority I claimants classified by the Program, on and before April 30, 1993, shall be treated equally and the same and shall continue to be funded and receive the same services as they were receiving on and before April 30, 1993.

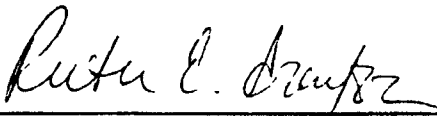
3. Respondents agree to and shall not alter or terminate funding for said Priority I claimants until they provide notice, an opportunity to respond and an administrative hearing or until such time as the Priority I claimants request alternative services or no longer desire to receive services.

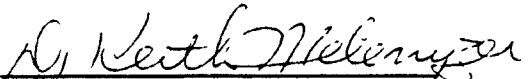
4. This Stipulation resolves Petitioner's application for a Preliminary Injunction. The Court shall retain jurisdiction over this matter regarding a permanent injunction and the other matters raised in the Petition for Review.

EXHIBIT A



The Department and petitioners agree to the above-stated Stipulations.


Ruth E. Granfors
Counsel for the
Department of Health


D. Keith Melenzyer
Counsel for Petitioners

Date: 5/14/93

Memorandum

DATE: June 8, 2001

TO: Elaine Terrell, Division of Special Health Care Programs
Department of Health

FROM: Robert E. Nyce, Executive Director *RE Nyce*

RE: Typo in Regulation #10-129 (IRRC #2034)

cc: Gary Hoffman, Legislative Reference Bureau
David DeVries, Office of Attorney General

During our review of the above regulation, we found a typographical error in Section 4.4(a). Specifically, "Providers of residential outpatient...." should be changed to "Providers of residential, outpatient...."

When you submit the regulation to the LRB, please ask them to make this change.

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 6, 2001

Honorable Matthew J. Ryan
Speaker of the House
Pennsylvania House of Representatives
139 Main Capitol
Harrisburg, PA 17120

Re: Regulation #10-129 (#2034)
Department of Health
Head Injury Program

Dear Speaker Ryan: *Matt*

Thank you for your letter dated June 4, 2001, expressing your concerns with this regulation. Be assured, the Commission will review and consider your comments on the regulation and the Departments of Health and Public Welfare. Additionally, your letter will be included in the Commission's public record file.

This regulation is on our June 7, 2001 meeting agenda. The meeting will be held in our 14th Floor Conference Room, 333 Market Street, commencing at 10:30 a.m.

Following this meeting, the Commission's Order will be available on our web page at www.irrc.state.pa.us. Or, if you wish, you may contact me to request a copy by mail, fax or email. Should you have any further questions, call me at 717-783-5506 or email to bohn@irrc.state.pa.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob", is written over the typed name.

Robert E. Nyce
Executive Director
wbg

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 23, 2001

Honorable Robert S. Zimmerman, Jr. M.P.H.
Secretary of Health
802 Health & Welfare Bldg.
Harrisburg, PA 17120

Re Regulation #10-129 (IRRC #2034)
Head Injury Program

Dear Secretary Zimmerman:

The Commission does not object to tolling the review of the subject regulation.

Therefore, the tolling period began on May 22, 2001, when we received the request to toll. By June 21, 2001, the Department must deliver to the Commission and the Committees either the revised regulation or written notification that the regulation will not be revised or it will be deemed withdrawn. The revised regulation or notification must be accompanied by a transmittal sheet (copy enclosed) confirming delivery to the Committees and the Commission on the same date.

If you have any questions, please contact me at 783-5506 or bohn@irrc.state.pa.us.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: Honorable Dennis M. O'Brien, Majority Chairman, House Health and Human Services Commission
Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee
Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee
David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Nia Wilson, Esq., Legal Counsel, House Health & Human Services Committee
Stanley Mitchell, Esq., Chief Counsel, House Health & Human Services Committee

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER:

SUBJECT:

AGENCY:

TYPE OF REGULATION

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON

SENATE COMMITTEE ON

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

April 20, 2001

Original: 2034



(717) 783-2500

RECEIVED
MAY 23 2001
OFFICE OF THE ATTORNEY GENERAL

DATE: May 23, 2001
SUBJECT: HIP Regulations
TO: Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
FROM: Lori McLaughlin *LM*
Chief Counsel

Attached is a letter sent from Secretary Zimmerman in response to questions raised by the standing committees about the HIP regulations. Both Senator Mowery and Representative O'Brien received this letter.

Please feel free to contact me should you have any questions.

Attachment

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

May 22, 2001

The Honorable Harold F. Mowery
Chairman, Public Health & Welfare Committee
Room 169 Main Capitol
Harrisburg, Pennsylvania 17120

Dear Senator Mowery:

On May 3, 2001, the Department of Health submitted final regulations for the operation of the Head Injury Program (HIP) to the Independent Regulatory Review Commission (IRRC) and the designated standing committees of the General Assembly. In response to that submission, a request was made for a written commitment by the Department that assures appropriate, adequate, and alternative placements for each of the clients currently receiving rehabilitation services funded through HIP.

As you will see in the final regulations, clients currently enrolled in the program will be "grandfathered" for up to another 18 months of enrollment in HIP, including twelve months of rehabilitation services and another six months of case management to ensure a successful transition. During this period, each client will receive a fresh assessment that will form the basis of their individualized rehabilitation service plan (IRSP). This plan will be developed with input from the client (or authorized representative) and their family. This multidisciplinary approach will also include input from health professionals involved in all aspects of the client's care and provides that discharge planning be central to the client's service strategy.

There are fifteen clients currently being served in HIP. Based on our most recent analysis of their care needs and financial resources, at least nine are eligible for Medical Assistance (MA). Another two may become eligible for MA based on financial resources they possess and spend-down provisions allowed under MA. To that end, enclosed you will find a letter from Public Welfare Secretary Feather Houstoun committing to serve clients who are MA eligible. Staff from our two agencies have completed a great deal of planning so that MA-funded services for these individuals will be available in a timely fashion.

Harold F. Mowery

2

Of the remaining four clients, we believe they possess financial resources sufficient to subsidize their own care. It is not uncommon for the clients in HIP to have private resources, either as a result of a legal settlement or via a private insurance benefit. Many clients enrolled in HIP have had the benefit of receiving publicly supported care for several years, and the regulations will continue that support through the grandfathered period until they have successfully transitioned. I have not included specific details about each of the clients in this letter due to confidentiality concerns, but I would be more than willing to direct staff to sit down with you or your staff to personally go over the care needs and financial resources present for each of the fifteen clients.

Lastly, I want to take this opportunity to stress that the passage of the HIP regulations is crucial to meeting the needs of individuals in the Commonwealth who have sustained a traumatic brain injury. The HIP currently has a waiting list of 170 applicants. They cannot be served until existing clients (who because regulations are not in place are under no time limitations) graduate from the program and create vacancies. Each year, about 15,000 head injuries occur in Pennsylvania, many of whom could benefit significantly from the services funded by the HIP. As you can see, we believe the HIP regulations are long overdue.

In sum, we are committed, in collaboration with the clients, their families, providers, and the Department of Public Welfare, to assuring that adequate and appropriate services are available to clients enrolled in HIP. Should you have any additional questions about these regulations, please do not hesitate to contact Deborah Griffiths, Director of Legislative Affairs at (717) 783-3985.

Sincerely,


Robert S. Zimmerman, Jr.

Enclosure



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
P.O. BOX 2675
HARRISBURG, PENNSYLVANIA 17105-2675

Feather O. Houstoun
Secretary

Telephone 717-787-2600/3600
FAX 717-772-2062

MAY 22 2001

The Honorable Robert Zimmerman
Secretary of Health
8th Floor, Health and Welfare Building
Harrisburg, Pennsylvania 17120

Dear Secretary Zimmerman:

This is to inform you that the Department of Public Welfare (DPW) will support the Department of Health (DOH) as it implements its new head injury program regulations, and that we are committed to ensuring that services are provided to Medicaid-eligible clients. As you know, our Department oversees the Medical Assistance program, which includes administering several Medicaid waivers and reimbursing for care provided in long-term care facilities enrolled in the program.

As I understand the regulations being considered, the Department of Health will provide another full year of services so that sufficient time exists to provide the rehabilitation and case management services necessary to transition clients into a program that will meet their long-term needs. In addition, the regulations provide an additional six months of case management services, which are intended to assure as much continuity in care and as little disruption to the lives of the clients as possible. During this 12 to 18 month period, staff from DPW and its contractors will continue to work with the staff from the head injury program to build on the planning process that has already started. We are committed to providing adequate and appropriate long-term care services to clients who are eligible for Medical Assistance.

Please let me know if there is anything else we can do in support of your head injury regulations.

Sincerely,

A handwritten signature in cursive script that reads "Feather O. Houstoun".

Feather O. Houstoun
Secretary of Public Welfare



Sandra Fabian
Assistant to the Chief Counsel

FACSIMILE TRANSMITTAL SHEET

TELEPHONE: (717) 783-2500

FAX: (717) 705-6042

E-mail: sfabian@state.pa.us

May 23, 2001

TO: Robert E. Nyce

FAX NUMBER: 783-2664

RE: HIP Regulations

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

5 PAGES, INCLUDING COVER PAGE

RECEIVED
MAY 23 2001

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMES ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH, IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 18, 2001

Honorable Robert S. Zimmerman, Jr. M.P.H.
Secretary of Health
802 Health & Welfare Bldg.
Harrisburg, PA 17120

Re Regulation #10-129
Head Injury Program

Dear Secretary Zimmerman:

On May 18, 2001, we discussed several problems with this final-form regulation with your staff. These problems could be corrected or clarified through the tolling procedure. Therefore, we recommend that you toll the review period to consider the following revisions:

1. Section 4.5(a), relating to application for enrollment as a HIP client, should be clarified to indicate that initial contact to the Department can be made through electronic mail or facsimile. Also, the Department should consider whether a phone call is sufficient documentation to place a prospective client on an application list.
2. In Section 4.5(c), the phrase "the division will place those individuals on a waiting list if *they* so elect." (Emphasis added.) We recommend that the regulation be rephrased as follows: "the division will place **an individual** on a waiting list if **the individual** so elects." In other areas of this section, the plural "individuals" should be replaced with the singular "individual."
3. In Section 4.5(e), the provision "The division will request individuals who have previously received rehabilitation services from HIP who are on the waiting list, or their authorized representatives, to submit applications for re-enrollment in the order that requests for re-enrollment were received" should be broken into two sentences for clarity.
4. The term "significant others" in Section 4.8(a), relating to rehabilitation service plans, is unclear. This phrase should be replaced with a clearer reference as to who can be consulted with respect to the applicant's needs.

Honorable Robert S. Zimmerman, Jr. M.P.H.
May 18, 2001
Page 2 of 3

5. Section 4.13(b)(1) states the Department will use a "sliding scale" to assess the client's share of costs. The "sliding scale" is unclear. This provision should include a cross-reference to the Patient Share of Cost Table. Also, the table should be added to the regulation as an appendix.
6. The term "immediate family" in Section 4.14(b)(3)(ii) should be defined. In addition, examples of circumstances which may create a conflict of interest in Section 4.14(b)(3)(i) and (ii) should be clarified.

If the Department chooses to toll the review period, it must deliver written notice to both the Standing Committees and the Commission on the same day. The written notice must be delivered prior to any Standing Committee action on the regulation, or before the end of the Standing Committee's review period on May 23, 2001, whichever occurs first.

As required by Section 307.5 of our regulations, written notice must include:

1. A citation to the section(s) the Department is considering revising,
2. A description of the revisions being contemplated, and
3. An explanation of how the revisions will satisfy our concerns.

If the Commission objects to tolling the review period, we will notify you and the Standing Committees within two business days after receipt of your tolling notice. In the event the Commission objects to your tolling notice, the review period will not be tolled and your regulation will be considered by the Commission at our public meeting on June 7, 2000. If the Commission does not object, the review period is tolled for up to 30 days beginning with receipt of your letter and ending on the day you resubmit the regulation.

If you have any questions, please call me at 783-5506. Sincerely,



Robert E. Nyce
Executive Director

cc: Honorable Dennis M. O'Brien, Majority Chairman, House Health and Human Services
Commission
Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services
Committee
Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare
Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare
Committee

Honorable Robert S Zimmerman, Jr. M P H.

May 18, 2001

Page 3 of 3

David J. DeVries, Esq., Office of Attorney General

Steven Tuckey, Esq., Office of General Counsel

Nia Wilson, Esq., Legal Counsel, House Health & Human Services Committee

Stanley Mitchell, Esq., Chief Counsel, House Health & Human Services Committee

Laurie McLaughlin, Esq., Chief Counsel, Department of Health

Original: 2034

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

May 22, 2001

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, Pennsylvania 17101

RECEIVED

MAY 22 11:00

Re: Department of Health Final Regulation No. 10-129
28 Pa. Code Chapter 4
Head Injury Program

Dear Mr. Nyce:

The Independent Regulatory Review Committee (IRRC) has recommended that the Department toll the final form regulations #10-129 (relating to Head Injury Program) that were submitted for your review on May 3, 2001. We are hereby requesting that the time for review of the regulations be tolled so that the Department can consider the issues raised by the IRRC. For your reference, we have included the letter from your agency recommending that the Department toll the regulations. The letter clearly identifies the issues that have been raised with regard to these regulations.

The Department expects to revise Section 4.5(a) by removing the reference to phoning, and by allowing initial contact with the Department to be made by electronic mail and facsimile. This is responsive to the concern that a phone call may not be sufficient documentation of a request to be placed on the waiting list, and allows for ease of access for potential applicants.

The Department expects to revise Section 4.5(c) by rephrasing the sentence cited by IRRC largely as recommended, and by replacing the plural "individuals" with the singular "individual" where appropriate in that section. This will make for improved clarity.

Likewise, the Department expects to break Section 4.5(e) into two sentences for clarity, as recommended by your agency.

The Department expects to remove the phrase "the applicant's significant others" from Section 4.8(a) and replace it with the phrase, "other individuals identified by the applicant." IRRC was concerned that the phrase was not clear. It is not, in fact, defined. The Department's intent was to ensure that the applicant could identify other individuals who could participate in creating a rehabilitation service plan. Stating this outright is clearer and in line with the Department's intent.

IRRC recommended that the Department include a cross-reference to the Patient Share of Cost table (used by the Division to determine patient share of cost) in Section 4.13(b)(1). The Department expects to include the Patient Share of Cost Table as an appendix to the regulations and to cross-reference it. In addition, the Department expects to add a reference indicating that the Patient Share of Cost Table will be published in the *Pennsylvania Bulletin* when changes are made. Such changes are made in response to changes to the Federal poverty guidelines.

The Department expects to add a definition of "immediate family" to Section 4.2, which would state as follows: "A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage." This change is in response to the suggestion that this term be defined. The Department also expects to change Section 4.14(b)(3)(i) so that it refers to services provided to the immediate family of a peer review committee member, and changing Section 4.14(b)(3)(ii) to refer to services provided by the immediate family of a peer review committee member. This change clarifies the circumstances that may create a conflict of interest for a peer review committee member.

We believe that this is responsive to the concerns of the IRRC. We appreciate your consideration in this matter, and remain available to answer any questions you may have.

Sincerely,



Robert S. Zimmerman, Jr.
Secretary of Health

Enclosure

cc: David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Honorable Harold F. Mowery, Jr., Majority Chairperson, Senate Public Health & Welfare
Committee
Honorable Vincent J. Hughes, Minority Chairperson, Senate Public Health & Welfare
Committee.
Honorable Dennis M. O'Brien, Majority Chairperson, House Health and Human Services
Committee
Honorable Frank L. Oliver, Minority Chairperson, House Health and Human Services
Committee

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARRISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
http://www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 18, 2001

Honorable Robert S. Zimmerman, Jr. M.P.H.
Secretary of Health
802 Health & Welfare Bldg.
Harrisburg, PA 17120

Re Regulation #10-129
Head Injury Program

Dear Secretary Zimmerman:

On May 18, 2001, we discussed several problems with this final-form regulation with your staff. These problems could be corrected or clarified through the tolling procedure. Therefore, we recommend that you toll the review period to consider the following revisions.

1. Section 4.5(a), relating to application for enrollment as a HIP client, should be clarified to indicate that initial contact to the Department can be made through electronic mail or facsimile. Also, the Department should consider whether a phone call is sufficient documentation to place a prospective client on an application list.
2. In Section 4.5(c), the phrase "the division will place those individuals on a waiting list if *they* so elect." (Emphasis added.) We recommend that the regulation be rephrased as follows: "the division will place **an individual** on a waiting list if the **individual** so elects." In other areas of this section, the plural "individuals" should be replaced with the singular "individual."
3. In Section 4.5(e), the provision "The division will request individuals who have previously received rehabilitation services from HIP who are on the waiting list, or their authorized representatives, to submit applications for re-enrollment in the order that requests for re-enrollment were received" should be broken into two sentences for clarity.
4. The term "significant others" in Section 4.8(a), relating to rehabilitation service plans, is unclear. This phrase should be replaced with a clearer reference as to who can be consulted with respect to the applicant's needs.

RECEIVED
MAY 21 2001
COMMUNICATIONS SECTION

Honorable Robert S. Zimmerman, Jr. M.P.H.
May 18, 2001
Page 2 of 3

5. Section 4.13(b)(1) states the Department will use a "sliding scale" to assess the client's share of costs. The "sliding scale" is unclear. This provision should include a cross-reference to the Patient Share of Cost Table. Also, the table should be added to the regulation as an appendix.
6. The term "immediate family" in Section 4.14(b)(3)(ii) should be defined. In addition, examples of circumstances which may create a conflict of interest in Section 4.14(b)(3)(i) and (ii) should be clarified.

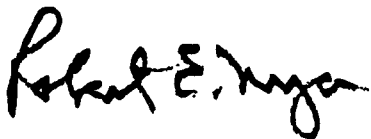
If the Department chooses to toll the review period, it must deliver written notice to both the Standing Committees and the Commission on the same day. The written notice must be delivered prior to any Standing Committee action on the regulation, or before the end of the Standing Committee's review period on May 23, 2001, whichever occurs first.

As required by Section 307.5 of our regulations, written notice must include:

1. A citation to the section(s) the Department is considering revising,
2. A description of the revisions being contemplated, and
3. An explanation of how the revisions will satisfy our concerns.

If the Commission objects to tolling the review period, we will notify you and the Standing Committees within two business days after receipt of your tolling notice. In the event the Commission objects to your tolling notice, the review period will not be tolled and your regulation will be considered by the Commission at our public meeting on June 7, 2000. If the Commission does not object, the review period is tolled for up to 30 days beginning with receipt of your letter and ending on the day you resubmit the regulation.

If you have any questions, please call me at 783-5506. Sincerely,



Robert E. Nyce
Executive Director

cc: Honorable Dennis M. O'Brien, Majority Chairman, House Health and Human Services
Commission
Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services
Committee
Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare
Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare
Committee

Honorable Robert S. Zimmerman, Jr. M.P.H.
May 18, 2001
Page 3 of 3

David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Nia Wilson, Esq., Legal Counsel, House Health & Human Services Committee
Stanley Mitchell, Esq., Chief Counsel, House Health & Human Services Committee
Laurie McLaughli, Esq., Chief Counsel, Department of Health

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

May 22, 2001

RECEIVED
MAY 23 2001
DEPARTMENT OF HEALTH

The Honorable Dennis M. O'Brien
Majority Chairperson
House Health and Human Services Committee
100 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Department of Health Final Regulation No. 10-129
28 Pa. Code Chapter 4
Head Injury Program

Dear Representative O'Brien:

The Independent Regulatory Review Committee (IRRC) has recommended that the Department toll the final form regulations #10-129 (relating to Head Injury Program) that were submitted for your review on May 3, 2001. We are hereby requesting that the time for review of the regulations be tolled so that the Department can consider the issues raised by the IRRC. For your reference, we have included the letter from the IRRC recommending that the Department toll the regulations. The letter clearly identifies the issues that the IRRC has raised with regard to these regulations.

The Department expects to revise Section 4.5(a) by removing the reference to phoning, and by allowing initial contact with the Department to be made by electronic mail and facsimile. This is responsive to the IRRC's concern that a phone call may not be sufficient documentation of a request to be put on the waiting list, and allows for ease of access for potential applicants.

The Department expects to revise Section 4.5(c) by rephrasing the sentence cited by IRRC largely as recommended by IRRC, and by replacing the plural "individuals" with the singular "individual" where appropriate in that section. This will make for improved clarity.

Likewise, the Department expects to break Section 4.5(e) into two sentences for clarity, as recommended by IRRC.

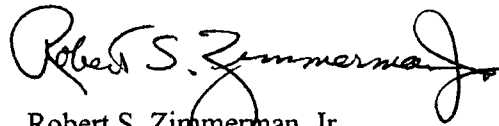
The Department expects to remove the phrase "the applicant's significant others" from Section 4.8(a) and replace it with the phrase, "other individuals identified by the applicant." IRRC was concerned that the phrase was not clear. It is not, in fact, defined. The Department's intent was to ensure that the applicant could identify other individuals who could participate in creating a rehabilitation service plan. Stating this outright is clearer and in line with the Department's intent.

IRRC recommended that the Department include a cross-reference to the Patient Share of Cost table (used by the Division to determine patient share of cost) in Section 4.13(b)(1). The Department expects to include the Patient Share of Cost Table as an appendix to the regulations and to cross-reference it. In addition, the Department expects to add a reference indicating that the Patient Share of Cost Table will be published in the *Pennsylvania Bulletin* when changes are made. Such changes are made in response to changes to the Federal poverty guidelines.

The Department expects to add a definition of "immediate family" to Section 4.2, which would state as follows: "A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage." This change is in response to IRRC's suggestion that this term be defined. The Department also expects to change Section 4.14(b)(3)(i) so that it refers to services provided to the immediate family of a peer review committee member, and changing Section 4.14(b)(3)(ii) to refer to services provided by the immediate family of a peer review committee member. This change clarifies the circumstances that may create a conflict of interest for a peer review committee member.

We believe that this is responsive to the concerns of the IRRC. We appreciate your consideration in this matter, and remain available to answer any questions you may have.

Sincerely,



Robert S. Zimmerman, Jr.
Secretary of Health

Enclosure

cc: David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Robert Nyce, Executive Director, IRRC

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

May 22, 2001

The Honorable Harold F. Mowery, Jr.
Majority Chairperson
Senate Public Health and Welfare Committee
169 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Department of Health Final Regulation No. 10-129
28 Pa. Code Chapter 4
Head Injury Program

Dear Senator Mowery:

The Independent Regulatory Review Committee (IRRC) has recommended that the Department toll the final form regulations #10-129 (relating to Head Injury Program) that were submitted for your review on May 3, 2001. We are hereby requesting that the time for review of the regulations be tolled so that the Department can consider the issues raised by the IRRC. For your reference, we have included the letter from the IRRC recommending that the Department toll the regulations. The letter clearly identifies the issues that the IRRC has raised with regard to these regulations.

The Department expects to revise Section 4.5(a) by removing the reference to phoning, and by allowing initial contact with the Department to be made by electronic mail and facsimile. This is responsive to the IRRC's concern that a phone call may not be sufficient documentation of a request to be placed on the waiting list, and allows for ease of access for potential applicants.

The Department expects to revise Section 4.5(c) by rephrasing the sentence cited by IRRC largely as recommended by IRRC, and by replacing the plural "individuals" with the singular "individual" where appropriate in that section. This will make for improved clarity.

Likewise, the Department expects to break Section 4.5(e) into two sentences for clarity, as recommended by IRRC.

May 22, 2001

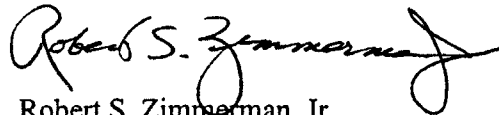
The Department expects to remove the phrase "the applicant's significant others" from Section 4.8(a) and replace it with the phrase, "other individuals identified by the applicant." IRRC was concerned that the phrase was not clear. It is not, in fact, defined. The Department's intent was to ensure that the applicant could identify other individuals who could participate in creating a rehabilitation service plan. Stating this outright is clearer and in line with the Department's intent.

IRRC recommended that the Department include a cross-reference to the Patient Share of Cost table (used by the Division to determine patient share of cost) in Section 4.13(b)(1). The Department expects to include the Patient Share of Cost Table as an appendix to the regulations and to cross-reference to it. In addition, the Department expects to add a reference indicating that the Patient Share of Cost Table will be published in the *Pennsylvania Bulletin* when changes are made. Such changes are made in response to changes to the Federal poverty guidelines.

The Department expects to add a definition of "immediate family" to Section 4.2, which would state as follows: "A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage." This change is in response to IRRC's suggestion that this term be defined. The Department also expects to change Section 4.14(b)(3)(i) so that it refers to services provided to the immediate family of a peer review committee member, and changing Section 4.14(b)(3)(ii) to refer to services provided by the immediate family of a peer review committee member. This change clarifies the circumstances that may create a conflict of interest for a peer review committee member.

We believe that this is responsive to the concerns of the IRRC. We appreciate your consideration in this matter, and remain available to answer any questions you may have.

Sincerely,



Robert S. Zimmerman, Jr.
Secretary of Health

Enclosure

cc: David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Robert Nyce, Executive Director, IRRC

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH
HARRISBURG

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

May 22, 2001

RECEIVED
MAY 22 11:00
DEPARTMENT OF HEALTH

The Honorable Frank L. Oliver
Minority Chairperson
House Health and Human Services Committee
34 East Wing, Capitol Building
Harrisburg, Pennsylvania 17120

Re: Department of Health Final Regulation No. 10-129
28 Pa. Code Chapter 4
Head Injury Program

Dear Representative Oliver:

The Independent Regulatory Review Committee (IRRC) has recommended that the Department toll the final form regulations #10-129 (relating to Head Injury Program) that were submitted for your review on May 3, 2001. We are hereby requesting that the time for review of the regulations be tolled so that the Department can consider the issues raised by the IRRC. For your reference, we have included the letter from the IRRC recommending that the Department toll the regulations. The letter clearly identifies the issues that the IRRC has raised with regard to these regulations.

The Department expects to revise Section 4.5(a) by removing the reference to phoning, and by allowing initial contact with the Department to be made by electronic mail and facsimile. This is responsive to the IRRC's concern that a phone call may not be sufficient documentation of a request to be placed on the waiting list, and allows for ease of access for potential applicants.

The Department expects to revise Section 4.5(c) by rephrasing the sentence cited by IRRC largely as recommended by IRRC, and by replacing the plural "individuals" with the singular "individual" where appropriate in that section. This will make for improved clarity.

Likewise, the Department expects to break Section 4.5(e) into two sentences for clarity, as recommended by IRRC.

May 22, 2001

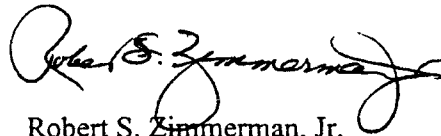
The Department expects to remove the phrase "the applicant's significant others" from Section 4.8(a) and replace it with the phrase, "other individuals identified by the applicant." IRRC was concerned that the phrase was not clear. It is not, in fact, defined. The Department's intent was to ensure that the applicant could identify other individuals who could participate in creating a rehabilitation service plan. Stating this outright is clearer and in line with the Department's intent.

IRRC recommended that the Department include a cross-reference to the Patient Share of Cost table (used by the Division to determine patient share of cost) in Section 4.13(b)(1). The Department expects to include the Patient Share of Cost Table as an appendix to the regulations and to cross-reference it. In addition, the Department expects to add a reference indicating that the Patient Share of Cost Table will be published in the *Pennsylvania Bulletin* when changes are made. Such changes are made in response to changes to the Federal poverty guidelines.

The Department expects to add a definition of "immediate family" to Section 4.2, which would state as follows: "A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage." This change is in response to IRRC's suggestion that this term be defined. The Department also expects to change Section 4.14(b)(3)(i) so that it refers to services provided to the immediate family of a peer review committee member, and changing Section 4.14(b)(3)(ii) to refer to services provided by the immediate family of a peer review committee member. This change clarifies the circumstances that may create a conflict of interest for a peer review committee member.

We believe that this is responsive to the concerns of the IRRC. We appreciate your consideration in this matter, and remain available to answer any questions you may have.

Sincerely,



Robert S. Zimmerman, Jr.
Secretary of Health

Enclosure

cc: David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Robert Nyce, Executive Director, IRRC

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH
HARRISBURG

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

May 22, 2001

The Honorable Vincent J. Hughes
Minority Chairperson
Senate Public Health and Welfare Committee
543 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Department of Health Final Regulation No. 10-129
28 Pa. Code Chapter 4
Head Injury Program

Dear Senator Hughes:

The Independent Regulatory Review Committee (IRRC) has recommended that the Department toll the final form regulations #10-129 (relating to Head Injury Program) that were submitted for your review on May 3, 2001. We are hereby requesting that the time for review of the regulations be tolled so that the Department can consider the issues raised by the IRRC. For your reference, we have included the letter from the IRRC recommending that the Department toll the regulations. The letter clearly identifies the issues that the IRRC has raised with regard to these regulations.

The Department expects to revise Section 4.5(a) by removing the reference to phoning, and by allowing initial contact with the Department to be made by electronic mail and facsimile. This is responsive to the IRRC's concern that a phone call may not be sufficient documentation of a request to be placed on the waiting list, and allows for ease of access for potential applicants.

The Department expects to revise Section 4.5(c) by rephrasing the sentence cited by IRRC largely as recommended by IRRC, and by replacing the plural "individuals" with the singular "individual" where appropriate in that section. This will make for improved clarity.

Likewise, the Department expects to break Section 4.5(e) into two sentences for clarity, as recommended by IRRC.

The Department expects to remove the phrase "the applicant's significant others" from Section 4.8(a) and replace it with the phrase, "other individuals identified by the applicant." IRRC was concerned that the phrase was not clear. It is not, in fact, defined. The Department's intent was to ensure that the applicant could identify other individuals who could participate in creating a rehabilitation service plan. Stating this outright is clearer and in line with the Department's intent.

IRRC recommended that the Department include a cross-reference to the Patient Share of Cost table (used by the Division to determine patient share of cost) in Section 4.13(b)(1). The Department expects to include the Patient Share of Cost Table as an appendix to the regulations and to cross-reference it. In addition, the Department expects to add a reference indicating that the Patient Share of Cost Table will be published in the *Pennsylvania Bulletin* when changes are made. Such changes are made in response to changes to the Federal poverty guidelines.

The Department expects to add a definition of "immediate family" to Section 4.2, which would state as follows: "A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage." This change is in response to IRRC's suggestion that this term be defined. The Department also expects to change Section 4.14(b)(3)(i) so that it refers to services provided to the immediate family of a peer review committee member, and changing Section 4.14(b)(3)(ii) to refer to services provided by the immediate family of a peer review committee member. This change clarifies the circumstances that may create a conflict of interest for a peer review committee member.

We believe that this is responsive to the concerns of the IRRC. We appreciate your consideration in this matter, and remain available to answer any questions you may have.

Sincerely,



Robert S. Zimmerman, Jr.
Secretary of Health

Enclosure

cc: David J. DeVries, Esq., Office of Attorney General
Steven Tuckey, Esq., Office of General Counsel
Robert Nyce, Executive Director, IRRC