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

July 16, 2001

Honorable Feather O. Houstoun, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-445 (IRRC #2043)
Medical Assistance Estate Recovery Program

Dear Secretary Houstoun:

On Friday, July 13, 2001, we discussed several drafting problems with your staff that we noted in our review of this regulation. These problems could be corrected or clarified through the tolling process. Therefore, we recommend that you toll the review process in order to consider the following revisions:

1. In Section 258.2, the defined term "individual" is confusing and should be deleted. In several sections of the regulation where this term appears, clarity would be improved if the defined term "decedent" were substituted. In addition, in the definition of "transferee," the use of the term "individual," as defined, is clearly inappropriate.
2. In Section 258.3(g), the Department should either delete the term "personal representative," describe a process by which the Department may petition a court to direct a personal representative to petition under the UFTA on behalf of the Department as a creditor, or delete the reference to the UFTA. A personal representative cannot recover property under the UFTA, as it is a remedy available only to creditors. If the reference to the UFTA is retained, the phrase "for the benefit of the estate" should be deleted since a creditor does not recover property for the estate's benefit.
3. In the second sentence of Section 258.3(g), the word "only" appears to be misplaced. This sentence should be restructured by changing the word "any" that appears before "transfer" to "a" and moving the word "only" from before "presume" to before "a." In the alternative, "only" may be deleted.
4. In Section 258.7(c)(2), the phrase "necessary legal steps" should be clarified by inserting a cross-reference to appropriate article of the UCC.

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5. Citations to Sections 1412(a.1) and (2) of the Act, which list the circumstances under which a personal representative or transferee may be held liable, should be added to Subsection (a).

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 July 19, 2001, whichever occurs first.

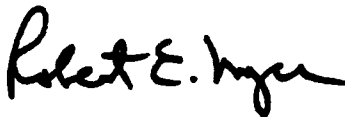
As required by Section 307.5 of our regulations, written notice must include:

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 the Commission will consider the regulation at our public meeting on July 26, 2001. If the Commission does not object, the review period will be 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 & Human Services Committee
Honorable Frank L. Oliver, Democratic Chairman, House Health & Human Services Committee
Honorable Harold F. Mowery, Chairman, Senate Public Health & Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health & Welfare Committee
Nia Wilson, Legal Counsel, House Health & Human Services Committee
Stanley Mitchell, Chief Counsel, House Health & Human Services Committee
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