Original: 2072
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cc: Sandusky
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October 28, 1999

VIA FACSIMILIE AND US MAIL

John Nanorta
Independent Regulatory Review Commission
14th Floor Harristown II
333 Market Street
Harrisburg, PA 17101

Dear John:

Enclosed please find Comments on the Department of Public Welfare's Final-Omitted Regulations #14-463 - Emergency Medical Condition filed by the Pennsylvania Health Law Project on behalf of the Consumer Health Coalition.

Respectfully Submitted,

Ann S. Torregrossa, Esq.
Alissa Eden Halperin, J.D.
Attorneys for the Consumer Health Coalition

cc: Bob Nelkin

Comments on the Department of Public Welfare's Final-Omitted Regulations #14-463 – Emergency Medical Condition filed by the Pennsylvania Health Law Project on behalf of the Consumer Health Coalition

DPW's Regulations do not comply with Act 68 or the BBA.

DPW's regulations are contrary to Act 68. Act 68 defines emergency services, requires that they be available 24 hours a day and requires that HMOs pay all reasonable costs for such services. As discussed more fully below, DPW's regulations are contrary to Act 68 for several reasons.

DPW fail to regulate HMOs as they are required to under the BBA. The Balanced Budget Act of 1997 (BBA) (42 U.S.C. 1396u-2, et. seq.) requires states to include in their contracts with HMOs assurances that emergency services will be provided and compensated. In fact, 42 U.S.C. §1396u-2(b)(2) requires that "each contract with a medicaid managed care organization under section 1903(m) and each contract with a primary care case manager under section 1905(t)(3) shall require the organization or manager (I) to provide coverage for emergency services (as defined in subparagraph (B)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization or manager..." DPW's regulations do not do that which the BBA requires it to do, require managed care plans to comply with the BBA. As discussed more fully below, DPW's regulations are contrary to the BBA for several reasons.

Section 1101.21 - Emergency Medical Condition

The Department's definition would not include emergency services coverage for a person with severe pain and no other acute symptoms contrary to Act 68. As federal legislation, the Balanced Budget Act (BBA) sets the minimum protections below which states may not venture. States are welcome to expand the scope of the federal legislation unless so doing is preempted. In Act 68, which is also commonly referred to as the Managed Care Bill of Rights, the General Assembly consciously expanded consumer protections beyond the floor established by the BBA. There the General Assembly defined an emergency medical condition as "a medical condition manifesting itself by acute symptoms of sufficient severity or severe pain such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to ...". In Section 1101.21, the Department eviscerates the expanded protection the General Assembly affirmatively took steps to provide. The General Assembly recognized the emergency circumstances surrounding

severe pain by itself are sufficient to constitute an emergency medical condition and other acute symptoms are not necessary. The DPW regulations are inconsistent with state law and must be changed.

Section 1141.2 and 1121.2 - Emergency Medical Care

The Department's definition would not, in some cases, include coverage for evaluation and stabilization contrary to the BBA and Act 68. The BBA instructed states to define Emergency Services to include evaluation and stabilization (which may not involve providing medical care). For example, a diabetic may enter an emergency room in shock and require mere apple juice and a place to sit to stabilize her sugars. These sections of the DPW regulations 1141.2 and 1121.2 do not include Emergency Services as required by the BBA but instead define emergency medical care. The definition of emergency medical care is more limited than that required under the BBA and thus is impermissible. Additionally, the DPW definition contradicts the clear intent of the General Assembly as evidenced in Act 68, because the General Assembly mirrored the language of the BBA. Congress and the General Assembly realized that the emergency services that are often necessary to evaluate and stabilize a patient do not always include the rendering of "medical care". Because the Department has no authority to contravene federal and state mandates, this definition must be changed to "emergency services" and it must include all that federal and state law require it to include.

The Department's definition fails to include emergency transportation services which Act 68 requires it to include. The emergency transportation services required to be covered by Act 68 for MCO members would not be covered under these regulations. The General Assembly affirmatively elected to include in that Act the transportation patients require in emergency situations are to be included in the definition of emergency services. These regulations contradict the specific language of the General Assembly, that such services must be included in any coverage and definition of Emergency Services.

Sections 1141.59 and 1221.59 - Noncompsenable services.

The Department has unjustifiably elected to burden the patient with responsibilities that would more reasonably be placed on the providers.. These sections provide that non-emergency services "are not reimbursable unless the recipient declares that he/she does not have access to a primary care physician or an outpatient clinic to receive non-emergency care. The hospital emergency room staff and/or the emergency room physician must document in the patient's

medical record the declaration." The Department is placing an immense and unfair burden on patients to declare and to know prior to getting to the ER that they must declare that they have no access to a primary care physician or outpatient clinic. There is no rational basis for imposing on the unknowing patient such an obligation. The providers should be responsible for inquiring. The providers deal with people in these situations all the time and should be held to know the requirements and to follow them.

The Department has unjustifiably exposed the patient to liability for non-emergency care. Providers should be required to know the procedures and timeframes to follow in order to receive compensation for the services provided. That is, after all, their business. Because the providers are the one with this knowledge and experience, they must be precluded from seeking payment from the patient where noncompensation from DPW results from the providers' failure to follow procedures or timetables.

Section 1150.2 - Definitions

The Department's definition of Emergency Admission impermissibly limits the specific language of Act 68. In this section, DPW defines an Emergency admission as an admission to a hospital for the purpose of rendering medical care in response to an emergency medical condition as defined in §1101.21 of this title". As already discussed above, section 1101.21 violates Act 68 by excluding coverage for an emergency medical condition where the sole complaint from the patient is severe pain. By defining emergency admissions to those conditions defined in Section 1101.21, DPW impermissibly excludes coverage for emergency admissions for extreme pain.

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RE:

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☐ URGENT ☐ CONFIDENTIAL ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ FOR REVIEW

NOTES/COMMENTS:

Eckert, Christina A.

From:	Nanorta, John E. Jr.	Original:	2072
Sent:	Tuesday, October 26, 1999 8:59 AM	McGinley	
To:	Sandusky, Richard M.; Wyatte, Mary S.; Eckert, Christina A.	Copies:	Sandusky
Subject:	FW: Emergency Regulations (DPW #2072)		Nanorta
			Wyatte

FYI, etc.,I received this e-mail pre-comment comment this morning from the Pennsylvania Health Law Project about the captioned rulemaking.

-----Original Message-----
From: Alissa Halperin [mailto:aehalperin@yahoo.com]
Sent: Tuesday, October 26, 1999 5:55 AM
To: johnn@irrc.state.pa.us
Subject: Emergency Regulations

Because we were unable to connect with the clients on whose behalf we were formulating comments to the regulations at the end of yesterday afternoon, we are unable to provide you with official comments to the regulations we discussed.

Unofficially, however, and as we already discussed, our clients are concerned about the fact that DPW was instructed by the BBA to define Emergency Services and to define it to include evaluation and stabilization (which may not involve providing medical care) and the regulations instead define emergency medical care. Our clients are also concerned that the transportation services available to MCO members under Act 68 is not available under these regulations. Our clients are concerned that these regulations are not consisted with Act 68, thus adding confusion and contradiction to the mix.

As regards non-emergency care, our clients are concerned about the burden placed on the patient to declare and to know prior to getting to the ER that they must declare that they have no primary care physician, etc. The providers should be responsible for inquiring. The providers deal with people in these situations all the time and should be held to know the requirements and to follow them. In this vein, our clients are concerned that providers who should know better and should know the procedures and timeframes to follow to be compensated for the services provided be precluded from seeking payment from the patient where noncompensation from DPW results from the providers failure to follow procedures or timetables.

I will be out of the office on Tuesday, October 26, 1999. I hope these preliminary, unofficial comments will be helpful to you. I should have a response from our clients however, in time to submit something more formal by Wednesday.

Thank you for calling yesterday. We appreciate your interest in our clients' comments and apologize that we were mistakenly thinking towards the 3rd as our

deadline.

Sincerely,

Alissa Halperin

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