PATRICIA H. VANCE, MEMBER
HOUSE POST OFFICE BOX 202020
MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 787-5935
FAX: (717) 787-0860

DISTRICT OFFICE:
3806 MARKET STREET
CAMP HILL, PENNSYLVANIA 17011-4327
PHONE: (717) 975-1985
FAX: (717) 975-2247
1-800-287-4045

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE,
VICE CHAIRMAN
FINANCE
HEALTH AND HUMAN SERVICES
INSURANCE

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Original letters to:
Coccodrilli, Harbison
Mizner, Nyce
COPIES: Harris, Jewett,
Markham, Smith
Wilmarth, Sandusky,
Wyatte, Notebook

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2, 333 Market Street
Harrisburg, PA 17101

Dear Bob:

I write to express number of significant concerns with the Department of Health's proposed regulations to implement the Managed Care Accountability Act. I particularly want to point out areas in which the regulations fail to provide the safeguards needed to protect older citizens for whom the process of accessing a complex system is very intimidating.

First, many older persons have physical problems that challenge their ability to get care. The proposed regulations place the burden on the regulated entity to establish a plan to comply with the Americans with Disabilities Act. Instead, the Health Department should set forth specific minimum standards and a monitoring process, governing not only access for members who use wheelchairs, but also assuring communication between health care providers and members who have hearing and visual problems, and providing that these guarantees extend to the complaint and grievance process. The Health Department should take note of the recent settlement of the Anderson case against HealthChoices. This is fundamental to quality of care, because if access is compromised, so is quality.

Second, the proposed regulations fail to require health plans to give older members the information and tools they need to be effective consumers. Plans can limit provider networks without informing current members, and can impose drug formularies without telling prospective members whether their medications will be covered. Plans are not required to describe their cost control incentives to the members. This lack of regulatory oversight is not part of the HMO Act, nor was it authorized by Act 68. By allowing plans to limit their networks beyond the amount needed for certification, the Health Department is taking a step backward from the legislative intent of the General Assembly. The proposed regulations require plans to

assure that members will be informed of their rights under Act 68. However, there is no list of these rights nor are minimum standards established as to how this information should be conveyed.

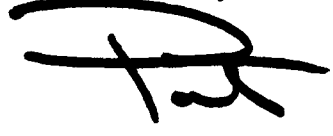
Third, a member is especially ill-advised under the complaint and grievance process. Plans are not required to share documents relating to decisions; they need not provide the identity or qualifications of the person who made the decision, and there is no requirement to render decisions which are sufficiently clear and detailed to permit a member to respond further. In the complaint and grievance area, the regulations make the plans less rather than more accountable than before Act 68. There is no process for Health Department intervention in cases where a member's rights are being ignored, or a penalty for plans that miss deadlines or otherwise fail to adhere to the complaint/grievance process. The Department has dropped its former requirement that it would assist members in identifying and gathering information and material needed to proceed with appeals at the Department level. Of particular concern is the Department's attempt, through the proposed regulation, to overturn their own Fundamental Fairness Guidelines for HMO's which have been in place since 1991.

Fourth, a number of provisions or omissions place older consumers, who often have more frequent and more serious health problems than younger persons, at risk. Health plans' financial incentives can play a large role in determining a members access to care. We rely on the Health Department to make sure that these mechanisms do not have the effect of discriminating against certain members. Yet, the proposed regulations do not require applicants for Certificates of Authority to describe in detail the financial incentives that they will use. Instead, plans must state only what types of incentives they might use. Bonus payments to reward low utilization can constitute up to half of a provider's compensation, which exposes members with high medical needs to an enormous risk of reduced levels of care. A Health Care Financing Administration study showed that when rewards for low utilization reach 25% of the provider's payment, the provider reaches a threshold which can color treatment decisions and result in inadequate care for the patient. These proposed regulations allow up to 49% of the provider's payment to be based on such incentives.

Finally, minimum quality assurance standards need to be set by the Department. We still live in an era in which cost is the major determinant of whether an employer with purchase a plan, and fewer and fewer employers offer a choice of plans. Retirees and other Pennsylvanians rely on the Department to protect them in this environment.

My interest in quality care, patient's rights, and the elimination of financial priorities taking precedence over patient care was the reason I took a leading role in the creation of Act 68. It is disappointing to me to see these proposed regulations going in the wrong direction. I offer my support as you shepherd these regulations through the Independent Regulatory Review Commission's process with a goal of achieving the protections intended for all Pennsylvanians.

Sincerely,



PATRICIA H. VANCE
Representative, 87th Legislative District