


Regulatory Analysis Form		This space for use by IRRC 2001 APR 25 PM 3:17 REVIEW COMMISSION  IRRC Number: 2194
(1) Agency Department of Public Welfare Office of Income Maintenance Bureau of Policy Division of Health Services		
(2) I.D. Number (Governor's Office Use)		
(3) Short Title Elimination of Requirement to Participate in the PACE Program		
(4) PA Code Cite 55 Pa. Code Chapter 181	Primary Contact: Edward J. Zogby 787-4081 Secondary Contact: George L. Hoover 772-7809	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language. <p>These final regulations eliminate the requirement that a medical assistance (MA) recipient enroll in the Pharmaceutical Assistance Contract for the Elderly (PACE) Program. Beginning June 1, 1994, the Department, based on the Omnibus Budget Reconciliation Act of 1987 and a Health Care Financing Administration (HCFA) directive, included coverage of prescribed compensable drugs as a covered service for medically needy only (MNO)-MA recipients receiving nursing facility services while residing in Intermediate Care Facilities/Mental Retardation (ICFs/MR) facilities, and in county and private nursing facilities (NFs). The inclusion of prescribed compensable drugs as a covered service for MNO-MA recipients in NFs eliminates the need for recipients to enroll in the PACE Program.</p>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>42 U.S.C. §1396r(b)(4)(A)(iii), §1919(b)(4)(A)(iii) of the Social Security Act, and the nursing home reform provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).</p>		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The Department is mandated by Federal statute (42 U.S.C. §1396r(b)(4)(A)(iii), §1919(b)(4)(A)(iii) of the Social Security Act and the Omnibus Budget Reconciliation Act) to include prescribed compensable drugs as a covered service for MNO-MA recipients receiving nursing facility services. The Department has amended its pharmaceutical services to include coverage of compensable drugs for MNO-MA recipients receiving nursing facility services. Effective June 1, 1994, MNO-MA recipients receiving nursing facility services are eligible for pharmaceutical services. This change resulted in the elimination of the requirement that an MNO-MA recipient eligible for the PACE Program must enroll in it because this requirement was rendered unnecessary. These regulations remove the enrollment requirement for PACE.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This amendment codifies the existing practice implemented June 1, 1994.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Not applicable.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The persons affected by this regulation change are MNO-MA recipients receiving nursing facility services in ICFs/MR facilities and county and private nursing facilities.

This regulation change will also have a positive affect on the Department of Aging. This change will reduce the number of recipients enrolled in the State-funded only PACE Program.

Stem Corp FEB 22 1999

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Not applicable

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All applicants and recipients of medically needy only medical assistance who are receiving nursing facility services in Intermediate Care Facilities/Mental Retardation and county and private nursing facilities.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

This regulation is mandated by provisions of the Federal statute, 42 U.S.C. § 1396r(b)(4)(A)(iii), § 1919(b)(4)(A)(iii) of the Social Security Act, which requires that compensable drugs are a covered service for medically needy only-medical assistance recipients receiving nursing facility services.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The purpose of this regulation is to codify the change which eliminates the requirement that a Medically Needy Only (MNO) medical assistance (MA) recipient enroll in the Pharmaceutical Assistance Contract for the Elderly (PACE) Program. Beginning June 1, 1994, the Department, based on the Omnibus Budget Reconciliation Act of 1987 and a Health Care Financing Administration (HCFA) directive, included the coverage of prescribed compensable drugs as a covered service for MNO-MA recipients receiving nursing facility care (NFC) while residing in Intermediate Care Facilities/Mental Retardation (ICFs/MR) and in county and private nursing facilities (NFs). The inclusion of prescribed compensable drugs as a covered service for MNO-MA recipients in NFs eliminates the need for recipients to enroll in the PACE Program.

For Fiscal Year 1998-1999, savings of \$16.689 million (\$7.731 million in State funds) are anticipated in the Medical Assistance-Long Term Care appropriation. These savings are a result of increased patient pay amounts due to the coverage of pharmaceuticals in the Medical Assistance-Outpatient appropriation. The increased cost in the Medical Assistance – Outpatient appropriations is estimated at \$18.683 million (\$8.655 million in State funds). There will be a negligible impact in the Private ICF/MR appropriations. The net impact to the Department is anticipated to be \$1.994 million (\$0.924 million in State funds) during Fiscal Year 1998-1999. This cost will be offset by anticipated savings to the Commonwealth's Pharmaceutical Assistance Contract for the Elderly (PACE) Program.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

(Dollar Amounts in Thousands)

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government	(\$7,731)	(\$8,590)	(\$9,544)	(\$10,604)	(\$11,782)	(\$13,091)
Total Savings	(\$7,731)	(\$8,590)	(\$9,544)	(\$10,604)	(\$11,782)	(\$13,091)
COSTS:						
Regulated Community						
Local Government						
State Government	\$8,655	\$9,615	\$10,681	\$11,865	\$13,180	\$14,641
Total Costs	\$8,655	\$9,615	\$10,681	\$11,865	\$13,180	\$14,641
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the estimates listed above were derived.

The estimated savings are based on increased patient pay amounts recovered in the Medical Assistance-Long-Term Care appropriations.

The cost estimate is based on the pharmaceuticals required for Medical Assistance medically needy only recipients receiving nursing facility care while residing in Intermediate Care Facilities-Mental Retardation, and in county and private nursing facilities.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
 (Dollar Amounts in Thousands)

Program	FY -3	FY -2	FY -1	Current FY
MA-Long Term Care	\$648,550	\$591,910	\$617,252	\$738,340
MA-Outpatient	\$792,293	\$798,836	\$662,740	\$590,278
Private ICF/MR	\$110,932	\$107,382	\$113,693	\$111,345

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The purpose of this regulation is to codify the change which eliminates the requirement that a Medical Needy Only (MNO) medical assistance (MA) recipient enroll in the Pharmaceutical Assistance Contract for the Elderly (PACE) Program.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered. To the extent possible, regulations have been written to provide savings.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered since this regulation is the result of a Federal mandate.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Pennsylvania's regulations are comparable with other states' requirements that provide MNO-MA.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These regulations will not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations shall take effect upon publication in the Pennsylvania Bulletin as final rulemaking retroactive to June 1, 1994.

(31) Provide the schedule for continual review of the regulation.

These regulations will be reviewed through the Department's Quality Control and Corrective Action review process which is monitored by the Federal Department of Health and Human Services.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

2011725 11 0 17

REVIEW COMMISSION

2194

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF PUBLIC WELFARE
(Agency)

LEGAL COUNSEL: Michael Ch...

DOCUMENT/FISCAL NOTE NO. #14-461
(DPW-OIM-03-99-001)

DATE OF ADOPTION: _____

BY: Jo Anniston

TITLE: SECRETARY OF PUBLIC WELFARE
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: Howard G. B...

12/20/00
Date of Approval

(Deputy General Counsel)
~~(Chief Counsel, Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING WITHOUT PUBLICATION AS PROPOSED
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF INCOME MAINTENANCE
BUREAU OF POLICY

[55 PA Code Chapter 181]
(Medical Assistance Income)

STATUTORY AUTHORITY

The Department of Public Welfare, by this Order, adopts the amended regulations set forth in Annex A under the authority of §§201(2) and 403(b) of the Public Welfare Code, Act of June 13, 1967 (P.L. 31, No. 21) (62 P.S. §§201(2) and 403(b)). 62 P.S. §201(2) provides that the Department has the authority to promulgate regulations with approval of the Governor. 62 P.S. §403(b) provides that the Department shall establish rules, regulations and standards consistent with law.

Notice of proposed rulemaking is omitted in accordance with §204(1)(iv) of the Commonwealth Documents Law (CDL) (45 P.S. §1204(1)(iv)) and 1 Pa. Code §7.4(1)(iv) because the administrative regulations relate to Commonwealth grants and benefits. The Health Care Financing Administration (HCFA) has determined that under the nursing home reform provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), the Commonwealth is required to consider compensable drugs as a covered service for Medically Needy Only - Medical Assistance (MNO-MA) recipients receiving nursing facility services. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary and contrary to the public interest under §204(3) of the CDL (45 P.S. §1204(3)) and 1 Pa. Code §7.4(3).

The inclusion of compensable drugs for MNO-MA recipients receiving nursing facility services permits the State to receive Federal Financial Participation (FFP) for providing compensable drugs. Previously, MNO-MA recipients in nursing facilities received compensable drugs through a State-funded pharmaceutical program. This amendment is beneficial to MNO-MA recipients receiving nursing facility services. Therefore, the Department finds proposed rulemaking is unnecessary because this amendment eliminates the requirement for recipients to enroll in the Pharmaceutical Assistance Contract for the Elderly (PACE) Program and codifies existing practice.

PURPOSE

The purpose of these amendments is to eliminate the requirement that an MA recipient receiving nursing facility services must meet the enrollment requirements for the PACE Program in determining the MA recipient's expected contribution toward the cost of nursing facility services.

BACKGROUND

HCFA determined that under the nursing home reform provisions of OBRA '87, states are required to reimburse incurred costs of drugs provided to all MA recipients receiving nursing facility services. Federal statute found at 42 U.S.C. §1396r(b)(4)(A)(iii),

§1919(b)(4)(A)(iii) of the Social Security Act, requires nursing facilities as a condition of participation in the Medicaid Program to provide pharmaceuticals to the extent necessary to fulfill each resident's plan of care. Federal statute found at 42 U.S.C. §1396a(o), §1902(a)(13) of the Social Security Act, requires states to pay nursing facilities through the use of rates which take into account the cost of complying with Medicaid participation requirements.

As the provision of drugs is a Medicaid nursing facility participation requirement, the Federal mandate requires that Pennsylvania must reimburse the incurred costs of drugs provided to all MA eligible nursing facility residents. Federal law requires the Commonwealth to consider compensable drugs as a covered service for MNO-MA recipients receiving nursing facility services.

The Office of Medical Assistance Programs (OMAP) amended its regulations in 55 Pa. Code §1121.22 to include coverage of pharmaceuticals for MNO-MA recipients receiving nursing facility services effective June 1, 1994. Medical Assistance Bulletin Number 1121-94-01 issued June 24, 1994 with an effective date of June 1, 1994, and Notice of Rule Change published in the Pennsylvania Bulletin at 24 Pa.B. 3760 (July 30, 1994) with an effective date of June 1, 1994, informed pharmacies and licensed prescribers

that the Department is including the coverage of pharmaceuticals for MNO-MA recipients receiving nursing facility services.

This change necessitates a revision to the Office of Income Maintenance eligibility regulations in 55 Pa. Code §181.452(d)(5)(ii)(B) and (iii) requiring that an MA recipient enroll in the PACE Program. Current regulations allow for the deduction from income of the full prescription costs depending upon whether an MA recipient has met the enrollment requirements for the PACE Program. The inclusion of prescription drugs as a covered service for MNO-MA recipients in nursing facilities eliminates the need for the recipients to enroll in the PACE Program.

TANF-related recipients referenced in §181.42(d) of Annex A include persons who qualify for MA under the pre-TANF (Aid to Families with Dependent Children) eligibility rules. 42 U.S.C. §1396u-1, §1931 of the Social Security Act.

This amendment is a benefit to MNO-MA recipients who are receiving nursing facility services. Effective June 1, 1994, OMAP included pharmaceuticals as a covered service for MNO-MA recipients receiving nursing facility services.

NEED FOR REGULATION

The regulations are needed to remove the requirements to enroll in the PACE Program currently in 55 Pa. Code §181.452(d)(5)(ii)(A), (d)(5)(ii)(B) and (iii). The inclusion of prescription drugs as a covered service for MNO-MA recipients eliminates the need for recipients to enroll in the PACE Program.

SUMMARY

Posteligibility determination of income available from an MA eligible person toward his cost of care - §181.452(d)(5)(ii)(A), (d)(5)(ii)(B) and (iii).

The subparagraph has been revised and the clauses have been eliminated at 55 Pa. Code §181.452(d)(5)(ii)(A), (d)(5)(ii)(B) and (iii) to remove the enrollment requirement for the PACE Program. The inclusion of prescription drugs as a covered service for MNO-MA recipients in nursing facilities eliminates the need for the recipients to enroll in the PACE Program.

AFFECTED PERSONS AND ORGANIZATIONS

These regulations will affect persons applying for, or receiving, MNO-MA who are receiving nursing facility services. This includes recipients who reside in Intermediate Care Facilities/Mental Retardation (ICFs/MR) facilities and county and private nursing facilities.

ACCOMPLISHMENTS/BENEFITS

This regulation change will benefit MNO-MA recipients receiving nursing facility services. This change eliminates the requirement for recipients to enroll in the PACE Program and eliminates one additional procedure the recipient was required to fulfill in obtaining prescriptions.

This regulation is consistent with 42 U.S.C. §1396r(b)(4)(A)(iii), §1919(b)(4)(A)(iii) of the Social Security Act, which requires prescription drugs as a covered service for MA recipients in nursing facilities.

FISCAL IMPACT

The net impact to the Department is anticipated to be \$1.994 million (\$0.924 million in State funds) during Fiscal Year 1998-1999. This cost will be offset by anticipated savings to the Commonwealth's Pharmaceutical Assistance Contract for the Elderly (PACE) Program.

PAPERWORK REQUIREMENTS

These regulations require no additional forms or reports.

EFFECTIVE DATE

These regulations are effective upon publication in the Pennsylvania Bulletin as final rulemaking retroactive to June 1, 1994.

SUNSET DATE

No sunset date is applicable. The Department continuously reviews the MA Program and regulations through the Federally-monitored Quality Control process. The Federal Health Care Financing Administration staff conduct audits periodically on specific aspects of the MA Program.

PUBLIC COMMENT PERIOD

Although these regulations are being adopted without prior notice, interested persons are invited to submit their written comments, suggestions, or objections to Mr. Edward J. Zogby, Director, Bureau of Policy, Department of Public Welfare, Room 431, Health and Welfare Building, Harrisburg, Pennsylvania 17120, telephone (717) 787-4081, within 30 days from the date of this publication for consideration by the Department as to whether the regulations should be revised.

Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (Voice users).

REGULATORY REVIEW ACT

Under §5(f) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the agency submitted a copy of this regulation with proposed rulemaking omitted on *APR 25 2001* to the Independent Regulatory Review Commission and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the regulation was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act.

In accordance with §5(c) of the Act, this regulation was approved by the Committees on . The Commission approved the regulation on

FINDINGS

The Department of Public Welfare finds that:

- (1) Public notice of intention to adopt the administrative regulations adopted by this Order may be omitted as this rulemaking relates to Commonwealth grants and benefits and is unnecessary and contrary to the public interest under §204(1)(iv) and (3) of the Commonwealth Documents Law (45 P.S. §1204(1)(iv) and (3)) and the regulations thereunder, 1 Pa. Code §7.4(1)(iv) and (3).

- (2) The adoption of this regulation in the manner provided in this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

ORDER

The Department of Public Welfare, acting under the Public Welfare Code, orders that:

- a. The regulations of the Department of Public Welfare are amended to read as set forth in Annex A to this Order.
- b. The Secretary of the Department of Public Welfare shall submit this Order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.
- c. The Secretary of the Department of Public Welfare shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- d. This Order shall take effect upon publication in the Pennsylvania Bulletin as final rulemaking retroactive to June 1, 1994.

cc: Legislative Reference Bureau

ANNEX A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND

AMOUNT OF ASSISTANCE

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY

NEEDY NMP-MA AND MNO-MA

Subchapter D. POSTELIGIBILITY DETERMINATION OF ELIGIBILITY

FOR MA PAYMENT TOWARD COST OF CARE IN INSTITUTIONS

POSTELIGIBILITY DETERMINATION PROVISIONS.

181.452. Posteligibility determination of income available from an MA eligible person toward his cost of care.

(d) The following amounts are deducted from the MA eligible person's total gross income identified in subsection (a) for persons in the aged-, blind-, and disabled-**RELATED** categories, or subsection (b) for persons in the **[AFDC-] TANF-RELATED** or GA-related categories and adjusted as applicable by the treatment of Veterans Administration benefits under subsection (c) for all MA eligible persons in the following order:

(5) The following medical expenses which are not subject to payment by a third party are deducted in the calendar month the medical expenses are paid.

* * * * *

(ii) Copayments or deductibles, including the [following:] **AMOUNT**

[(A) An] **AN** applicant/recipient participating in the Copayment Program **IS** required **TO PAY** by the Department [is permitted a medical expense deduction for copayment expenses,] subject to the **DEPARTMENT'S ESTABLISHED** copayment limit. [established by the Department.

(B) The allowable medical expense for an applicant/recipient determined eligible for the Pharmaceutical Assistance Contract for the Elderly (PACE) Program is limited to the current PACE payment for each prescription.

(iii) For persons not eligible for, or not receiving, the PACE benefits, the allowable medical expense is the full prescription payment if the applicant/recipient:

(A) Had been denied PACE benefits and the reasons for denial have not changed.

(B) Has not been determined eligible for PACE.

(C) Had good cause for not applying for, or participating in, the PACE program. Factors that constitute good cause include the following:

(I) The client's health or age preclude participation or makes it impractical.

(II) The client had been unaware of the responsibility to apply for PACE participation.

(III) The client had previously been denied PACE benefits and the circumstances that caused denial have not changed.

(iv)](iii) ***

Please return to:
Independent Regulatory Review Commission
14th Floor, Harristown II

TRANSMITTAL SHEET FOR REGULATORY REVIEW

I.D. NUMBER: 14-461
SUBJECT: Medical Assistance Income
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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

RECEIVED
INDEPENDENT REGULATORY REVIEW COMMISSION
APR 25 10 51 17
HARRISTOWN II

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/25/01	<i>Frank J. Oliver</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
4/25	<i>Lila J. Burris</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
4/25	<i>Mike St...</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
4/25/01	<i>Steph J. Hoff...</i>	ATTORNEY GENERAL

~~LEGISLATIVE REFERENCE BUREAU~~