

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		This space for use by IRRC 2001 SEP -4 PM 3:35 REVIEW COMMISSION	
		IRRC Number: 2217	
(1) Agency Department of Public Welfare Office of Medical Assistance Programs			
(2) I.D. Number (Governor's Office Use)			
(3) Short Title Disproportionate Share Incentive Payments			
(4) PA Code Cite 55 Pa. Code, Chapter 1187		(5) Agency Contacts & Telephone Numbers Primary Contact: Gail Weidman 705-3705 Secondary Contact: Alice Gustitus 772-2525	
(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. This regulation change to 55 Pa.Code Chapter 1187, Section 1187.111 will authorize an increase to the disproportionate share incentive payments for nursing facilities for Fiscal Year 1999-2000 through Fiscal year 2002-2003.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Public Welfare Code, 62 P.S. Section 201(2).			

(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.

No.

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

The intent of the disproportionate share is to provide an incentive to encourage nursing facilities to admit individuals eligible for Medical Assistance (MA) and to appropriately recognize nursing facilities that serve a greater number of MA residents.

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

None.

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

A disproportionate share incentive payment is made to MA participating nursing facilities having an annual overall occupancy rate of at least 90 percent of the total available bed days, and an MA occupancy rate of at least 80 percent based on MA paid days of care times the per diem incentive to facilities.

As per the 1999-2000 Intergovernmental Transfer (IGT) agreement, funds shall be allocated for payment by the Department to increase the disproportionate share payments to qualified nursing facilities for FY 1999-2000 through 2002-2003, only. The increased incentive payment shall be equal to two times the disproportionate share per diem incentive calculated in accordance with 55 Pa. Code § 1187.111(c).

There are approximately 665 nursing facilities in Pennsylvania enrolled in the Medical Assistance Program.

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(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.)

No adverse effects anticipated.

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

No one will be required to comply with this regulation. This is an incentive payment made to MA participating nursing facilities that meet the requirements.

(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 change is in response to the 1999-2000 Intergovernmental Transfer (IGT) agreement between the Department and the County Commissioners Association of Pennsylvania.

(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.

None anticipated.

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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 change is to increase the disproportionate share incentive payments to qualified nursing facilities for the periods January 1, 2000, through June 30, 2003. The IGT agreements provide for this payment.

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AND PLANNING**

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(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						
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community						
Local Government						
State Government	\$4,999	\$5,084	\$5,222	\$2,697	\$0	\$0
Total Costs	\$4,999	\$5,084	\$5,222	\$2,697	\$0	\$0
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 cost estimate is based on MA paid days of care times the increased per diem incentive payment for the January 1, 2000, through June 30, 2003, with a six month lag in payment. These costs are budgeted in the Medical Assistance - Long-Term Care appropriation.

Regulatory Analysis Form

(20b) Provide the past three years 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	\$617,252	\$721,631	\$693,625	\$793,246

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

This regulation increases the amount of disproportionate share incentive payments to qualified nursing homes. These payments provide an incentive to encourage nursing facilities to admit individuals eligible for Medical Assistance (MA) and to appropriately recognize nursing facilities that serve a greater number of MA residents.

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

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



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

Program	FY -3	FY - 2	FY - 1	Current FY

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

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

Nonregulatory alternatives were not considered. Currently, disproportionate share incentive payments are found at 55 Pa. Code 1187. In order to change the calculation for this incentive payment for FY 1999-2003, a regulatory process must be followed.

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

No alternatives were considered.

(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?

The regulation will not disadvantage the Commonwealth.

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

Yes. This is a change to the calculation of the incentive payments to nursing facilities for the time period of July 1, 1999 to June 30, 2003 as found at 55 Pa. Code Chapter 1187, Section 1187.111.

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

The regulation change was negotiated as part of the Intergovernmental Transfer Agreement (IGT) of September 21, 1999. Negotiations of the IGT were held at the Health and Welfare Building, Room 327, Harrisburg, Pennsylvania, between January 2000 and May 2000.

Regulatory Analysis Form

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

This regulation change will not affect 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.

Not applicable.

(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 effective date of the regulation is January 1, 2000.

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

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2001 SEP -4 PM 3:34
REVIEW COMMISSION

#2217

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: Kathleen Grogan

DOCUMENT/FISCAL NOTE NO. 14-470

DATE OF ADOPTION: _____

BY: [Signature]

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: [Signature]

5/17/01
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 MEDICAL ASSISTANCE PROGRAMS

(55 PA CODE CHAPTER 1187)

Disproportionate Share Incentive Payments

Statutory Authority

The Department of Public Welfare, Office of Medical Assistance Programs, by this Order, adopts the amendment to 55 Pa. Code Chapter 1187 (relating to disproportionate share incentive payments). The amendment is set forth in Annex A and is adopted under the authority of Section 201 of the Public Welfare Code, (62 P.S. § 201(2)).

Notice of proposed rulemaking is omitted in accordance with Section 204(1)(iv) and (3) of the Act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. § 1204(1)(iv) and (3)), known as the Commonwealth Documents Law, and 1 Pa. Code § 7.4(1)(iv) and (3). Section 204(1)(iv) and (3) and § 7.4(1)(iv) and (3) provides that an agency may omit notice of proposed rulemaking when the amendment relates to Commonwealth grants or benefits or where circumstances render it impractical, unnecessary or contrary to public interest. Notice of proposed rulemaking is omitted since this regulatory amendment involves an increase to Medical Assistance (MA) payments to qualifying nursing facilities that are already aware of this change.

Purpose of Regulation

This regulation will increase the disproportionate share incentive payments to qualified nursing facilities effective for the periods January 1, 2000 through June 30, 2003, only. The disproportionate share incentive payment shall be increased to equal two times the disproportionate share per diem incentive calculated in accordance with 55 Pa. Code § 1187.111(c).

Need for Regulation

A disproportionate share incentive payment is made to MA participating nursing facilities having an annual overall occupancy rate of at least 90 percent of the total available bed days, and an MA occupancy rate of at least 80 percent based on MA paid days of care times the per diem incentive to facilities.

The Intergovernmental Transfer (IGT) Agreement for Fiscal Year 1999-2000 provides that for the period January 1, 2000 to June 30, 2003, the disproportionate share incentive payment to qualified nursing facilities shall be increased to equal two times the disproportionate share per diem incentive calculated in accordance with 55 Pa. Code § 1187.111(c).

Requirements

Section 1187.111 is being amended to provide increased disproportionate share incentive payments effective for the periods January 1, 2000 to June 30, 2003.

Affected Organizations

MA participating nursing facilities which have an annual overall occupancy rate of at least 90 percent of the total available bed days, and an MA occupancy rate of at least 80 percent, are eligible to receive disproportionate share incentive payments.

Fiscal Impact

Public Sector

The Commonwealth

The Department will see an increase in monies being paid to eligible nursing facilities due to doubling the disproportionate share incentive payments for the periods January 1, 2000 to June 30, 2003.

Political Subdivisions

No impact is anticipated.

Private Sector

No impact is anticipated.

General Public

No impact is anticipated.

Paperwork Requirements

There should be no increase in paperwork requirements.

Effective Date

This amendment shall take effect on January 1, 2000.

Sunset Date

There is no sunset date for this regulation.

Public Comments

Although this regulation is being adopted without prior notice, interested persons are invited to submit their written comments within 30 days from the date of this publication for consideration by the Department as to whether the regulation should be revised. Such comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, Pennsylvania 17105.

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). If you require another alternative, please contact Tom Vracarich in the Office of Legal Counsel at (717) 783-2209.

Regulatory Review

Under Section 5(f) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. Sections 745.1 - 745.15), the agency submitted a copy of this regulation with proposed rulemaking omitted on ~~SEP 04 2000~~ to the Independent Regulatory Review Commission and to the Chairperson 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 pursuant to the Commonwealth Attorneys Act. In accordance with Section 5(c) of the Act, this regulation was approved by the Committees on and was approved by the Commission on

The Department of Public Welfare finds:

- a. That notice of proposed rulemaking is omitted because this regulation relates to Commonwealth grants and benefits and notice of proposed rulemaking is unnecessary and contrary to the public interest under Sections 204(1)(iv) and (3) of the Act No. 240 of July 31, 1968, P.L. 767 (45 P.S. § 1204(1)(iv) and (3)) and the regulations thereunder, 1 Pa. Code § 7.4(1)(iv) and (3).

- b. That 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, Act of June 13, 1967 (P.L. 31, Act 21) § 443.1(2) and (3) (62 P.S. § 443.1(2) and (3)).

The Department of Public Welfare, acting pursuant to the authority of the Public Welfare Code, orders:

- 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 hereto to the Attorney General and General Counsel for approval as to legality and form as required by law.
- c. The Secretary of the Department of Public Welfare shall duly certify this Order and Annex A hereto and deposit same in the Legislative Reference Bureau as required by law.
- d. This order shall take effect on January 1, 2000.

ANNEX A
Title 55. Public Welfare
Chapter 1187. Nursing Facility Services

§ 1187.111. Disproportionate share incentive payments.

(e) For year 1 of implementation only, facilities with a June 30 cost report year end will receive a disproportionate share payment based on the January 1 through June 30 time period.

(f) For the period January 1, 2000 to June 30, 2003, the disproportionate share incentive payment to qualified nursing facilities shall be increased to equal two times the disproportionate share per diem incentive calculated in accordance with 55 Pa. Code § 1187.111(c).

(1) For the period commencing January 1, 2000 through June 30, 2000, the increased incentive shall apply to cost reports filed for the fiscal period ending December 31, 1999 or June 30, 2000.

(2) For the period commencing July 1, 2000 through June 30, 2001, the increased incentive shall apply to cost reports filed for the fiscal period ending December 31, 2000 or June 30, 2001.

(3) For the period commencing July 1, 2001 through June 30, 2002, the increased incentive shall apply to cost reports filed for the fiscal period ending December 31, 2001 or June 30, 2002.

(4) For the period commencing July 1, 2002 through June 30, 2003, the increased incentive shall apply to cost reports filed for the fiscal period ending December 31, 2002 or June 30, 2003.

§ 1187.112. Cost per bed limitation adjustment.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

*Pls. sign all 3 copies
& return to: ITRC
14th Fl., Harrisburg
PA*

I.D. NUMBER: 14-470
SUBJECT: Disproportionate Share Incentive Payments
AGENCY: DEPARTMENT OF PUBLIC WELFARE

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

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 INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/4/01	<i>[Signature]</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
9-4-01	<i>Marguerite Pelletier</i>	
9/4/01	<i>Kurt Krasner</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
9-4-01	<i>S. King</i>	
9/4/01	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
9-4-01	<i>Mary Mummert</i>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

May 17, 2001