



1100 Bent Creek Boulevard  
Mechanicsburg, PA 17050

ORIGINAL: 2240

January 7, 2002

Robert Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harristown 2  
333 Market Street  
Harrisburg, PA 17101

Dear Mr. Nyce:

PANPHA is a statewide trade association representing 350 nonprofit long-term care providers. Included in our membership are 220 licensed nursing care facilities that participate in the Medicaid program. Over the past two years, PANPHA, through staff and member task force, has been working with the Department of Public Welfare on changes to the State's nursing facility Medicaid regulation to address movable property and durable medical equipment. The regulatory package to be considered at the 1/10/02 IRRC meeting is a result of this working dialogue. PANPHA recommends that the Independent Regulatory Review Commission approve the amendments to Chapter 1187 dealing with movable property and durable medical equipment.

We support the Department's process to pursue implementing these changes by promulgating final regulations rather than a Notice of Rule Change. Additionally, we are pleased with the language in the definition of "Supply" and the inclusion of the special-rehab and hospital-based facilities for grants for exceptional durable medical equipment.

PANPHA members look forward to the implementation of these regulatory changes to Chapter 1187 and urge the IRRC's approval.

Sincerely,

A handwritten signature in cursive script that reads "Christine F. Klejbuk".

Christine F. Klejbuk  
Vice President/Public Policy  
chris@panpha.org

cc: Peg Dierkers  
Andrew Major

Forthcoming/NORC  
cc: Nyce

Louis J. Capozzi, Esquire  
Daniel K. Natirboff, Esquire  
Stephen A. Miller, Esquire  
Ben M. Rollins, Esquire  
Katherine E. Stine, Esquire  
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November 29, 1999

Original: 2240  
Department of Public Welfare  
Office of Medical Assistance Programs  
Attention: Policy Section  
P.O. Box 2675  
Harrisburg, PA 17105-2675

RE: COMMENTS ON 29 PA.B. 5957 (November 20, 1999)  
Proposed Changes to Medical Assistance Nursing Facility  
Services Payment Methodology Relating to Exceptional  
Payment Policy  
Our Matter No. 99-00700

Dear Members of the Policy Section:

This correspondence provides comments on the proposed addition of 55 Pa. Code, Chapter 1187, Subchapter K. The focus of our comments is the characterization in the proposed rules of the payment to be made as a "grant."

The Department has no authority under the Public Welfare Code to make "grants" to nursing facility providers for services to recipients. Payments to nursing facility providers for services are made on behalf of residents pursuant to 62 P.S. § 443.1 and the provider agreement and are payments for services. That MA payments are payments for services is also indicated in 62 P.S. § 443.6 (relating to reimbursement for items and services requiring prior authorization). See also: In re: Leopardi, 516 Pa. 115, 532 A.2d 311 (1987); Northern Associates, Inc. v. State Board of Vehicle Manufacturers, Dealers and Salespersons, 725 A.2d 857, 859 (Pa. Cmwlth. 1999) (Doubtful power not conferred on agency by express language or by necessary implication does not exist). Therefore, the Department should amend its proposed rules to delete the term "grant" in the definitions of "Exceptional DME Grant" and "Exceptional DME Grant Agreement" and to substitute the term "payment" for the term "grant" wherever used in Subchapter K.

RECEIVED  
1999 DEC -2 AM 9:09  
INDUSTRIAL REGULATORY  
REVIEW COMMISSION

Department of Public Welfare  
Office of Medical Assistance Programs  
Attention: Policy Section  
COMMENTS ON 29 PA.B. 5957 (November 20, 1999)  
Our Matter No. 99-00700  
November 29, 1999  
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We note that, under the Commonwealth Procurement Code (62 Pa. C.S.A. §§ 101 *et seq.*), a "grant" is defined as the "furnishing of assistance by the Commonwealth..., whether financial or otherwise, to any person to support a program" (62 Pa. C.S.A. § 102(f)). We also note that the Code does not apply to MA provider agreements (62 Pa. C.S.A. § 102(e)). The payments that Subchapter K involves are not "assistance...to support a program" and are, therefore, not "grants" even as defined by the Code. The payments are for services rendered (i.e., reimbursement), as indicated in the language of the Public Welfare Code.

The Department's characterization of these payments as "grants" is also related to the proposed provisions of 55 Pa. Code §§ 1187.152(e), 1187.153(e), 1187.153(g), seeking to enact an exception to the exclusive jurisdiction of the Board of Claims to resolve provider payment disputes and establishing sanctions against both recipients and providers that seek to utilize the jurisdiction of the Board of Claims or other tribunals established by statute, including loss of services that the Department has determined to be medically necessary for MA recipients in nursing facilities. Such limitations and sanctions are inconsistent with law and beyond the authority vested in the Department of Public Welfare by the Public Welfare Code and, therefore, are incompatible with the powers vested exclusively in the General Assembly and the rights vested in the citizens and medical facilities of the Commonwealth by the Pennsylvania State Constitution. Citizens of the Commonwealth should not be threatened by their government agencies with loss of medically necessary services because they elect to exercise rights created by statute. Such retaliatory procedures are contrary to principles of a free society. See: Board of County Commissioners v. Umbehr, 518 U.S. 668, 674 (1996) ("unconstitutional conditions doctrine").

Pursuant to the Public Welfare Code and the Board of Claims Act, providers are and must continue to be authorized to contest before the Board of Claims any determination by DPW relating to payment at the rates established by the Department for such services except determinations relating to the eligibility of persons for Medical Assistance nursing facility benefits. Once the Department has determined that a person is eligible for Medical Assistance nursing facility benefits, the Department is precluded by federal law from fragmenting that mandated service into different services with different recipient or provider rights.

Department of Public Welfare  
Office of Medical Assistance Programs  
Attention: Policy Section  
COMMENTS ON 29 PA.B. 5957 (November 20, 1999)  
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Once a person is eligible for nursing facility services, they are eligible for those services required to maintain their highest practicable physical, mental, and psychosocial well-being, including the medically necessary services involved in Subchapter K. The Department's determination to provide payments to providers to support the cost of such services in addition to the regular case-mix payment indicates the Department's confirmation that the case-mix payment methodology is insufficient, by itself, to cover such necessary costs. We agree with the Department that both federal and state law permit the Department to provide incentive payments for providers which are payable in limited circumstances to cover such extraordinary costs.

We also agree that the Department can and must provide for medical or utilization review of such services as part of its authorization process for such extraordinary payments. We do not agree that the Department may limit the rights of providers or recipients to contest the Department's determinations in such reviews through regulations which effectively amend statutory entitlements. Just as providers may and do contest in the Board of Claims the Department's determination of the number of MA Days, so a provider can and must be entitled to contest in that tribunal or other tribunals as permitted by statute, the Department's denial of payments for services which meet the Department's criteria for medical necessity for these extraordinary payments, especially where the provider is required by law to provide such services and may be sanctioned for not providing them.

If the Department has determined that providers should be paid incentive payments where extraordinary services are necessary, there should be no restrictions on providers' existing rights to contest Department determinations affecting providers' rights to payments for such services where denied by the Department. Calling the payments "grants" when a provider has agreed to provide these "extraordinary services" could result in a provider having no fair and impartial adjudicative recourse where a dispute arises. The denial of such recourse should not be the "reward" for providers who provide extraordinary services to indigent residents.

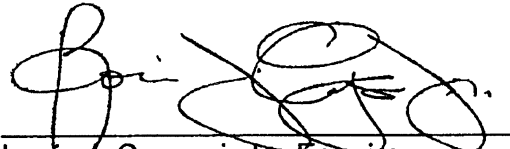
Department of Public Welfare  
Office of Medical Assistance Programs  
Attention: Policy Section  
COMMENTS ON 29 PA.B. 5957 (November 20, 1999)  
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In situations, for example, where there is a dispute as to whether the Department did or did not "act on a request" within 21 days such that the request may be deemed approved pursuant to the proposed 55 Pa. Code § 1187.152(b)(i), the proposed regulations do not provide guidance on what is meant by "act on a request" and how providers or residents are to know whether the Department did so or not. Where a provider or a recipient's family has reasonably relied on a failure by the Department to provide actual notice of denial within the 21-day time frame, they should not be precluded from contesting a later received Department denial in such forums as the General Assembly has seen fit to designate for that purpose, including the Board of Claims.

We appreciate this opportunity to comment on these proposed rules. We look forward to the discussion of the proposed rules, including our concerns, at the public meetings listed in the Notice of November 20, 1999.

Very truly yours,

CAPOZZI AND ASSOCIATES, P.C.



Louis J. Capozzi, Jr., Esquire

cc: Honorable Harold F. Mowery  
Independent Regulatory Review Commission  
Pennsylvania Health Law Project/Consumers Subcommittee  
Edward J. Newett, Jr., CPA/LTC Subcommittee  
George Gugoff/HAP  
Christine Klejbuk/PANPHA  
Robert Moran/PHCA

ORIGINAL: 2240

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Harrisburg, PA  
President and CEO

January 7, 2002

**Via Hand Delivery**

**John R. McGinley, Jr., Esquire**  
**Chairman**  
**Independent Regulatory Review Commission**  
**333 Market Street**  
**14<sup>th</sup> Floor**  
**Harrisburg, PA 17101**

2002 JAN -7 PM 1:06  
 INDEPENDENT REGULATORY REVIEW COMMISSION

**Re: (14-473) Changes in Payment Methodology for Movable  
Property and Exceptional Payment for Nursing Facility  
 Services**

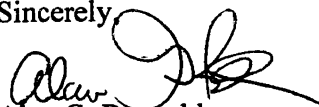
Dear Commissioner McGinley:

The Pennsylvania Health Care Association (PHCA) represents more than 325 proprietary and non-profit providers of long term care and senior services throughout the Commonwealth. We appreciate the opportunity to comment on the proposed amendments to 55 PA. Code Chapter 1187 concerning changes in payment methodology for movable property and exceptional payment for nursing facility services.

PHCA is pleased to support the regulatory changes embodied in the submission by the Department of Public Welfare. The proposed regulations should assist nursing facilities in providing high quality care and services to Medical Assistance (MA) residents. In particular, we believe that these regulations will allow for more timely payment for certain types of medical equipment, which may well increase the number of MA providers willing to admit residents that require exceptional medical equipment.

PHCA urges the Independent Regulatory Review Commission to approve these "final omit" regulations when you consider them on January 10. If I can provide any further clarification on our comments, please do not hesitate to contact me.

Sincerely,

  
 Alan G. Rosenbloom  
 President and CEO



John R. McGinley, Jr., Esquire  
January 7, 2002  
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cc: Commissioner Alvin C. Bush, Vice Chairman  
Commissioner Arthur Coccodrilli  
Commissioner Robert J. Harbision III  
Commissioner John F. Mizner, Esquire  
Scott R. Schalles, Regulatory Analyst  
Mr. Andrew Major, Director, Bureau of LTC Programs, DPW



# PENNSYLVANIA ASSOCIATION OF COUNTY AFFILIATED HOMES

17 NORTH FRONT STREET • HARRISBURG, PA 17101-1624 • (717) 232-7554 • FAX (717) 232-2162

ORIGINAL: 2240

January 4, 2002

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, Pa. 17101

RE: Department of Public Welfare #14-473: Changes in Payment Methodology for  
Movable Property and Exceptional Payment for Nursing Facility Services (Final-  
Omit)

Dear Mr. Nyce:

The Pennsylvania Association of County Affiliated Homes (PACAH) is pleased to lend its support to the above-named regulations and urges approval by the Independent Regulatory Review Commission (IRRC). PACAH is an affiliate of the County Commissioners Association of Pennsylvania and represents all 54 county and county-affiliated nursing facilities in the Commonwealth. With a growing number of non-county high Medicaid occupancy facilities joining PACAH, our membership has now reached 80.

PACAH and its member facilities (because of our high Medicaid resident census) are always most interested and have the most risk when regulations affecting Medicaid payments are concerned. PACAH has been closely involved with the Department of Public Welfare in the development and potential interpretation of these regulations over the past two years, and are supportive of their decision to present these as final omit regulations.

Once fully implemented, these regulations will allow nursing facilities to receive payment for some of their operational expenses in a more timely manner, and ultimately make caring for the Medicaid resident more equitable for facilities. Once again, PACAH urges the IRRC to approve these regulations. Thank you for the opportunity to comment.

Sincerely,

Michael J. Wilt  
Executive Director

Cc: Richard Sandusky  
Peg Dierkers  
Andrew Major

RECEIVED  
 DEPARTMENT OF PUBLIC WELFARE  
 1/7/02 11:59:03

AN AFFILIATE OF THE COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA  
WWW.PACOUNTIES.ORG

Email - mwilt@pacounties.org Email - sdibeler@pacounties.org



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# PENNSYLVANIA ASSOCIATION OF COUNTY AFFILIATED HOMES

17 NORTH FRONT STREET • HARRISBURG, PA 17101-1624 • (717) 232-7554 • FAX (717) 232-2162

## FAX

REVIEW COMMISSION

2002 JAN -7 AM 9:03

To: Robert NYce  
Executive Director

Location: IRRC

Fax number: 783-2664

From: Mike WILT

Date: 1/7/02

# of pages 2

Comments: DPW Resolutions

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Please call PACAH @ 717 232 7554 if there are any problems with this fax transmission.



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