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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 5, 2002

Honorable Feather O. Houstoun, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-477 (IRRC #2296)
Department of Public Welfare
Income Provisions for Categorically Needy NMP-MA and MNO-MA

Dear Secretary Houstoun:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce", written in a cursive style.

Robert E. Nyce
Executive Director

sfn

Enclosure

cc: Honorable George T. Kenney, Jr., Majority Chairman, House Health and Human Services Committee

Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee

Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee

Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee

Nia Wilson, Legal Counsel, House Health and Human Services Committee

Stanley Mitchell, Chief Counsel, House Health and Human Services Committee

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation No. 14-477

Income Provisions for Categorically Needy NMP-MA and MNO-MA

December 5, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Public Welfare (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. - Disapproval by a Standing Committee; Policy Decision Requiring Legislative Review; Protection of the Public Health, Safety and Welfare; Economic and Fiscal Impact; Feasibility; Reasonableness.

Disapproval by the House Health and Human Services Committee; Policy decision requiring legislative review

The House Health and Human Services Committee (House Committee) disapproved the proposed amendments. In their letter dated October 21, 2002, the House Committee found “that the proposed changes will jeopardize the health and well being of many Pennsylvanians. The Committee unanimously and adamantly opposes” this regulation.

The Senate Public Health and Welfare Committee (Senate Committee) submitted a letter opposing this rulemaking. In their letter dated November 25, 2002, the Senate Committee believed this regulation “is not in the public interest as it fails to protect the public health and ultimately will result in additional costs for the Commonwealth and municipal governments.”

We agree with both the House and Senate Committees’ concerns and herein state our objections to the proposed amendments.

Protection of the public health, safety and welfare

There are three concerns related to our criterion of protection of the public health, safety and welfare.

First, the Department estimates 7,196 individuals will lose NMP benefits and 14,802 individuals will lose Medicaid eligibility as a result of these amendments. The House Committee described this population as “Pennsylvania’s most needy and vulnerable citizens.” Commentators have

described these individuals as generally elderly, disabled or experiencing mental health problems. The Department should include a comprehensive description of the affected population in the final-form regulation.

Second, these amendments will cause many individuals to lose their prescription drug coverage. Commentators stated that without prescription coverage, many individuals won't be able to afford necessary medication. Among the commentators' concerns is the loss of independence for the elderly and individuals with mental illness. The Department gave no estimate of how the loss of this assistance will impact health. The Department needs to explain how the health, safety and welfare of the individuals will be protected upon the implementation of this regulation. The Department also needs to explain in detail what other assistance the individuals may be eligible for, and whether the level of assistance is sufficient for the individuals to maintain their health.

Finally, the House Committee "is very concerned about the potentially harmful impact of the proposed changes on Pennsylvania's most needy and vulnerable citizens." The Department should explain in the Preamble to the final-form regulation the alternatives considered to accomplish cost savings and why this regulation is the most reasonable way to cut costs in relation to other alternatives available to the Department.

Economic and fiscal impact; Feasibility

The House Committee and most commentators questioned whether the amendments will save or cost the Commonwealth money in the long run. The amendments: may cause increased hospitalizations and/or nursing home care; may simply shift costs to other programs; or may increase the cost of uncompensated care. We object to the lack of comprehensive economic and fiscal data in the Preamble and the Regulatory Analysis Form (RAF). The information provided fails to include analysis of these costs and therefore does not reflect the full impact of the proposed amendments, and calls into question the feasibility of the savings the Department claims will be accomplished by the amendments. In the Preamble and RAF for the final-form regulation, the Department must fully explain and quantify the overall impact of the amendments and demonstrate that the benefits outweigh the adverse effects and negative fiscal impact. Specifically, the Department must quantify the cost increases in the following four areas.

First, in the Preamble, the Department acknowledges the following may experience increases in enrollment:

- The Department's Medical Assistance for Workers with Disabilities program
- The Insurance Department's CHIP and Adult Basic Programs
- The Department of Aging's PACE/PACENET Program

The Department must quantify the number of individuals who could be shifted to other programs and the costs for the final-form regulation in order to demonstrate the full impact of the regulation on state government.

Second, compounding our first concern, is the effect on matching federal funds. The Department acknowledges in the Preamble that there will be a loss of federal matching funds, but this loss was not included in the RAF. The Department also needs to demonstrate whether the Department's savings and loss of federal funds will be greater than the costs incurred by other programs, some of which are fully funded by the Commonwealth.

Third, the Department also states in the Preamble that there is potential for healthcare providers to have an increase in uncompensated care. These increases could affect both local governments and private providers. Some counties operate county-run nursing homes or clinics. Those affected persons who lose coverage could utilize these services when their coverage is eliminated, increasing uncompensated costs for these entities. Private providers could be affected in similar ways, through hospital stays, emergency room visits and other provided services. In order for the Commission to determine whether the amendments are in the public interest, the Department must provide these costs.

Finally, we question the economic impact on those individuals whose eligibility is eliminated by this regulation. Individuals who lose coverage will be faced with significant increases for health care. Given the limited income of this group, they could lose their homes, considerable amounts of their savings, and other resources that could contribute to financial independence and security. Other individuals who can't afford to replace lost health coverage may experience medical problems that will inhibit their ability to maintain employment. If this assistance is lost, affected individuals could be forced into other assistance programs. How will this regulation affect individuals whose eligibility is eliminated by this regulation?

2. Section 181.12. Retroactive eligibility. – Clarity.

Section 181. 14. Eligibility under MNO-MA spend-down. – Clarity.

Paragraph (2) in Section 181.12 and Paragraph (d)(1)(v) in Section 181.14 contain a time period of three months. How was this time frame determined?