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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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June 2, 2004

Honorable Estelle B. Richman, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-481 (IRRC #2395)
Department of Public Welfare
Payment for Burial

Dear Secretary Richman:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will 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,

Robert E. Nyce
Executive Director

evp

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

Comments of the Independent Regulatory Review Commission
on
Department of Public Welfare Regulation No. 14-481 (IRRC #2395)
Payment for Burial

June 2, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Public Welfare (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 3, 2004. 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.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. Chapter 285. Payment for burial. – Fiscal impact; Reasonableness; Clarity.

Title of chapter.

This chapter is entitled “Payment for Burial.” However, this chapter also includes arrangements for cremation. For clarity, the Department should change the title of this chapter to “Payment for Burial and Cremation” or “Payment for Disposition.”

Funeral director.

The existing regulations state that the Department will pay a “funeral director” for burial services. There are two concerns.

First, the term “funeral director” is not defined in the existing regulations. The final-form regulation should include a reference to the statutory definition of “funeral director” in Section 2(1) of the Funeral Director Law (63 P.S. § 479.2(1)).

Second, how will the Department assure that other providers will receive a portion of the payment for the services they provide related to burial or cremation? For example, do funeral directors face penalties for failure to proportion payments to other providers? If so, how does the Department inform funeral directors of these penalties?

Estimated cost of the program.

Item #19 of the Regulatory Analysis Form (RAF) states “The Department estimates the annual cost for the program to be \$1.116 million in state funds.” This annual estimate is also found in the Preamble of the proposed rulemaking. Item #13 of the RAF states “approximately 216 payments were distributed to funeral directors from the Department in the past two years.” Estimating 108 payments per year, at \$750 per payment, the total expenditure for this program per year would be

\$80,000 annually. The Department should explain why the estimated costs of this program will increase so dramatically.

2. Section 285.3. Requirements. – Fiscal impact; Reasonableness; Clarity.

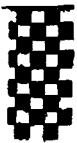
Subsection (c) Standards for burial.

Several commentators expressed support for the proposed regulation but also suggested additional amendments. One group suggested the deletion of the minimum requirements for goods and services in Subsections (c)(1) and (2). These requirements include: standard casket; standard outer case; suitable clothing for the remains; preparation of the remains; and transportation for the remains and the funeral party. This group claimed deletion of these specific items would provide recipients' families with greater flexibility and choice in planning funeral arrangements.

Another group suggested minor revisions to the minimum requirements while contending that most of the current requirements should be retained. They claimed the minimum requirements are useful for funeral directors, cemeteries, crematoriums and other providers in determining what is to be covered by the payments from the Department. The minimum requirements may also provide some protection to the recipients' families by assuring payment for certain items or services. The Department should thoroughly review the requirements, and provide a rationale for retaining or revising the requirements, or for deleting items from this subsection in the final-form regulation.

Subsection (e) Resources that do not reduce Department payment.

The Department is proposing to delete Subparagraphs (A), (B) and (C) of Subsection (e)(1)(i). The references to Subparagraphs (A), (B) and (C) in Subsection (e)(1)(iii) should also be deleted in the final-form regulation.



Facsimile Cover Sheet

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To: Shirley A. Nace
Stephanie Schubert
Ruth O'Brien, Esq.
Agency: Department of Public Welfare
Phone: 3-2201; 7-4063; 3-2800
Fax: 2-0717
Date: June 2, 2004
Pages: 4

Vertical stamp: JUN 2 2004 10:08 AM

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-481 (IRRC # 2395). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley A. Nace **Date:** 6/2/04

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