

## Regulatory Analysis Form

(1) Agency  Department of Public Welfare	This space for use by IRRC
(2) I.D. Number (Governor's Office Use)	IRRC Number: 2402
(3) Short Title MA Program Payment Policies	
(4) PA Code Cite  55 Pa.Code Ch. 1150	(5) Agency Contacts & Telephone Numbers Primary Contact: Amy Flaherty 717-772-7395 dary Contact: Patricia Yoder 717-772-6119
(6) Type of Rule Making (Check One)  <input type="checkbox"/> Proposed Rule Making <input type="checkbox"/> Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rule Making Omitted	(7) Is a 120-Day Emergency Certification Attached? (To be used only for emergency-certified regulations.)  <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 revises the maximum reimbursement limit paid by the Medical Assistance (MA) Program for services provided by a practitioner during one hospitalization.	
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  62 P.S. §§ 201(2) and 443.3(2)(ii).	
(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.  This regulation is not mandated by a Federal or state law, court order or regulation. However, under Federal law, states are required to establish payment rates that are "sufficient to enlist enough providers so that care and services are available . . . at least to the extent that such care and services are available to the general population	

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in the geographic area" (42 U.S.C.A. § 1396a(a)(30)(A)).

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

This regulation is needed because the current regulatory reimbursement limit for services provided during an inpatient stay has the unintended effect of discouraging practitioners from treating MA recipients in need of services.

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

To avoid harm to MA recipients as a result of this unintended consequence, the Department has determined that it is necessary and proper to revise the current cap on reimbursement for practitioners' services during an inpatient stay.

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

Practitioners enrolled in the MA Program will benefit from the regulation because revision of the current cap on payment during a period of hospitalization will enable the Department to revise procedure-specific fees as needed.

(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 one will be adversely affected by the regulation.

(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.)

Practitioners enrolled in the MA program will be required to comply with the regulation.

(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.

N/A

(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 that may be required.

None.

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(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.

There is no fiscal impact associated with this regulation.

*Sam Roubal 4-13-04*

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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)

	FY 01-02 Year	FY +1 02-03 Year	FY +2 03-04 Year	FY +3 04-05 Year	FY +4 05-06 Year	FY +5 06-07 Year
<b>SAVINGS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

Currently Medical Assistance payment for practitioner services provided in an inpatient setting is limited to \$1000 during any one period of hospitalization. This regulation will allow for an exception to the limit if the Medical Assistance fee established for the procedure exceeds the limit. This revision is similar to the exception currently available if the services are provided in an outpatient setting; therefore, it will provide consistency to the limit policy regardless of the service setting. This change is effective January 1, 2004, and is expected to have no fiscal impact, as there are currently no fees in excess of \$1000. Any fiscal impact associated with increased fees will be addressed upon proposal to increase payment rates for a particular procedure code.

## 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-Outpatient	\$668,586	\$705,750	\$666,832	\$740,075

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

The existing limit policy has been in effect since 1985 and currently has the unintended effect of discouraging practitioners from treating Medical Assistance patients. The anticipated effect of of this regulation is to provide greater incentive for physicians to remain in the Commonwealth, and Medical Assistance patients should benefit by continuing to have access to health care.

(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.

## Regulatory Analysis Form

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.

The Department did not consider nonregulatory alternatives.

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

The Department did not consider alternative regulatory schemes.

(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, there are no provisions that are more stringent than federal standards.

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

Other states were not surveyed regarding this issue. The regulation allows Pennsylvania to remain competitive with other states for the purpose and retaining and recruiting health care practitioners.

(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, the regulation will not affect other regulations.

## Regulatory Analysis Form

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

The Department will continue to meet with affected individuals and organizations to discuss the application and effectiveness of this regulation.

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

No new reports, forms, records or paperwork are required by this regulation.

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

The provisions of the regulation revising the cap for services provided during an inpatient stay will benefit MA recipients by enabling the Department to establish fees as needed to assure continued access to services.

(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 is January 1, 2004.

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

The Department will evaluate the effectiveness of this regulation on an ongoing basis. Necessary and appropriate changes will be made in response to letters, recommendations and comments from other offices, agencies and individuals and as a result of Departmental findings.

CDL-1

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

2004 MAY 14 11:11:46

REVIEW COMMISSION

#2402

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><b>DEPARTMENT OF PUBLIC WELFARE</b> (Agency)</p> <p>LEGAL COUNSEL: <u>Deis M. Leisdn</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>14-484</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Estelle B. Richman</u></p> <p>TITLE: <u>SECRETARY OF PUBLIC WELFARE</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>[Signature]</u></p> <p><u>5/3/04</u> Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**NOTICE OF FINAL REGULATION WITHOUT PUBLICATION AS PROPOSED**

**DEPARTMENT OF PUBLIC WELFARE**

**OFFICE OF MEDICAL ASSISTANCE PROGRAMS**

[55 Pa.Code Chapter 1150]

MA Program Payment Policies



### *Statutory Authority*

The Department of Public Welfare (Department), by this order, adopts the regulation set forth in Annex A, pursuant to the authority of § 201(2) and § 443.3(2)(ii) of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21, 62 P.S. §§ 201(2), 443.3(2)(ii).

### *Omission of Proposed Rulemaking*

Notice of proposed rulemaking is omitted in accordance with § 204(1)(iv) and (3) of the Commonwealth Documents Law (45 P.S. § 1204(1)(iv) and (3)) and 1 Pa.Code § 7.4(1)(iv) and (3). The Department may omit proposed rulemaking because the regulation relates to Commonwealth grants and benefits. The Department also finds that notice of proposed rulemaking is, under the circumstances, unnecessary and contrary to the public interest because access to some medical services by Medical Assistance recipients may be jeopardized if the Department delays taking action to increase payment rates for selected medical services available under the Medical Assistance Program.

### *Purpose*

The purpose of this regulation is to revise the current Medical Assistance maximum reimbursement limit for services provided by a practitioner during any one

period of hospitalization, retroactive to January 1, 2004, in order to allow for the same exception to the limit that exists for services provided on an outpatient basis.

### *Need for the Regulation*

The current regulatory limit for payment to a practitioner for services rendered during a single hospitalization has been in place since 1985 (15 Pa.B. 1436 (April 20, 1985); 18 Pa.B. 2212 (May 14, 1988)). It currently has the unintended effect of discouraging practitioners from treating Medical Assistance recipients. To avoid harm to Medical Assistance recipients as a result of this unintended consequence, the Department has determined that it is necessary and proper to revise the current cap on payments made to a practitioner during a single period of hospitalization.

### *Background*

Under current regulations, the Department limits payment to practitioners to \$1000 per inpatient stay. See 55 Pa.Code § 1150.51(e). By contrast, payment for services in an outpatient setting is limited to \$500 per day, unless the Medical Assistance fee for an outpatient procedure is more than \$500, in which case the daily limit is the Medical Assistance fee for that outpatient procedure. See id. § 1150.51(f). In 1985, when the limit for services in an inpatient setting was set at \$1000, fees for individual practitioners' services were well below the regulatory limit. Various fee increases in the intervening years have resulted in the fees for many procedure codes

on the Medical Assistance Fee Schedule being equal to the limit. The maximum reimbursement limit was never intended to constrain the Department's ability to set payment rates for individual procedures. Nonetheless, the current effect of the limit is to keep fees for select procedure codes artificially depressed so as not to exceed the limit. In addition to increasing the Department's flexibility to modify payment rates as needed to continue to assure recipient access to services, the proposed revision will make the payment limit for services provided during a hospitalization consistent in principle with the payment limit for services provided in an outpatient setting.

### *Requirements*

Section 1150.51(e) is amended to revise the maximum reimbursement limit for services provided by a practitioner during a single period of hospitalization to allow for an exception to the existing \$1000 limit if the fee for a particular procedure rendered during the hospitalization is higher than \$1000.

### *Affected Individuals and Organizations*

Practitioners who provide services to hospitalized patients will be affected by the regulation, which revises the current cap on payment for services provided during an inpatient admission.

### *Accomplishments and Benefits*

This regulation revises the current Medical Assistance reimbursement limit for services provided by a practitioner during a hospital stay. The anticipated effect is to provide greater incentive for physicians to remain in the Commonwealth as well as to attract physicians to the Commonwealth. In addition, Medical Assistance recipients should benefit by continuing to have access to needed health care.

### *Fiscal Impact*

There is no fiscal impact associated with this regulation. Any fiscal impact would be addressed in the public notice issued under 55 Pa.Code § 1150.61(a), announcing the Department's decision to increase the payment rate for a particular procedure code.

### *Paperwork Requirements*

No new or additional paperwork requirements result from the adoption of the regulation.

### *Public Comment*

Although this regulation is being adopted without publication as proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding the regulation to the Department at the following address: John

Hummel, Regulations Coordinator, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, 515 Health and Welfare Building, Harrisburg, Pennsylvania 17120.

Comments will be reviewed and considered in any subsequent revision of the regulation.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users).

*Sunset Date*

There is no sunset date.

*Regulatory Review Act*

Under § 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5.1(c)), on MAY 14 2004 the Department submitted a copy of this regulation, with proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC) 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 pursuant to the Commonwealth Attorneys Act.

In accordance with § 5.1(j.1) and (j.2) of the Act, this regulation was [*deemed*] approved by the Committees on \_\_\_\_\_. The IRRC met on \_\_\_\_\_ and approved the regulation.

In addition to submitting the final-omit rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

*Order*

The Department finds:

- (a) That notice of proposed rulemaking is omitted in accordance with § 204(1)(iv) and (3) of the Commonwealth Documents Law (45 P.S. § 1204(1)(iv) and (3)) and 1 Pa.Code § 7.4(1)(iv) and (3) because the regulation relates to Commonwealth grants and benefits and notice of proposed rulemaking is unnecessary and contrary to the public interest.
- (b) That adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting pursuant to the Public Welfare Code orders:

- (a) The regulation of the Department is adopted to read as set forth in Annex A of this Order.
  
- (b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.
  
- (c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.
  
- (d) This Order shall take effect on January 1, 2004.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1150. MA Program Payment Policies

PAYMENT FOR SERVICES

§ 1150.51. General payment policies.

\* \* \* \* \*

(e) The maximum payment made to a practitioner for all services provided to a patient during any one period of hospitalization will be the lowest of:

(1) The practitioner's usual charge to the general public for the same service.

(2) The MA maximum allowable fee.

(3) A maximum reimbursement limit of \$1,000 unless a procedure provided during the hospitalization has a fee which exceeds \$1000, in which case that fee is the maximum reimbursement for the period of hospitalization.

\* \* \* \* \*



*mitt to last delivery*  
IRRC  
14<sup>th</sup> Floor  
HARRISTOWN II

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
REGULATORY REVIEW ACT

I.D. NUMBER: 14-484  
SUBJECT: MA Program Payment Policies  
AGENCY: DEPARTMENT OF PUBLIC WELFARE # 2402

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  
MAY 14 2004  
REGULATORY REVIEW DIVISION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/14/04	<i>Mattie McKerny</i>	HOUSE COMMITTEE ON HEALTH & WELFARE
5/14/04	<i>J. Chan</i>	
5-14-04	<i>Debbie Pata</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
5/14/04	<i>Laraine Cal</i>	
5/14/04	<i>Stephen J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
5-14-04	<i>George Noe</i>	ATTORNEY GENERAL (for Final Omitted only)
		<del>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</del>