

Regulatory Analysis Form

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2011-03-08 11:09:50

REVIEW SUBMISSION

(1) Agency
Department of Public Welfare

(2) I.D. Number (Governor's Office Use)

IRRC Number:

#2414

(3) Short Title

Metropolitan Statistical Areas (MSA)

(4) PA Code Cite

55 Pa.Code Chapter 1187

(5) Agency Contacts & Telephone Numbers

Primary Contact: Gail Weidman 705-3705

Secondary Contact: Tom Jayson 705-3705

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulation changes the manner in which the Department establishes the peer groups used to set net operating prices under the case-mix payment system under § 1187.94 (relating to peer grouping for price setting). The Department is proposing to change the payment system to specify that it will use the historical MSA group classification published by the Federal Office of Management and Budget (OMB) in OMB Bulletin No. 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions) to classify nursing facilities into peer groups. Although this proposed regulation changes the language of § 1187.94, the effect of this amendment will be to preserve the status quo.

(9) State the statutory authority for the regulation and any relevant state or Federal court decisions.

Public Welfare Code, Act of June 13, 1967, P.L.31, No.21, §§ 201(2), 206(2), and 403(b) and 443.1 (62 P.S. §§ 201(2), 403(b) and 443.1).

Regulatory Analysis Form

(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. This proposed regulation is not mandated by any Federal or state law, regulation or court order.

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

The peer grouping methodology used by the Department to establish net operating peer group prices under the current case-mix payment system is based on the nursing facility's geographical location and bed size. The Department uses the most recent Metropolitan Statistical Area (MSA) group classification as published by the Federal Office of Management and Budget (OMB) on or before April 1, of each year to classify each nursing facility into one of three MSAs or one non-MSA group. The Federal OMB recently published OMB Bulletin No. 03-04 (relating to revised definitions of Metropolitan Statistical Areas, new definitions of Micropolitan Statistical Areas and Combined Statistical Areas, and guidance on uses of the statistical definitions of these areas) that both revised its definitions of MSAs and eliminated MSA group classifications that are referenced in the Department's current regulations at § 1187.94 (1)(iii). OMB's elimination of the MSA group classifications makes it impossible for the Department to apply the existing language of § 1187.94 (1) for setting peer groups. To address this problem, the Department determined that the language of § 1187.94 had to be amended. In evaluating the alternative ways in which § 1187.94 might be amended, the Department considered the potential effects that adopting the new Federal definitions for MSAs might have on peer group prices and nursing facility rates. The Department's preliminary analyses indicate that a majority of nursing facility providers would be adversely affected (i.e., the case-mix payment system would compute lower rates for the majority) if the Department were to adopt the new Federal MSA definitions.

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

By not amending the regulation the majority of nursing facility providers would experience lower reimbursement rates under the case-mix payment system.

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

By maintaining the historical MSA group classifications the Department will continue to ensure that the case-mix payment methodology properly takes into account variables that may impact the cost of providing nursing facility services. Nursing facilities will continue to receive reasonable and adequate reimbursement under the case-mix payment system and MA recipients will continue to obtain access to nursing facility services.

Regulatory Analysis Form

(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 are anticipated from the promulgation of this regulation.

(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.)

Nursing facilities enrolled in the MA Program except nursing facilities that meet the definition of hospital-based nursing facility or special rehabilitation facility. See § 1187.2 (relating to definitions).

Currently there are 643 nursing facilities participating in the MA Program in Pennsylvania. There are approximately 53,121 MA recipients currently residing in those nursing facilities with a total average of 78,506 MA recipients who receive nursing facility services in a typical year.

(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.

On November 26, 2003 and December 23, 2003 the Department met with members of the four nursing home associations, Pennsylvania Association of Not for Profit Homes (PANPHA), Pennsylvania Health Care Association (PHCA), Hospital Association of Pennsylvania (HAP) and Pennsylvania Association of County Affiliated Homes (PACAH), to discuss the implications of the Federal changes to the MSA definitions and to reach an agreement on whether or not the Department should adopt the Federal changes. The proposed regulation was also discussed at the Long-Term Care Subcommittee of the Medical Assistance Advisory Committee (MAAC) on February 11, 2004.

(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.

No fiscal impact will result from this proposed amendment since the effect is to preserve the status quo by maintaining the same MSA group classification method that the Department has used to assign nursing facilities to peer groups since the case-mix payment system was implemented in January 1996.

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 proposed regulations change will have no direct fiscal impact.

Regulatory Analysis Form

(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	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$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.

To determine net operating prices under the case-mix system, the Department groups nursing facilities based on the facility's Metropolitan Statistical Area (MSA) and certified bed complement. Current regulations require the Department to use the most recent MSA group classification as published annually by the Federal Office of Management and Budget (OMB). The OMB recently revised its definition of MSA, cautioning these new definitions were not intended for non-statistical purposes. The Department has determined the use of the new methodology would negatively impact nursing facilities; therefore, these regulations propose to maintain the MSA group classification as issued in OMB Bulletin No. 99-04. This change will enable the Department to maintain the historical MSA group classification; therefore, it will have no direct fiscal impact on 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 00-01	FY 01-02	FY 02-03	Current FY
MA-Long Term Care	\$722,565	\$761,877	\$782,948	\$799,014

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

The proposed regulations change will enable the Department to maintain the historical MSA group classification and preserve the status quo of the case mix payment system, until a more comprehensive overhaul of the payment system can be developed.

(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

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

Nonregulatory alternatives were not considered. To maintain the historical group classification in the case-mix payment system the Department must amend the regulation to specify that it will use the MSA group classification as published by the Federal OMB in OMB Bulletin No. 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions).

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

No alternative regulatory schemes were considered. This proposed regulation maintains the historical group classification used in the case-mix payment system since implementation in 1996.

(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.

There are no provisions that are more stringent than Federal law.

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

Surveys of other states have shown a variety of methodologies that are being used to establish peer groups under their respective payment systems while other states do not classify nursing facilities into peer groups (e.g. a number of states use a cost-based system, while others employ a case-mix system). Based on the review of those surveys the Department has determined that the proposed regulations will not put the Commonwealth at a disadvantage.

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

The regulation will not affect the regulations of other state agencies.

Regulatory Analysis Form

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

The issue of peer group classifications is part of the ongoing discussions that the Department is conducting with the nursing facility industry, consumers and other stakeholders regarding a comprehensive overhaul of the case-mix payment system.

(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.

The proposed regulation will not change any reporting, record keeping or 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.

Because this proposed regulation simply maintains the historical MSA group classification used under the case-mix payment system no special provisions are needed.

(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 proposed regulation will be effective for July 1, 2004 rate setting.

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

The Department will review the regulation on an ongoing basis to ensure compliance with Federal and state law and to assess the appropriateness and effectiveness of the regulation. In addition, specific regulatory issues raised by members of the Medical Assistance Advisory Committee (MAAC) and the Long-Term Care Subcommittee of the MAAC will be researched and addressed as needed. The Department will also monitor the impact of the regulation through regular audits and utilization management reviews to determine the effectiveness of the regulation with respect to consumers of long-term care services and the industry. In addition, the Department will be working with the nursing facility industry, consumers and other stakeholders to redesign the current case-mix payment system as part of the redesign. The Department will be reviewing all existing regulatory provisions relating to nursing facility services.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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2004 JUN 10 11:03:56
REVIEW SECTION

2414

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Robert A. Kondo
 BY: _____
 (Deputy Attorney General)
JUN 24 2004
 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: Mary Francis Grabowski

DOCUMENT/FISCAL NOTE NO. 14-483

DATE OF ADOPTION: _____

BY: Estelle B. Richman

TITLE: Secretary of Public Welfare
 (Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies
Tanya C. Gunkle
 BY: _____
5/14/04
 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 PROPOSED RULEMAKING
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF MEDICAL ASSISTANCE PROGRAMS

[55 Pa.Code Chapter 1187]

Nursing Facility Services

Metropolitan Statistical Area (MSA)

Statutory Authority

Notice is hereby given that the Department of Public Welfare (Department), under the authority of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21, §§ 201(2), 206(2), 403(b) and 443.1 (62 P.S. §§ 201(2), 206(2), 403(b) and 443.1), intends to amend the regulation set forth in Annex A to this notice.

Purpose of Regulation

If adopted, the proposed regulation will amend the method by which the Department establishes the peer groups used to set net operating prices under the case-mix payment system. See § 1187.94 (relating to peer grouping for price setting).

Need for Regulation

The Medical Assistance (MA) Program pays each enrolled MA nursing facility provider for nursing facility services provided to MA residents using the Department's case-mix payment system. See 55 Pa.Code Chapter 1187 (relating to nursing facility services). Under this payment system, the Department sets a prospective per diem rate for each MA nursing facility provider. A nursing facility's case-mix per diem rate is comprised of three "net operating" rate components and one "capital rate" component. See 55 Pa.Code § 1187.96(e) (relating to price and rate setting computations). The

three net operating rate components are based upon peer group prices.

See 55 Pa.Code § 1187.96(a)-(e).

The Department computes net operating peer group prices annually using the nursing facility cost report data available in the Nursing Home Information System (NIS) database. See 55 Pa.Code §§ 1187.94 (relating to peer grouping for price setting), and 1187.95 (relating to general principles for rate and price setting). The Department's case-mix payment system regulations specify that, in setting net operating prices, the Department will classify each nursing facility participating in the MA Program, except those nursing facilities that meet the definition of a hospital-based nursing facility or special rehabilitation facility (as defined in § 1187.2 (relating to definitions)), into one of 12 mutually exclusive peer groups based on Metropolitan Statistical Areas (MSA) group classification and the nursing facility's certified bed complement. See 55 Pa.Code § 1187.94(1). The regulations further state that "the Department will use the most recent MSA group classification, as published by the Federal Office of Management and Budget (OMB) on or before April 1 of each year" to make the peer group classifications. See 55 Pa.Code § 1187.94(1)(i).

Prior to 2003, OMB categorized MSAs into three levels based on the total population of the counties in the MSA: Level A (areas with a total population of 1 million or more); Level B (areas with a total population of 250,000 to 999,999); and, Level C (areas with a total population of 100,000 to 249,000). The Department's case-mix payment system regulations, 55 Pa.Code § 1187.94(1)(iii) (relating to peer grouping for price setting), make explicit reference to the three MSA groups (A, B, and C) in

identifying the 12 peer groups into which nursing facilities are classified under the case-mix payment system.¹

On June 6, 2003, OMB published OMB Bulletin No. 03-04 (relating to revised definitions of Metropolitan Statistical Areas, new definitions of Micropolitan Statistical Areas and Combined Statistical Areas, and guidance on uses of the statistical definitions of these areas) that revised the definitions of MSAs. In publishing these revised MSA definitions, OMB added definitions for Micropolitan Statistical Areas and Combined Statistical Areas based on Federal Census Bureau data derived from the 2000 census. However, OMB eliminated the use of the MSA group levels A, B and C that are specifically referenced in § 1187.94(1)(iii) (relating to peer grouping for price setting).

OMB's elimination of the three MSA group levels makes it impossible for the Department to apply the existing language of § 1187.94(1) (relating to peer grouping for price setting) in classifying nursing facilities into peer groups. More specifically, the Department cannot use the most recent MSA group classifications published by OMB, as required by § 1187.94(1)(i), and also classify nursing facilities into the 12 peer groups identified in § 1187.94(1)(iii). To address this problem, the Department has determined that the language of § 1187.94 should be amended.

¹ Nursing facilities that are located in counties that are not included in one of the three MSA group levels are classified in a "non-MSA" peer group under the regulations. See 55 Pa.Code § 1187.94(1)(iii).

In evaluating the alternative ways in which § 1187.94 (relating to peer grouping for price setting) might be amended, the Department considered the potential effects that adopting the new Federal definitions for MSAs might have on peer group prices and nursing facility rates. The Department's preliminary analyses indicate that a majority of nursing facility providers would be adversely affected (i.e., the case-mix payment system would compute lower rates for the majority) if the Department were to adopt the new Federal MSA definitions.

Instead of adopting the new Federal definitions, the Department is proposing to amend § 1187.94(1)(i) (relating to peer grouping for price setting) and the Commonwealth's Title XIX State Plan to specify that the Department will use the MSA group classification published by the OMB in OMB Bulletin No. 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions) to peer group nursing facilities. By using the MSA classification in OMB Bulletin No. 99-04, the Department will maintain the historical MSA groups and will continue to classify each MA nursing facility as MSA A, B, or C, or as non-MSA. Although the language of § 1187.94 will change, the effect of this amendment will be to preserve the status quo.

Requirements

The Department is proposing to amend § 1187.94 (relating to peer grouping for price setting) to change the method used for peer grouping by specifying that the

Department will use the MSA group classification published in OMB Bulletin No. 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions) to classify nursing facilities into peer groups instead of the most recent MSA group classification published on or before April 1 of each year.

Affected Organizations

Nursing facilities enrolled in the MA Program except nursing facilities that meet the definition of hospital-based nursing facility or special rehabilitation facility. See § 1187.2 (relating to definitions).

Accomplishments and Benefits

Amending the regulation to specify that the Department will use the MSA group classifications published in OMB Bulletin 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions) enables the Department to ensure that the case-mix payment system takes into account variables that may impact the cost of providing nursing facility services while the Department continues and completes its discussions with the nursing facility industry, consumers and other stakeholders on a more comprehensive overhaul of the case-mix payment system.

Fiscal Impact

Public Sector

Commonwealth

No fiscal impact will result from this proposed amendment since the effect is to preserve the status quo by maintaining the same MSA group classification method which the Department has used to assign nursing facilities to peer groups since the case-mix payment system was implemented in January 1996.

Political Subdivisions

No fiscal impact will result from this proposed amendment since the effect is to preserve the status quo by maintaining the same MSA group classification method which the Department has used to assign nursing facilities to peer groups since the case-mix payment system was implemented in January 1996.

Private Sector

No fiscal impact will result from this proposed amendment since the effect is to preserve the status quo by maintaining the same MSA group classification method

which the Department has used to assign nursing facilities to peer groups since the case-mix payment system was implemented in January 1996.

General Public

There will be no fiscal impact on the general public.

Paperwork Requirements

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

Effective Date

The proposed regulation will take effect with July 1, 2004 rate setting.

Sunset Date

There is no sunset date. However, the Department will review the effectiveness of the regulation and the issue of peer group classifications as part of its continuing discussions with the nursing facility industry, consumers and other stakeholders on a more comprehensive overhaul of the case-mix payment system.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Division of Long Term Care Client Services, Attention: Gail Weidman, P.O. Box 2675 Harrisburg, Pennsylvania 17105-2675, within 30 calendar days after the date of publication of this Notice in the Pennsylvania Bulletin.

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).

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on AUG 13 2004 the Department submitted a copy of this proposed rulemaking 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. In addition to submitting the proposed 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.

Under § 5(g) of the Regulatory Review Act, if the IRRC has any comment, recommendations or objections to any portion of the proposed regulation, it may notify

the Department and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

**ANNEX A
TITLE 55. PUBLIC WELFARE
PART III. MEDICAL ASSISTANCE MANUAL
CHAPTER 1187. NURSING FACILITY SERVICES**

§ 1187.94. Peer grouping for price setting.

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

(1) Nursing facilities participating in the MA Program, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, will be classified into 12 mutually exclusive groups based on MSA group classification and nursing facility certified bed complement.

(i) Effective for rate-setting periods commencing July 1, 2004, the Department will use the [most recent] MSA group classification[, as] published by the Federal Office of Management and Budget [on or before April 1 of each year,] in the OMB Bulletin No. 99-04 (relating to revised definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions), to classify each nursing facility into one of three MSA groups or one non-MSA group.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
REGULATORY REVIEW ACT

IRRC
14th Floor
HARRISTOWN II

I.D. NUMBER: 14-483
SUBJECT: Nursing Facility Services
Metropolitan Statistical Area (MSA)
AGENCY: DEPARTMENT OF PUBLIC WELFARE

2004 JUL 23 - 3 11:55
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TYPE OF REGULATION

- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/3/04	J. Chan	HOUSE COMMITTEE ON HEALTH & WELFARE
8/3/04	Patricia McNamee	
8/3/04	Kristi Kreiser	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
8/3/04	Lorraine E. Chel	
8/3/04	J. Helms	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/3/04	C. L. Davis	LEGISLATIVE REFERENCE BUREAU (for Proposed only)