

3113



The Best Thing
Next
To Pittsburgh

COMMISSIONERS:

PATRICIA L. KIRKPATRICK
RICHARD L. FINK
JAMES V. SCAHILL



HEALTH CENTER

ADMINISTRATOR
NANCY D. DRAGAN

September 3, 2004

Ms. Gail Weidman
Department of Public Welfare
Division of Long Term Care Client Services
P.O. Box 2675
Harrisburg, PA 17105-2675

RECEIVED
SEP 15 PM 9:21
COMMUNICATIONS

Dear Ms. Weidman:

This letter is written to comment on the Armstrong County Health Center's opposition to the publication in the Pennsylvania Bulletin Volume 34 dated August 14, 2004 regarding [55PA. Code CH. 1187] Metropolitan Statistical Area. The facility is located at 265 South McKean Street, Kittanning, PA 16201.

The case mix payment systems regulations specify that in setting the net operating prices the Department will classify each nursing facility participating in the Medical Assistance Program into one of twelve mutually exclusive peer groups based on Metropolitan Statistical Area group classification and the nursing facility's certified bed complement.

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 June 6, 2003 the OMB published new Federal MSA definitions. DPW is now proposing to change the State Plan to maintain the historical MSA groups.

The Armstrong County Health Center strongly opposes this proposal. Currently, with 130 beds, Armstrong County Health Center has the potential to lose, depending on the peer group it would fall into, approximately \$200,000 - \$500,000 per year by being kept at the rural MSA designation.

The close proximity to Pittsburgh creates a competitive job market especially for professional and licensed personnel at the nursing facility. The Department's suggested proposal ignores changes of economic realities to our facility.

265 SOUTH McKEAN STREET, KITTANNING, PENNSYLVANIA 16201
724-548-2222 FAX: 724-548-1103



Ms. Gail Weidman
September 3, 2004
Page 2

It would seem to me if the majority of nursing facility providers would be adversely affected as you stated in the bulletin, the fiscal impact to the State would be positive. I would hope there can be another solution to this issue such the Department of Public Welfare considering a draft regulation, which would preserve the existing MSA's but allow for "grandfathering" the facilities that were placed in a different MSA as a result of the June 6, 2003 OMB regulation.

Thank you for the opportunity to voice my opposition on behalf of the Armstrong County Health Center.

Sincerely yours,

A handwritten signature in black ink that reads "Nancy Dragan". The signature is written in a cursive style with a large, sweeping "N" and "D".

Nancy D. Dragan, RN, NHA
Administrator

NDD:nb



#12485

RD# 1 Box 27C
Route 422 East
Kittanning, PA 16201
T (724) 545-2273 F (724) 543-1423
www.grane.com

September 1, 2004

The Honorable Estelle B. Richman
Secretary of Public Welfare
Department of Public Welfare
Room 333 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

RECEIVED
2004 SEP 15 PM 02:21

RE: PETITION FOR REGULATORY RELIEF
1 Pa. Code § 35.18; Rule 21 of Final Standing Practice Order
Request that the Secretary Not Implement the Proposed Freeze
On MSA Groups (April 3, 2004, 34 Pa.B. 1863, and August 14, 2004, 34
Pa.B. 4465) – 55 Pa. Code, Chapter 1187 AND COMMENTS,
SUGGESTIONS, AND OBJECTIONS FOR PROPOSED RULE
CHANGES

Dear Secretary Richman:

Our nursing facility is a participating provider in Pennsylvania's Medical Assistance Program and is located in Armstrong County, Pennsylvania. This Petition for Regulatory Relief requests that the Department withdraw its proposals to amend 55 Pa. Code § 1187.94(1).

The Department has proposed to amend the regulation effective July 1, 2004. We are requesting the Department to withdraw the proposal as inconsistent with the cost-based underpinnings of Medical Assistance Program payments for nursing facility care and services (62 P.S. § 443.1). The problem addressed in the proposed rulemaking affects every nursing facility provider in Pennsylvania except those in Peer Groups 13-14 (whose rates are not based on differences in MSA's or size), as recognized in the Department's Notices, because changes in the counties making up Peer Groups 1-12 affect the costs used to determine the net operating components of the rates for providers in those Peer Groups and, as a result, can result in increases or decreases to the Peer Group Prices and Limited Prices for those providers.

The Department, however, has historically made such changes in the past in compliance with the Department's acknowledgement, repeated when the Department developed the present case-mix system, of the relationship between provider costs and MSA assignments. Freezing the current MSA Groups, which are based on provider cost data that is more than ten (10) years old, is inconsistent with the design of the case-mix system and undercuts the statistical validity of the grouping methodology, which may skew price-and rate-setting for providers. Freezing out-of-date Peer Groups also deprives providers with atypical labor-related costs any opportunity for

reclassification and fails to consider relevant factors supporting a reclassification process such as those on which Congress based its authorization of a reclassification process for Medicare skilled nursing facility providers in Section 315 of BIPA in 2000. Such a reclassification system could significantly dampen the negative impact posted in the Department's proposed rulemaking from implementation of the OMB's update of MSA's, since most of the negative impact of the update impacts the rural provider Peer Groups (11 & 12) in the data model publicly shared by the Department using the Year 8 NIS Database.

The Medicare Program recently determined to implement the OMB MSA changes for inpatient hospital providers for FY 2005 because they found it would be inappropriate to deny providers wage index adjustments based on real changes in labor market costs as defined by OMB MSA changes (69 FR 28250-28252, May 18 2004; 69 FR 48915, August 11, 2004). The very same conclusion and analysis supports the use of updated OMB MSA changes in determining Pennsylvania's payment rates for nursing facilities as well as provision for reclassification of rural providers to urban MSA grounds based on atypical labor-related costs. Freezing out-of-date Peer Groups also precludes later realignments based on later updates to the OMB MSA assignments, as well as good cause reclassifications of facilities or counties such as those currently permitted for wage index adjustments for Medicare hospital rates. We submit that the Department's cost-based mandate, is best met where the Department retains flexibility in the rate- and price-setting process, just as the Medicare Program does, rather than through freezing outdated grouping methods.

We also believe that it is inappropriate for the Department to propose to eliminate possible increases in rates due to changes economic conditions and costs without making public the affected database and information on how the Department's proposal will affect provider rates in comparison with how provider rates would change were the Department to implement the OMB MSA changes. To date, the Department has refused to make available for public review and analysis the Year 10 NIS database that the Department currently has in its possession and is required by its own regulations to use to set rates of FYE June 30, 2005 (Year 10). There is simply no way the public or providers can meaningfully comment on the Department's proposed changes to the regulations with respect to the OMB MSA changes without prior access to the Year 10 NIS database. Only by reference to the Year 10 NIS database can anyone, including the Department, assess the fiscal impact on the MA Program or providers of different alternatives solutions to the problem asserted by the Department in the proposed rulemaking. We suggest that the Department convene a workgroup of provider and Department technical staff to develop the most equitable method, using the Year 10 NIS Database, to both recognize the changes in economic realities represented by the OMB MSA updates and minimize disruptive shifts in reimbursement rates.

We do not understand why the Department cannot implement the OMB changes under its existing regulations, since the OMB previously defined the system for determining whether the population of an MSA may be labeled as A, B, C, or D, and the population information for each of the MSA's is a matter of public record. In addition, only six (6) Pennsylvania counties (Armstrong, Columbia, Lebanon, Mercer, Somerset, and Pike) have changes to their prior MSA assignments; and, the Pittsburgh MSA to which Armstrong County shifts was and remains qualified as an "A"; the Youngstown OH MSA to which Mercer shifts was and remains qualified

Page 3

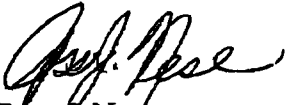
as a "B"; the Newark, NJ MSA to which Pike shifts was and remains qualified as an "A"; and the non-MSA area to which Columbia and Somerset may shift was and remains the non-MSA area. The split of Lebanon County into a separate MSA can be resolved by the Department interpreting Lebanon to remain a part of the Greater Harrisburg MSA because OMB finds them still connected.

We therefore request that you withdraw the proposal to change the regulations by freezing the current MSA Group and that you issue an interpretation of general applicability on the application of the current regulations instead. A proposed form of Order is attached. In addition, we request that you order the Bureau of Long Term Care Programs to immediately make available for public review and analysis the Year 10 NIS database.

Please let us know if you require any additional information or documentation to schedule this matter for hearing and determination. We submit that a determination of this Petition for Regulatory Relief prior to the Department's publication of proposed or final rates for FYE June 30, 2004 or FYE June 30, 2005 is appropriate.

We are also sending a copy of this Petition to Gail Weidman, the person designated in the proposed rulemaking to receive comments, to also constitute our comments to, suggestions about and objections to the proposed rulemaking.

Respectfully submitted,



Ross J. Nese
President
Kittanning Care Center, LLC

RJN:del

Cc: Gail Weidman, Division of Long Term Care Client Services,
Department of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105-2675
Wm. Russ McDaid, Public Policy Officer, PANPHA, 1100 Bent Creek Boulevard,
Mechanicsburg, PA 17050
Robert E. Nyce, Executive Director, Independent Regulatory Review Commission,
333 Market Street (14th Floor), Harrisburg, PA 17101
Senator Howard Mowery, Jr., Senate Public Health & Welfare Committee
Senator Vincent J. Hughes, Senate Public Health & Welfare Committee
169-C State Capital, Harrisburg, PA 17120
Representative George T. Kenney, Jr., House Health & Human Services Committee
Room 108, Ryan Office Building, State Capitol, Harrisburg, PA 17120
Representative Frank Oliver, House Health & Human Services Committee
Room 34, East Wing, State Capitol, Harrisburg, PA 17120
[Local State Senators]

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

Re: Petition for Regulatory Relief
Seeking Withdrawal of April 3, 2004 Notice at 34 Pa.B. 1863, and August 14,
2004 Proposed Rulemaking at 34 Pa.B. 4465, relating to changes in 55 Pa. Code
§ 1187.94(1), relating to MSA Groups

ORDER

AND NOW, this _____ day of _____, 2004, pursuant to the Petition for Regulatory Relief, concerning the Department's April 3, 2004 Notice at 34 Pa.B. 1863, and the Notice of Proposed Rulemaking of August 14, 2004 at 34 Pa.B. 4465, requesting that such Notices be withdrawn, finding merit in the Petition, the Petition is hereby GRANTED and the proposed rulemaking is hereby withdrawn without prejudice to later renewal or amendment.

The Bureau of Long Term Care Programs shall immediately make available for public review and analysis an electronic spreadsheet of the Year 10 NIS database as of June 30, 2004; and, shall schedule open meetings during the months of September and October 2004 with providers and provider representatives to discuss and develop alternative proposals for possible amendments to 55 Pa. Code Chapter 1187 relating to changing the method of determining the membership of Peer Groups used to collect data to determine Peer Group Prices and/or to determine individual provider rates, including criteria for reclassification of counties based on atypical labor-related costs such as those used to reclassify hospitals in the Federal Medicare Program. The results of these open meetings shall be reported to the Deputy Secretary for Medical Assistance Programs for consideration in proposing amendments to the regulations with respect to the determination of the membership of Peer Groups, which proposed amendments shall be published in the *Pennsylvania Bulletin* prior to November 1, 2004.

ESTELLE B. RICHMAN
Secretary of Public Welfare

FINAL ADMINISTRATION
ACTION AND DATE OF MAILING

11199



120A Lakeside Drive, Worthington, PA 16262
(724) 445-3076
Fax: (724) 445-3186
www.QualityLifeServices.com

RECEIVED
2004 SEP 15 PM 3:21

REVIEW COMMISSION

September 2, 2004

Pennsylvania Department of Public Welfare
Department of Medical Assistance

Re: Comment to recent proposed regulation change for determination on MSA change for nursing home reimbursement.

The proposed change to the Commonwealth's policy regarding determining how Counties will be grouped for their Medical Assistance Reimbursement is most harmful to the quality of care for our residents and the quality of life for their care givers. Since the inception of the MSA reimbursement methodology in Pennsylvania we have been struggling on an uneven field to remain financially solvent while meeting the social, emotional, and physical needs of our residents. We have been bordered by three counties that are in the highest MSA reimbursement area while we have been grouped into the lowest cost MSA. Now the US census has determined that the workforce of Armstrong County and these other three counties are interwoven. The cost of acquiring and maintaining the number and quality of staff needed to provide the care and services our residents need and deserve is directly related to the wage scales of these other three surrounding Counties. If the Department of Public Welfare enacts their proposed rule change every resident in an Armstrong County nursing home will be adversely affected.

For us to be able to attract and retain the best possible care givers we must be able to pay comparable wages. For us to be able to meet the resident's needs in a timely and fulfilling manner we must have adequate numbers of quality staff. Unless we receive appropriate reimbursement we can not answer both needs. One of these two needs will go unmet and inevitably the people of Armstrong County will be required to suffer.

If the current method of determining MSA remains the cost to the Commonwealth is nominal as is the cost to the Counties that are currently in this higher wage scale area. The cost to the smaller rural Counties if the proposed policy change is implemented would be immense and unbearable.

We thank you in advance for your time and consideration as we attempt to have all people in our Commonwealth treated equally and fairly.

Yours truly,

Kenneth R. Tack
Chief Executive Officer

Chicora Medical Center * Countryside * Emlenton's Laurel Manor * Sugar Creek Rest * Trinity Living Center
Chicora, PA Mercer, PA Emlenton, PA Worthington, PA Grove City, PA



14-483-1
C-letter #1

2250 Shenango Freeway • Hermitage, PA 16148

(724) 981-3200 • Fax: (724) 981-1677 • www.johnxxiihome.org

Original: 2414

KIRK
Hawthorne

RECEIVED
DIVISION OF LIC
CLIENT SERVICES
SEP 02 2004

RECEIVED - 9 11 09 21

The Honorable Estelle B. Richman
Secretary of Public Welfare
Department of Public Welfare
Room 333 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

REF: _____

RECEIVED

SEP 03 2004

RE: PETITION FOR REGULATORY RELIEF
1 Pa. Code § 35.18; Rule 21 of Final Standing Practice Order
Request that the Secretary Not Implement the Proposed Freeze
On MSA Groups (April 3, 2004, 34 Pa.B. 1863, and August 14, 2004, 34
Pa.B. 4465) - 55 Pa. Code, Chapter 1187 AND COMMENTS,
SUGGESTIONS, AND OBJECTIONS FOR PROPOSED RULE
CHANGES.

PROGRAM ANALYSIS
AND REVIEW SECTION

Dear Secretary Richman:

Our nursing facility is a participating provider in Pennsylvania's Medical Assistance Program and is located in [name of] County, Pennsylvania. This Petition for Regulatory Relief requests that the Department withdraw its proposals to amend 55 Pa. Code § 1187.94(1).

The Department has proposed to amend the regulation effective July 1, 2004. We are requesting the Department to withdraw the proposal as inconsistent with the cost-based underpinnings of Medical Assistance Program payments for nursing facility care and services (62 P.S. § 443.1). The problem addressed in the proposed rulemaking affects every nursing facility provider in Pennsylvania except those in Peer Groups 13-14 (whose rates are not based on differences in MSA's or size), as recognized in the Department's Notices, because changes in the counties making up Peer Groups 1-12 affect the costs used to determine the net operating components of the rates for providers in those Peer Groups and, as a result, can result in increases or decreases to the Peer Group Prices and Limited Prices for those providers.

The Department, however, has historically made such changes in the past in compliance with the Department's acknowledgment, repeated when the Department developed the present case-mix system, of the relationship between provider costs and MSA assignments. Freezing

the current MSA Groups, which are based on provider cost data that is more than ten (10) years old, is inconsistent with the design of the case-mix system and undercuts the statistical validity of the grouping methodology, which may skew price- and rate-setting for providers. Freezing out-of-date Peer Groups also deprives providers with atypical labor-related costs any opportunity for reclassification and fails to consider relevant factors supporting a reclassification process such as those on which Congress based its authorization of a reclassification process for Medicare skilled nursing facility providers in Section 315 of BIPA in 2000. Such a reclassification system could significantly dampen the negative impact posited in the Department's proposed rulemaking from implementation of the OMB's update of MSA's, since most of the negative impact of the update impacts the rural provider Peer Groups (11 & 12) in the data model publicly shared by the Department using the Year 8 NIS Database.

The Medicare Program recently determined to implement the OMB MSA changes for inpatient hospital providers for FY 2005 because they found it would be inappropriate to deny providers wage index adjustments based on real changes in labor market costs as defined by OMB MSA changes (69 FR 28250-28252, May 18, 2004; 69 FR 48915, August 11, 2004). The very same conclusion and analysis supports the use of updated OMB MSA changes in determining Pennsylvania's payment rates for nursing facilities as well as provision for reclassification of rural providers to urban MSA grounds based on atypical labor-related costs. Freezing out-of-date Peer Groups also precludes later realignments based on later updates to the OMB MSA assignments, as well as good cause reclassifications of facilities or counties such as those currently permitted for wage index adjustments for Medicare hospital rates. We submit that the Department's cost-based mandate, is best met where the Department retains flexibility in the rate- and price-setting process, just as the Medicare Program does, rather than through freezing outdated grouping methods.

We also believe that it is inappropriate for the Department to propose to eliminate possible increases in rates due to changes economic conditions and costs without making public the affected database and information on how the Department's proposal will affect provider rates in comparison with how provider rates would change were the Department to implement the OMB MSA changes. To date, the Department has refused to make available for public review and analysis the Year 10 NIS database that the Department currently has in its possession and is required by its own regulations to use to set rates of FYE June 30, 2005 (Year 10). There is simply no way the public or providers can meaningfully comment on the Department's proposed changes to the regulations with respect to the OMB MSA changes without prior access to the Year 10 NIS database. Only by reference to the Year 10 NIS database can anyone, including the Department, assess the fiscal impact on the MA Program or providers of different alternatives solutions to the problem asserted by the Department in the proposed rulemaking. We suggest that the Department convene a workgroup of provider and Department technical staff to develop the most equitable method, using the Year 10 NIS Database, to both recognize the changes in economic realities represented by the OMB MSA updates and minimize disruptive shifts in reimbursement rates.

We do not understand why the Department cannot implement the OMB changes under its existing regulations, since the OMB previously defined the system for determining whether the population of an MSA may be labeled as A, B, C, or D, and the population information for each

of the MSA's is a matter of public record. In addition, only six (6) Pennsylvania counties (Armstrong, Columbia, Lebanon, Mercer, Somerset, and Pike) have changes to their prior MSA assignments; and, the Pittsburgh MSA to which Armstrong County shifts was and remains qualified as an "A"; the Youngstown OH MSA to which Mercer shifts was and remains qualified as a "B"; the Newark, NJ MSA to which Pike shifts was and remains qualified as an "A"; and the non-MSA area to which Columbia and Somerset may shift was and remains the non-MSA area. The shift of Lebanon County into a separate MSA can be resolved by the Department interpreting Lebanon to remain a part of the Greater Harrisburg MSA because OMB finds them still connected.

We therefore request that you withdraw the proposal to change the regulations by freezing the current MSA Group and that you issue an interpretation of general applicability on the application of the current regulations instead. A proposed form of Order is attached. In addition, we request that you order the Bureau of Long Term Care Programs to immediately make available for public review and analysis the Year 10 NIS database.

Please let us know if you require any additional information or documentation to schedule this matter for hearing and determination. We submit that a determination of this Petition for Regulatory Relief prior to the Department's publication of proposed or final rates for FYE June 30, 2004 or FYE June 30, 2005 is appropriate.

We are also sending a copy of this Petition to Gail Weidman, the person designated in the proposed rulemaking to receive comments, to also constitute our comments to, suggestions about and objections to the proposed rulemaking.

Respectfully submitted,


Administrator

cc: Gail Weidman, Division of Long Term Care Client Services,
Department of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105-2675
Wm. Russ McDaid, Public Policy Officer, PANPHA, 1100 Bent Creek Boulevard,
Mechanicsburg, PA 17050
Robert E. Nyce, Executive Director, Independent Regulatory Review Commission,
333 Market Street (14th floor), Harrisburg, PA 17101
Senator Howard Mowery, Jr., Senate Public Health & Welfare Committee
Senator Vincent J. Hughes, Senate Public Health & Welfare Committee
169-C State Capital, Harrisburg, PA 17120
Representative George T. Kenney, Jr., House Health & Human Services Committee
Room 108, Ryan Office Building, State Capitol, Harrisburg, PA 17120
Representative Frank Oliver, House Health & Human Services Committee
Room 34, East Wing, State Capitol, Harrisburg, PA 17120

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

Re: Petition for Regulatory Relief

Seeking Withdrawal of April 3, 2004 Notice at 34 Pa.B. 1863, and August 14, 2004 Proposed Rulemaking at 34 Pa.B. 4465, relating to changes in 55 Pa. Code § 1187.94(1), relating to MSA Groups

ORDER

AND NOW, this _____ day of _____, 2004, pursuant to the Petition for Regulatory Relief, concerning the Department's April 3, 2004 Notice at 34 Pa.B. 1863, and the Notice of Proposed Rulemaking of August 14, 2004 at 34 Pa.B. 4465, requesting that such Notices be withdrawn, finding merit in the Petition, the Petition is hereby GRANTED and the proposed rulemaking is hereby withdrawn without prejudice to later renewal or amendment.

The Bureau of Long Term Care Programs shall immediately make available for public review and analysis an electronic spreadsheet of the Year 10 NIS database as of June 30, 2004; and, shall schedule open meetings during the months of September and October 2004 with provider and provider representatives to discuss and develop alternative proposals for possible amendments to 55 Pa. Code Chapter 1187 relating to changing the method of determining the membership of Peer Groups used to collect data to determine Peer Group Prices and/or to determine individual provider rates, including criteria for reclassification of counties based on atypical labor-related costs such as those used to reclassify hospitals in the Federal Medicare Program. The results of these open meetings shall be reported to the Deputy Secretary for Medical Assistance Programs for consideration in proposing amendments to the regulations with respect to the determination of the membership of Peer Groups, which proposed amendments shall be published in the *Pennsylvania Bulletin* prior to November 1, 2004.

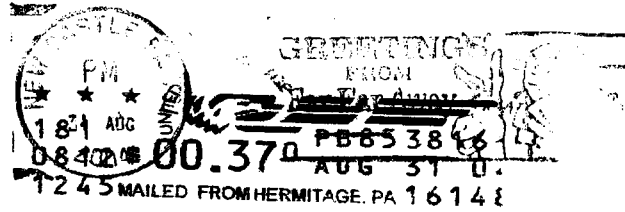
ESTELLE B. RICHMAN
Secretary of Public Welfare

FINAL ADMINISTRATIVE
ACTION AND DATE OF MAILING

RECEIVED
2004 SEP -9 11:03:22
DEPARTMENT OF PUBLIC WELFARE



2250 Shenango Freeway • Hermitage, PA 16148



RECEIVED

SEP 03 2004

PROGRAM ANALYSIS
AND REVIEW SECTION

Gail Weidman
Division of Long Term Care Client Services
Department of Public Welfare
P O Box 2675
Harrisburg PA 17105-2675

17105+2675



Louis J. Capozzi, Jr., Esquire
Daniel K. Natirboff, Esquire

Donald R. Reavey, Esquire
Doreena C. Sloan, Esquire
Daniel J. Pedersen, Esquire
Michael B. Volk, Esquire
Joseph M. Murphy, Esquire

Bruce G. Baron, Research Coordinator
Robert G. Sobanski, Reimb. Analyst
Karen L. Fisher, Paralegal
Dollie D. Himes, Paralegal
Susan Courchesne, Paralegal



Original: 2414

2933 North Front Street
Harrisburg, PA 17110

Telephone: (717) 233-4101
Fax: (717) 233-4103
www.capozziassociates.com

Of Counsel:
Steven T. Hanford, Esquire

September 30, 2004

The Honorable Estelle B. Richman
Secretary of Public Welfare
Department of Public Welfare
Room 333 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

RE: PETITION FOR RELIEF - SUPPLEMENT
1 Pa. Code § 35.18; Rule 21 of Final Standing Practice Order
Request that the Secretary Not Implement the Proposed Freeze
On MSA Groups (April 3, 2004, 34 Pa.B. 1863, and August 14, 2004, 34
Pa.B. 4465) - 55 Pa. Code, Chapter 1187 AND COMMENTS,
SUGGESTIONS, AND OBJECTIONS FOR PROPOSED RULE
CHANGES
Our Matter No. 236-04

Dear Secretary Richman:

This supplements the Petition filed on behalf Hometown Nursing & Rehabilitation Center and Shenandoah Manor Nursing Center on September 3, 2004, in which we requested that the Department withdraw the proposed rule, release the relevant Year 10 Database, and convene a technical workgroup in cooperation with interested providers to determine how to implement the June 2003 OMB MSA changes. This correspondence responds to the September 21, 2004 comments and proposed orders filed on behalf of the Bureau on Long Term Care Programs; and, is filed on behalf of all four of the nursing facility providers whose petitions are addressed in the Bureau's comments. Since providers are required to exhaust all administrative remedies under 1 Pa. Code § 35.18 or the Regulatory Review Act prior to seeking judicial intervention, Matesic v. Maleski, 624 A.2d 776 (Pa. Cmwlth. 1993) (En Banc), the petitions submitted to you are appropriate and required; and, the dispositions suggested by the Bureau should be rejected. The petitions submitted to you were also submitted as comments within the regulatory process and are therefore also part of the public rulemaking record.

The Honorable Estelle B. Richman
Secretary of Public Welfare
RE: PETITION FOR RELIEF
Our Matter No. 236-04
September 30, 2004
Page Two

The central point of difference between Petitioners and the Bureau is Petitioners' concern that meaningful public comment on the proposed rulemaking is impossible without public access to the Year 10 database in order to assess the actual effects of the proposed rule on provider rates and MA Program revenues. The Bureau's opposition to this request for relief in the Petitions is especially troubling because the Department entered into an IGT Agreement on September 24, 2004 in which it committed to making settlement offers to Petitioners to waive their Year 10 appeal rights in exchange for IGT settlement payments. This IGT Agreement requires providers to accept settlement offers without information on the Year 10 rates. The Department has a duty of good faith and fair dealing with respect to providers and should be taking all steps available to assure all providers timely and meaningful access to Year 10 rate information before asking them to waive Year 10 appeal rights. This is especially important given that many providers are unaware that the Department is contemplating a 12% rate decrease in connection with the IGT (*see*: 33 Pa.B. 3052, as proposed on June 28, 2003).

The fact that Petitioners can provide some comments on the proposed rulemaking does not undercut the effect of their one-sided lack of information about the actual effects of the proposed rulemaking on provider rates. The lack of information negates meaningful comment on the proposed rules. Keeping providers in the dark about the actual impact of the proposed rules when the Department has the information available to document that actual impact is not in the best interest of the MA Program or of the public process of rulemaking and ratemaking required under Pennsylvania and Federal law.

Nothing in the Commonwealth Documents Law precludes Petitioners' resort to the Secretary of Public Welfare to seek the withdrawal of the rulemaking. While 45 P.S. § 1202 requires the Department to consider any written comments submitted pursuant to 45 P.S. § 1201 "before taking action upon any administrative regulation or change therein", the statute does not preclude the Secretary's consideration of any other forms

The Honorable Estelle B. Richman
Secretary of Public Welfare
RE: PETITION FOR RELIEF
Our Matter No. 236-04
September 30, 2004
Page Three

of relief, including the Petitions addressed to her authority to administer the MA Program. The Regulatory Review Act expressly contemplates agency receipt of documents in addition to public comments relating to a proposed rulemaking (71 P.S. § 745.5(c)(requiring transmission to IRRC of “other documents received from...the public relating to the proposed regulation”), which become part of the public record of that rulemaking. The Regulatory Review Act also expressly contemplates agency withdrawal of proposed regulations (71 P.S. § 745.5(e)). Both the Pennsylvania Constitution (Article I, § 20) and U.S. Constitution (First Amendment) expressly protect the right to petition.

In these Petitions, the Petitioners are bringing directly to the Secretary important Due Process issues that merit the Secretary’s consideration as the chief administrative officer for the MA Program. Petitioners and others have filed their comments as well as part of the regulatory comment process. The Bureau presents no sound public policy reason why Petitioners should not also be able to petition the Secretary to stop what is a misinformed regulatory effort. The case law in Pennsylvania plainly supports Petitioners’ use of every administrative avenue to bring the issues to the attention of the Secretary in order to get them resolved as soon as possible so that the rulemaking process can proceed expeditiously after necessary corrections are made.

The General Rules of Administrative Practice and Procedure (1 Pa. Code, Part II) are to be afforded a liberal construction to assure just, speedy, and inexpensive determination of the issues presented (1 Pa. Code § 31.2). Pursuant to 1 Pa. Code § 35.17, the Secretary is authorized to determine any petition for relief under authority delegated to the Department, including the withdrawal of the proposed rulemaking and the convening of the workgroup sought by Petitioners. Pursuant to 1 Pa. Code § 35.18, the Secretary is authorized to determine any petition for the repeal of a regulation, which includes the withdrawal of a proposed regulation. The Secretary clearly is authorized to resolve the questions raised by Petitioners by these rules.

The intent and spirit of the General Rules of Administrative Practice and Procedure is to get to the merits of matters in order to assist agencies in correcting their own errors. Here, where the Bureau offers no sound public policy basis for keeping Petitioners and the public in the dark about the actual impact of the proposed rulemaking and seeks to confine the Secretary’s authority. Petitioners submit that there is no dispute about the facts in these matters. The Bureau does not contest that the Year 10 database exists, could be made easily available, and would enhance the public’s

The Honorable Estelle B. Richman
Secretary of Public Welfare
RE: PETITION FOR RELIEF
Our Matter No. 236-04
September 30, 2004
Page Four

ability to comment on the proposed rulemaking. The Bureau does not contest that the Year 10 database was required to be made public prior to the publication of the proposed rulemaking. The Bureau does not contest that the Year 10 database is the database that is required to determine the actual fiscal impact of the proposed rulemaking on providers and on the MA Program. The Bureau does not contest that the fiscal impact analysis in the proposed rulemaking is based on data for periods that are not impacted by the proposed rulemaking. The Bureau does not contest that providers have repeatedly requested that the Year 10 database be made available for review and that the Bureau has refused to make it available for review after indicating to them that it would be made available. The Bureau has not provided you with any reason at all why the Year 10 database has not been made available for public review and cannot be made available for public review.

Where there is so fundamental a flaw in a proposed rulemaking, as here, the Bureau's arguments about the interests of others participating in the rulemaking process are inapposite. The Bureau does not suggest how the rights of others would be harmed by appropriately restarting the rulemaking process to correct a fundamental flaw. The Bureau does not and cannot argue that the rights of others would be harmed by providing them with the appropriate information necessary for their meaningful assessment and review of the proposed rulemaking, as requested by Petitioners. Rulemaking with incomplete information precludes the agency as well as the public from considering all relevant factors, as required by the agency to engage in proper rulemaking, and is subject to judicial remand for reconsideration. *See: Motor Vehicles Mfg. Assn. of the U.S. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (Agency rulemaking is arbitrary where the agency fails to consider the relevant data or an important aspect of the problem).

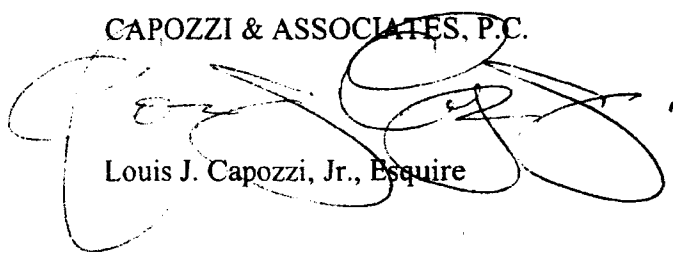
This is simply a case of the Department knowingly and intentionally keeping required information relevant to public and provider comment on a rulemaking away from providers and the public for no reason in violation of its own regulations and Federal law. Petitioners have a constitutionally protected right to bring such a grievance before the Secretary for correction. Since neither the Department nor the Bureau has corrected this problem to date, Petitioners continue their requests to the Secretary to withdraw the proposed rulemaking, make public the Year 10 database, and convene the technical workgroup as previously requested. The Secretary should consider and grant the Petitions in the interest of administrative economy, in the interest of justice, and in

The Honorable Estelle B. Richman
Secretary of Public Welfare
RE: PETITION FOR RELIEF
Our Matter No. 236-04
September 30, 2004
Page Five

conformity with the Department's duty of good faith and fair dealing with providers and the public in the rulemaking process.

Respectfully submitted,

CAPOZZI & ASSOCIATES, P.C.



Louis J. Capozzi, Jr., Esquire

Attachment.

cc: Kirk R. Reichart
Kirk Hawthorne
Ross Nese
Leonard W. Crumb, Esquire
Robert E. Nyce, Executive Director, Independent Regulatory Review
Commission
Senator Howard Mowery, Jr., Senate Public Health & Welfare Committee
Senator Vincent J. Hughes, Senate Public Health & Welfare Committee
Senator James J. Rhoades
Representative George T. Kenney, Jr., House Health & Human Services
Committee
Representative Frank Oliver, House Health & Human Services Committee

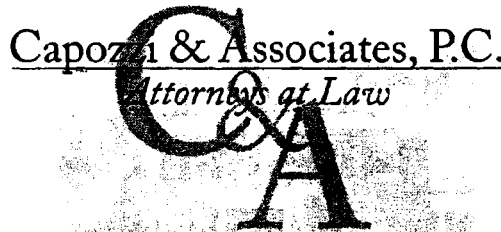
14-483-11

Original: 2414

Louis J. Capozzi, Jr., Esquire
Daniel K. Natirboff, Esquire

Donald R. Reavey, Esquire
Deena C. Sloan, Esquire
Daniel J. Pedersen, Esquire
Michael B. Volk, Esquire
Joseph M. Murphy, Esquire

Bruce G. Baron, Research Coordinator
Robert G. Sobanski, Reimb. Analyst
Karen L. Fisher, Paralegal
Dollie D. Himes, Paralegal
Susan Courchesne, Paralegal



2933 North Front Street
Harrisburg, PA 17110

Telephone: (717) 233-4101

Fax: (717) 233-4103

www.capozziassociates.com

Of Counsel:
Steven T. Hanford, Esquire

RECEIVED
DIVISION OF LTC
CLIENT SERVICES

September 16, 2004

SEP 17 2004

The Honorable Estelle B. Richman
Secretary of Public Welfare
Department of Public Welfare
Room 333 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

REF: _____

RECEIVED

SEP 17 2004

PROGRAM ANALYSIS
AND REVIEW SECTION

RE: PETITION FOR RELIEF - SUPPLEMENT
1 Pa. Code § 35.18; Rule 21 of Final Standing Practice Order
Request that the Secretary Not Implement the Proposed Freeze
On MSA Groups (April 3, 2004, 34 Pa.B. 1863, and August 14, 2004, 34
Pa.B. 4465) - 55 Pa. Code, Chapter 1187 AND COMMENTS,
SUGGESTIONS, AND OBJECTIONS FOR PROPOSED RULE
CHANGES
Our Matter No. 236-04

Dear Secretary Richman:

This supplements the Petition filed on behalf Hometown Nursing & Rehabilitation Center and Shenandoah Manor Nursing Center on September 3, 2004, in which we requested that the Department withdraw the proposed rule, release the relevant Year 10 Database, and convene a technical workgroup in cooperation with interested providers to determine how to implement the June 2003 OMB MSA changes.

Enclosed is a copy of an impact analysis prepared by staff of the Department's own Bureau of Long Term Care Programs that estimates implementing the June 2003 OMB MSA changes would **save the Pennsylvania Medical Assistance Program almost ONE MILLION DOLLARS.** The Department's proposed rulemaking at 34 Pa.B. 4465 (August 14, 2004) provides no discussion at all of this impact analysis or of any possibility of savings for Commonwealth taxpayers from the use of alternatives to that proposed by the Department.

We are advised that the enclosed impact analysis, like the rationale in the Department's proposed rulemaking, is based on information contained in the rate

SEP 17 2004
11:11 AM
11:11 AM

The Honorable Estelle B. Richman
Secretary of Public Welfare
RE: PETITION FOR RELIEF
Our Matter No. 236-04
September 16, 2004
Page Two

database for FYE June 30, 2003, Year 8. In our Petition, we urged the Department to make public the relevant Year 10 database (i.e., for FYE June 30, 2005 rates), which the Department has to date failed to make public. The enclosed impact analysis supports our position that public access to the FYE June 30, 2005 rate database is essential for any meaningful public debate to be possible with respect to the proposed change in the regulations.

The enclosed impact analysis indicates that the Department has determined not to pursue alternative methods to implement the OMB MSA changes that could result in savings for the taxpayers, during a fiscal period in which the Department itself is not complying with its own regulations by not publishing proposed and final rates for FYE June 30, 2004 and FYE June 30, 2005, due to the current uncertainty of funding to support rate increases required under those regulations. The Department currently is making payments to all nursing facility providers using outdated rates, based on outdated MSA Groups, based on an outdated April 1, 2004 database, instead of using the required July 1, 2004 database updated to reflect the OMB MSA changes.

The Department's rationale for managing the timing of changes to provider rates for FYE June 30, 2004 and FYE June 30, 2005 requires the Department to consider, and to at least mention in any rulemaking, alternatives for changes in rate-setting regulations that have potential to make up part of projected potential shortfalls in Program revenues. The enclosed impact analysis indicates that the Department's proposed resolution of the problem has a fiscal impact on the MA Program significantly different from the "no impact" described in the proposed rulemaking.

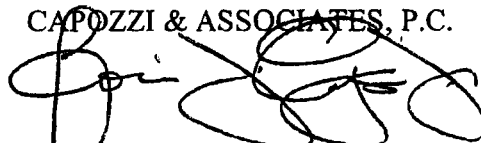
We continue to urge you to withdraw the proposed rulemaking, make the Year 10 rate database available for public review and analysis, and convene the technical workgroup to resolve how the new OMB MSA's should be used in rate-setting, including reclassification methods based on Medicare Program guidelines. The workgroup should be charged to develop policy alternatives for the Department that reflect: (a) statistically sound grouping protocols for the development of provider rates; (b) transition rules to prevent abrupt dislocation of provider budgets; and (c) consideration of possible cost savings to the MA Program.

The Honorable Estelle B. Richman
Secretary of Public Welfare
RE: PETITION FOR RELIEF
Our Matter No. 236-04
September 16, 2004
Page Three

We are also sending a copy of this Supplement to our Petition to Gail Weidman, the person designated in the proposed rulemaking to receive comments, to also supplement our clients' comments to, suggestions about, and objections to, the proposed rulemaking, as well as to those persons listed below, who were copied on our original Petition.

Respectfully submitted,

CAPOZZI & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read "Louis J. Capozzi, Jr.", is written over the printed name below.

Louis J. Capozzi, Jr., Esquire

Enclosure.

cc: Kirk R. Reichart
Gail Weidman, Division of Long Term Care Client Services,
Robert E. Nyce, Executive Director, Independent Regulatory Review
Commission
Senator Howard Mowery, Jr., Senate Public Health & Welfare Committee
Senator Vincent J. Hughes, Senate Public Health & Welfare Committee
Senator James J. Rhoades
Representative George T. Kenney, Jr., House Health & Human Services
Committee
Representative Frank Oliver, House Health & Human Services Committee

ChangeByCountyByAmount

County	Change Amount
Columbia	(\$553,302.36)
Somerset	(\$436,777.22)
Luzerne	(\$220,932.34)
Lancaster	(\$206,137.07)
Erie	(\$193,929.29)
Lackawanna	(\$172,446.84)
Cumberland	(\$166,685.65)
Montgomery	(\$163,360.08)
Philadelphia	(\$130,252.52)
Allegheny	(\$116,887.53)
York	(\$115,250.98)
Dauphin	(\$114,316.98)
Northampton	(\$103,139.70)
Lehigh	(\$101,506.42)
Berks	(\$94,970.50)
Bucks	(\$91,805.80)
Delaware	(\$66,004.36)
Westmoreland	(\$48,864.82)
Washington	(\$39,024.59)
Butler	(\$34,460.82)
Juniata	(\$28,551.60)
Perry	(\$28,144.60)
Adams	(\$27,999.19)
Chester	(\$26,520.34)
Lawrence	(\$25,414.69)
Fayette	(\$25,148.73)
McKean	(\$18,071.37)
Huntingdon	(\$17,385.00)
Montour	(\$15,441.36)
Jefferson	(\$15,413.32)
Carbon	(\$12,485.48)
Monroe	(\$11,994.78)
Union	(\$11,157.01)
Beaver	(\$9,257.27)
Forest	(\$7,857.46)
Venango	(\$7,744.74)
Susquehanna	(\$7,144.08)
Greene	(\$6,272.90)
Wyoming	(\$5,250.40)
Crawford	(\$4,538.63)
Clarion	(\$3,733.79)
Bedford	(\$3,063.14)
Cameron	(\$2,152.98)
Lebanon	(\$921.55)
Snyder	(\$776.62)
Bradford	\$182.22
Potter	\$749.25
Mifflin	\$1,016.59
Sullivan	\$1,078.06
Elk	\$1,410.25
Tioga	\$1,511.24
Warren	\$3,669.14
Indiana	\$3,783.29
Northumberland	\$3,871.16
Clinton	\$4,059.54
Franklin	\$4,954.13
Wayne	\$5,708.56
Clearfield	\$11,963.19
Schuylkill	\$19,303.32
Pike	\$76,020.96
Centre	\$113,511.43
Lycoming	\$254,165.61
Mercer	\$396,992.93
Cambria	\$414,801.70
Blair	\$506,252.57
Armstrong	\$716,374.95
	(\$951,116.81)

Original: 2414



Program Analysis and
Review Unit

OFFICE OF MEDICAL ASSISTANCE PROGRAMS
P.O. BOX 2875
HARRISBURG, PENNSYLVANIA 17105-2875

Tel: (717) 705-3705
Fax: (717) 772-2827

Don White
Senator, 41st District

Senate Box 203041
Harrisburg PA
17120-3041

9/14/2004

Dear Commenter:

The Department has received your comments regarding the proposed revisions to the 55 Pa.Code Chapter 1187 regulation that was recently published in the Pennsylvania Bulletin. Your comments will be taken into consideration in the development of the final regulation.

Thank you for sharing your comments with the Department and for your interest in the Medical Assistance Program.

Sincerely,

Gail Weidman, Chief
Program Analysis and Review Unit

SEP 15 2004
15 15 2004
15 15 2004

C Letter # 7

COMMITTEES

- VETERANS AFFAIRS & EMERGENCY PREPAREDNESS, CHAIR
- COMMUNITY & ECONOMIC DEVELOPMENT, VICE CHAIR
- AGRICULTURE & RURAL AFFAIRS
- BANKING & INSURANCE
- ENVIRONMENTAL RESOURCES & ENERGY TRANSPORTATION
- SOUTHWESTERN PA VETERANS' CENTER ADVISORY COUNCIL
- STATE TRANSPORTATION ADVISORY COMMITTEE

State Senator
Don White
41st Senatorial District



Senate of Pennsylvania

- SENATE BOX 203041
THE STATE CAPITOL
HARRISBURG, PA 17120-3041
717-787-8724
FAX: 717-772-1888
- 618 PHILADELPHIA STREET
INDIANA, PA 15701
724-387-0151
FAX: 724-387-0148
- 101 MARKET STREET
SUITE 100
KITTTANNING, PA 16201
724-543-3026
FAX: 724-544-4856
- 2990 WILLIAM PENN HIGHWAY
MUNNYSVILLE, PA 15668
724-327-2433
FAX: 724-327-2436

September 10, 2004

Ms. Gail Weidman
Division of Long Term Care Client Services
PA Department of Public Welfare
Post Office Box 2675
Harrisburg, PA 17105-2675

RECEIVED

SEP 13 2004

**PROGRAM ANALYSIS
AND REVIEW SECTION**

RE: Comments on Proposed Rulemaking
55 PA Code, Chapter 1187

Dear Ms. Weidman:

I am taking this opportunity to express my most sincere opposition to the Department of Public Welfare's (DPW) proposed rulemaking regarding 55 PA Code, Chapter 1187, also known as Metropolitan Statistical Area (MSA). Attached are copies of letters of opposition from Armstrong County Board of Commissioners, Armstrong County Health Center, Kittanning Care Center, and Quality Life Services - which are all negatively affected by the above referenced proposed rulemaking changes.

Armstrong County was added to the Pittsburgh MSA on July 06, 2003 by the Federal Office of Management and Budget (OMB). These proposed regulations are DPW's attempt to make changes to existing reimbursement procedures, which will negatively affect Armstrong County residents as well as public and privately administered nursing homes.

DPW's attempt to avoid recognizing Armstrong County as part of the Pittsburgh MSA when allocating Medicaid reimbursements will mean millions in lost funding for county homes. In the case of the Armstrong County Health Center, a county owned and operated health care facility, DPW's proposed regulation would deny the facility \$200,000 in additional revenue annually.

SEP 15 11 28 AM '04

Gall Weidman
September 10, 2004
Page Two

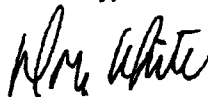
Additionally, numerous privately owned facilities' reimbursements will be negatively impacted and will result in their inability to compete with Pittsburgh homes which receive a higher reimbursement.

Armstrong County has been attempting to become part of the Pittsburgh MSA for many years. One of the main reasons for their long effort was to increase their reimbursement levels for Medicaid. To be more blunt, the Pittsburgh MSA wanted Armstrong County to be included because it would be an overall benefit to the region. However, the proposed regulations if enacted do not make the relationship mutually beneficial. Rather, the Pittsburgh MSA receives the additional clout of being a larger region while Armstrong County is denied the very benefits the other members of the MSA receive.

In a meeting with Secretary Richman on May 12, 2004, I also voiced the aforementioned concerns regarding these proposed changes. To adopt these changes is to jeopardize the quality of care to Armstrong County residents. I urge DPW to maintain the current regulations and begin reimbursing Armstrong County health care facilities as currently mandated.

Thank you for your attention to this matter. If I may provide additional information, please let me know.

Sincerely,



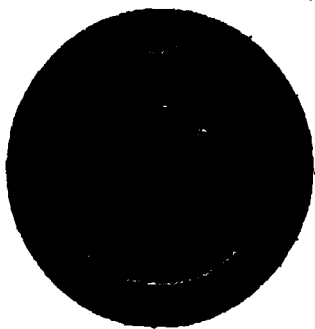
Don White
Senator, 41st District

**Gail Weidman
September 10, 2004
Page Three**

**cc: The Honorable Estelle B. Richman, Secretary, DPW
The Honorable David J. Brightbill
The Honorable Samuel H. Smith
The Honorable Harold F. Mowery
The Honorable James V. Scahill, Armstrong County Commissioner
Ms. Nancy D. Dragan, Administrator, Armstrong County Health Center
Mr. Ross J. Nese, President, Kittanning Care Center
Mr. Kenneth R. Tack, CEO, Quality Life Services**

#6005

SEP 13 2004



BOARD OF COMMISSIONERS

JUDY K. RUPP
Chief Clerk

PATRICIA L. KIRKPATRICK
RICHARD L. FINK
JAMES V. SCAHILL

JAMES J. PANCHIK
Solicitor

RE: ...

SEP

September 8, 2004

HARRISBURG

Ms. Gail Weidman
Division of Long Term Care Client Services
DEPARTMENT OF PUBLIC WELFARE
P.O. Box 2675
Harrisburg, PA 17105-2675

RE: Comments on Proposed Rulemaking
55 PA Code, Chapter 1187

Dear Ms. Weidman:

On behalf of the citizens of Armstrong County, and to protect their collective interests, the Board of Commissioners of the County of Armstrong strenuously object to the Department's proposed rulemaking relating to peer grouping for price setting in Chapter 1187.94 of 55 PA Code. Frankly, this "proposed rulemaking" is an arrogant display of power by a Department that admits it wishes to maintain in its own words "status quo" reimbursement policies that perpetuates discrimination against Armstrong County that has been finally recognized and corrected by the federal government's Office of Management & Budget (OMB) in 2003.

To the lay person, the language of the proposed rulemaking seems innocuous enough; however, it is simply goobly-goop that states that the Department is going to ignore its own rules to TOTALLY IGNORE changes in OMB designations for not just Armstrong County but other counties that will and should change the formulas by which reimbursement should occur. We do not use the word "arrogant" lightly. How else can we describe the Department's statement that "No fiscal impact will result" when in fact fiscal impact will result in several ways? How else can we describe the fact that the fiscal impact statement is printed twice for some reason? How else can we describe the Department's statement that there will be no fiscal impact on the general public when in fact the good citizens of Armstrong County will continue to be denied additional reimbursements for its county-owned skilled nursing facility under the new MSA designation and peer grouping that would result in an estimated \$ 200,000-\$ 500,000 in additional funding? Finally, how else can we describe a department proposing rulemaking that will have an effective date TWO MONTHS BEFORE the comment period is closed?

Simply put, and has been repeatedly pointed out to the Department, Armstrong County should have been included in the original designation of "Statistical Metropolitan Areas" (SMA) in 1950 since Armstrong County physically touches the core county of Allegheny and its principal city, Pittsburgh. In the intervening 50+ years, Armstrong County's numerous requests to correct this wrong have never been addressed. Recently, PA State Senator Don White met personally with Secretary Estelle B. Richman about this injustice. Enclosed please find the background briefing paper that had been prepared for the Senator, and we wish to enter it as part of the record of this letter of objection.

DPW: Letter of Objection on Proposed 1187 Rulemaking

-2-

On June 3, 2003, the announcement by the federal OMB in the Federal Register that Armstrong County was included in the Pittsburgh Core Base Metropolitan Statistical Area (MSA) was met with jubilation in the county. It was a short-lived celebration for the county quickly found out that playing by all the rules sometimes just doesn't win regardless of how just your cause may be. Subsequent actions by both the federal and state governments in regard to the MSA designation defied logic and protected the status quo of reimbursement policy that has systematically shifted funding that should have been shared by Armstrong County to other counties that no longer (or never) qualified for said reimbursement. Fortunately, after careful consideration the federal government several months ago reaffirmed the June 3, 2003 action that Armstrong County was indeed part of the core Pittsburgh MSA Region. We felt that affirmation by the CSM would surely filter down to the DPW and its own policies would cause it to adjust to the new MSA designations, including the new classification of micropolitan areas. Had this been a perfect world, the adjustments would have occurred and Armstrong County would be a full partner to the Pittsburgh Region. The present proposed rulemaking by DPW demonstrates that it wishes to cling to the past and is willing to risk the ire of legislators by ignoring the most recent OMB ruling. Frankly, when Senator White met with Secretary Richman, the County was willing to move forward and not discuss past reimbursements. That issue is currently under review, given the proposed rulemaking. Since the 1960's, Armstrong County has been recognized as a full regional partner in transportation, economic planning, and other areas, with the exception of DPW reimbursement. Denied access to that reimbursement has resulted in MILLIONS of dollars that should have come to Armstrong County instead going to other counties under the DPW policy. By maintaining the "status quo" under the DPW proposed rulemaking (which is the present reimbursement policy), there will be no change in the manner or amount that Armstrong County is reimbursed. Therefore, the County will explore recovering amounts that were due it since this designation began.

The extensive history that has been outlined to the Department has apparently fallen on deaf ears. What recourse does that leave our county? We now are faced with a conflict between the OMB MSA designation and the State DPW non-designation. How can we be both things at once? In addition, we are troubled by the capricious nature in which the county "Level" designation occurs. In the proposed rulemaking, the Department describes it as: Level A as areas having over 1 million in population; Level B as areas having a population of 250,000 to 999,999; and Level C as areas having a population of 100,000 to 249,000 (according to the proposed rulemaking). Incidentally, what about a county that has between 249,000 and 250,000 in population? Would they be reimbursed at Level B or C or not at all? Regardless of other factors such as competition with an adjacent urban area or material costs, all other counties are arbitrarily and capriciously determined to be reimbursed at a lesser, "non-classified, non-urban" rate. That means that 34 of the 67 counties in Pennsylvania are in this category. While there will be some function of population density driving rate, this archaic structure should change with the times. But a quick study of two of the counties that receive a Level C rate demonstrates that the designation is arbitrary. Somerset County is a 6th Class county with a population of 80,023, well below the 100,000 so aptly described as Level C by the Department. Worse, another 6th Class county, Carbon, has less than 60% of the DPW requirement with a population of 58,802. What is the justification for these two counties to enjoy Level C status when they clearly don't mean the requirement as presented?

DPW: Letter of Objection on Proposed 1187 Rulemaking

-3-

Obviously, the Department is attempting to make the public believe there will be serious harm if any other, fairer formula would be applied. Frankly, the total amount of money would relatively stay the same. Counties that had received more than they should would indeed have to begin to live within the requirement needs. Counties that deserve the new formula would finally receive it. This is a matter that will be pursued with the IRRC, the Governor and the public.

We only ask for fairness in this matter. Withdraw this proposed rulemaking and replace it with a matching of the OMB's designation of MSA counties. Recalculate the formula for fairness and let the chips fall where they will.

In closing, we recognize that we have a responsibility to provide for our most fragile citizens, our seniors and those with disabilities that have no where else to go. We do so in a wonderful facility, with dedicated and supportive staff. Does the Department factor into the formula the fact that over 25% of the citizens of Armstrong County are over the age of 60, which means that our Health Center is vital to the well being of the community and county? As mentioned in the opening, it is apparent to many of our people that we are being discriminated against based solely on the population of our county and some arbitrary formula that rewards counties smaller than us. We cannot stand by and allow that to happen. We will not go quietly in the night anymore, and seek redress for our citizens who are willing to fight this issue as far as it needs to go.

We hope that the Department will listen to reason on this issue and do the right thing, regardless of how popular it is. Thank you for your consideration in this matter.

Cordially,

BOARD OF COMMISSIONERS

Patricia L. Knyatrich
Richard L. Lusk
Jim Scull

ATTEST:

cc: Honorable Edward G. Rendell, Governor
Senator Don White
Senator Jim Ferio
Rep. Sam Smith
Rep. Fred McIlhattan
Rep. Jeff Coleman
Rep. Joe Petrarca
Rep. John Pallone
IRRC

5113
ARMSTRONG
 COUNTY

The Best Thing
Next
 To Pittsburgh

COMMISSIONERS:

PATRICIA L. KIRKPATRICK
 RICHARD L. FINK
 JAMES V. SCAHILL

ARMSTRONG
 COUNTY

HEALTH CENTER
 ADMINISTRATOR
 NANCY D. DRAGAN

September 3, 2004

Ms. Gail Weidman
 Department of Public Welfare
 Division of Long Term Care Client Services
 P.O. Box 2675
 Harrisburg, PA 17105-2675

Dear Ms. Weidman:

This letter is written to comment on the Armstrong County Health Center's opposition to the publication in the Pennsylvania Bulletin Volume 34 dated August 14, 2004 regarding [55PA. Code CH. 1187] Metropolitan Statistical Area. The facility is located at 265 South McKean Street, Kittanning, PA 16201.

The case mix payment systems regulations specify that in setting the net operating prices the Department will classify each nursing facility participating in the Medical Assistance Program into one of twelve mutually exclusive peer groups based on Metropolitan Statistical Area group classification and the nursing facility's certified bed complement.

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 June 6, 2003 the OMB published new Federal MSA definitions. DPW is now proposing to change the State Plan to maintain the historical MSA groups.

The Armstrong County Health Center strongly opposes this proposal. Currently, with 130 beds, Armstrong County Health Center has the potential to lose, depending on the peer group it would fall into, approximately \$200,000 - \$500,000 per year by being kept at the rural MSA designation.

The close proximity to Pittsburgh creates a competitive job market especially for professional and licensed personnel at the nursing facility. The Department's suggested proposal ignores changes of economic realities to our facility.

265 SOUTH MCKEAN STREET, KITTANNING, PENNSYLVANIA 16201
 724-548-2222 FAX: 724-548-1103



Ms. Gail Weidman
September 3, 2004
Page 2

It would seem to me if the majority of nursing facility providers would be adversely affected as you stated in the bulletin, the fiscal impact to the State would be positive. I would hope there can be another solution to this issue such the Department of Public Welfare considering a draft regulation, which would preserve the existing MSA's but allow for "grandfathering" the facilities that were placed in a different MSA as a result of the June 6, 2003 OMB regulation.

Thank you for the opportunity to voice my opposition on behalf of the Armstrong County Health Center.

Sincerely yours,



Nancy D. Dragan, RN, NHA
Administrator

NDD:nb



Kittanning

CARE CENTER

#12405

RD# 1 Box 270
Route 422 East
Kittanning, PA 16201
T (724) 846-2273 F (724) 643-1423
www.grane.com

September 1, 2004

The Honorable Estelle B. Richman
Secretary of Public Welfare
Department of Public Welfare
Room 333 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

RE: PETITION FOR REGULATORY RELIEF

1 Pa. Code § 35.18; Rule 21 of Final Standing Practice Order

Request that the Secretary Not Implement the Proposed Freeze

On MSA Groups (April 3, 2004, 34 Pa.B. 1863, and August 14, 2004, 34 Pa.B. 4465) – 55 Pa. Code, Chapter 1187 AND COMMENTS, SUGGESTIONS, AND OBJECTIONS FOR PROPOSED RULE CHANGES

Dear Secretary Richman:

Our nursing facility is a participating provider in Pennsylvania's Medical Assistance Program and is located in Armstrong County, Pennsylvania. This Petition for Regulatory Relief requests that the Department withdraw its proposals to amend 55 Pa. Code § 1187.94(1).

The Department has proposed to amend the regulation effective July 1, 2004. We are requesting the Department to withdraw the proposal as inconsistent with the cost-based underpinnings of Medical Assistance Program payments for nursing facility care and services (62 P.S. § 443.1). The problem addressed in the proposed rulemaking affects every nursing facility provider in Pennsylvania except those in Peer Groups 13-14 (whose rates are not based on differences in MSA's or size), as recognized in the Department's Notices, because changes in the counties making up Peer Groups 1-12 affect the costs used to determine the net operating components of the rates for providers in those Peer Groups and, as a result, can result in increases or decreases to the Peer Group Prices and Limited Prices for those providers.

The Department, however, has historically made such changes in the past in compliance with the Department's acknowledgement, repeated when the Department developed the present case-mix system, of the relationship between provider costs and MSA assignments. Freezing the current MSA Groups, which are based on provider cost data that is more than ten (10) years old, is inconsistent with the design of the case-mix system and undercuts the statistical validity of the grouping methodology, which may skew price-and rate-setting for providers. Freezing out-of-date Peer Groups also deprives providers with atypical labor-related costs any opportunity for

Page 2

reclassification and fails to consider relevant factors supporting a reclassification process such as those on which Congress based its authorization of a reclassification process for Medicare skilled nursing facility providers in Section 315 of BIPA in 2000. Such a reclassification system could significantly dampen the negative impact posted in the Department's proposed rulemaking from implementation of the OMB's update of MSA's, since most of the negative impact of the update impacts the rural provider Peer Groups (11 & 12) in the data model publicly shared by the Department using the Year 8 NIS Database.

The Medicare Program recently determined to implement the OMB MSA changes for inpatient hospital providers for FY 2005 because they found it would be inappropriate to deny providers wage index adjustments based on real changes in labor market costs as defined by OMB MSA changes (69 FR 28250-28252, May 18 2004; 69 FR 48915, August 11, 2004). The very same conclusion and analysis supports the use of updated OMB MSA changes in determining Pennsylvania's payment rates for nursing facilities as well as provision for reclassification of rural providers to urban MSA grounds based on atypical labor-related costs. Freezing out-of-date Peer Groups also precludes later realignments based on later updates to the OMB MSA assignments, as well as good cause reclassifications of facilities or counties such as those currently permitted for wage index adjustments for Medicare hospital rates. We submit that the Department's cost-based mandate, is best met where the Department retains flexibility in the rate- and price-setting process, just as the Medicare Program does, rather than through freezing outdated grouping methods.

We also believe that it is inappropriate for the Department to propose to eliminate possible increases in rates due to changes economic conditions and costs without making public the affected database and information on how the Department's proposal will affect provider rates in comparison with how provider rates would change were the Department to implement the OMB MSA changes. To date, the Department has refused to make available for public review and analysis the Year 10 NIS database that the Department currently has in its possession and is required by its own regulations to use to set rates of FYE June 30, 2005 (Year 10). There is simply no way the public or providers can meaningfully comment on the Department's proposed changes to the regulations with respect to the OMB MSA changes without prior access to the Year 10 NIS database. Only by reference to the Year 10 NIS database can anyone, including the Department, assess the fiscal impact on the MA Program or providers of different alternatives solutions to the problem asserted by the Department in the proposed rulemaking. We suggest that the Department convene a workgroup of provider and Department technical staff to develop the most equitable method, using the Year 10 NIS Database, to both recognize the changes in economic realities represented by the OMB MSA updates and minimize disruptive shifts in reimbursement rates.

We do not understand why the Department cannot implement the OMB changes under its existing regulations, since the OMB previously defined the system for determining whether the population of an MSA may be labeled as A, B, C, or D, and the population information for each of the MSA's is a matter of public record. In addition, only six (6) Pennsylvania counties (Armstrong, Columbia, Lebanon, Mercer, Somerset, and Pike) have changes to their prior MSA assignments; and, the Pittsburgh MSA to which Armstrong County shifts was and remains qualified as an "A"; the Youngstown OH MSA to which Mercer shifts was and remains qualified

Page 3

as a "B"; the Newark, NJ MSA to which Pike shifts was and remains qualified as an "A"; and the non-MSA area to which Columbia and Somerset may shift was and remains the non-MSA area. The split of Lebanon County into a separate MSA can be resolved by the Department interpreting Lebanon to remain a part of the Greater Harrisburg MSA because OMB finds them still connected.

We therefore request that you withdraw the proposal to change the regulations by freezing the current MSA Group and that you issue an interpretation of general applicability on the application of the current regulations instead. A proposed form of Order is attached. In addition, we request that you order the Bureau of Long Term Care Programs to immediately make available for public review and analysis the Year 10 NIS database.

Please let us know if you require any additional information or documentation to schedule this matter for hearing and determination. We submit that a determination of this Petition for Regulatory Relief prior to the Department's publication of proposed or final rates for FYE June 30, 2004 or FYE June 30, 2005 is appropriate.

We are also sending a copy of this Petition to Gail Weidman, the person designated in the proposed rulemaking to receive comments, to also constitute our comments to, suggestions about and objections to the proposed rulemaking.

Respectfully submitted,



Ross J. Nese
President
Kittanning Care Center, LLC

RJN:del

Cc: Gail Weidman, Division of Long Term Care Client Services,
Department of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105-2675
Wm. Russ McDaid, Public Policy Officer, PANPHA, 1100 Bent Creek Boulevard,
Mechanicsburg, PA 17050
Robert E. Nyce, Executive Director, Independent Regulatory Review Commission,
333 Market Street (14th Floor), Harrisburg, PA 17101
Senator Howard Mowery, Jr., Senate Public Health & Welfare Committee
Senator Vincent J. Hughes, Senate Public Health & Welfare Committee
169-C State Capitol, Harrisburg, PA 17120
Representative George T. Kenney, Jr., House Health & Human Services Committee
Room 108, Ryan Office Building, State Capitol, Harrisburg, PA 17120
Representative Frank Oliver, House Health & Human Services Committee
Room 34, East Wing, State Capitol, Harrisburg, PA 17120
[Local State Senators]

COMMONWEALTH OF PENNSYLVANIA**DEPARTMENT OF PUBLIC WELFARE**

Re: **Petition for Regulatory Relief**
Seeking Withdrawal of April 3, 2004 Notice at 34 Pa.B. 1863, and August 14,
2004 Proposed Rulemaking at 34 Pa.B. 4465, relating to changes in 55 Pa. Code
§ 1187.94(1), relating to MSA Groups

ORDER

AND NOW, this _____ day of _____, 2004, pursuant
to the Petition for Regulatory Relief, concerning the Department's April 3, 2004 Notice at 34
Pa.B. 1863, and the Notice of Proposed Rulemaking of August 14, 2004 at 34 Pa.B. 4465,
requesting that such Notices be withdrawn, finding merit in the Petition, the Petition is hereby
GRANTED and the proposed rulemaking is hereby withdrawn without prejudice to later renewal
or amendment.

The Bureau of Long Term Care Programs shall immediately make available for public review
and analysis an electronic spreadsheet of the Year 10 NIS database as of June 30, 2004; and,
shall schedule open meetings during the months of September and October 2004 with providers
and provider representatives to discuss and develop alternative proposals for possible
amendments to 55 Pa. Code Chapter 1187 relating to changing the method of determining the
membership of Peer Groups used to collect data to determine Peer Group Prices and/or to
determine individual provider rates, including criteria for reclassification of counties based on
atypical labor-related costs such as those used to reclassify hospitals in the Federal Medicare
Program. The results of these open meetings shall be reported to the Deputy Secretary for
Medical Assistance Programs for consideration in proposing amendments to the regulations with
respect to the determination of the membership of Peer Groups, which proposed amendments
shall be published in the *Pennsylvania Bulletin* prior to November 1, 2004.

ESTELLE B. RICHMAN
Secretary of Public Welfare

FINAL ADMINISTRATION
ACTION AND DATE OF MAILING

11199



C Letter #

120A Lakeside Drive, Worthington, PA 16262
 (724) 445-3076
 Fax: (724) 445-3186
 www.QualityLifeServices.com

September 2, 2004

Pennsylvania Department of Public Welfare
 Department of Medical Assistance

Re: Comment to recent proposed regulation change for determination on MSA change for nursing home reimbursement.

The proposed change to the Commonwealth's policy regarding determining how Counties will be grouped for their Medical Assistance Reimbursement is most harmful to the quality of care for our residents and the quality of life for their care givers. Since the inception of the MSA reimbursement methodology in Pennsylvania we have been struggling on an uneven field to remain financially solvent while meeting the social, emotional, and physical needs of our residents. We have been bordered by three counties that are in the highest MSA reimbursement area while we have been grouped into the lowest cost MSA. Now the US census has determined that the workforce of Armstrong County and these other three counties are interwoven. The cost of acquiring and maintaining the number and quality of staff needed to provide the care and services our residents need and deserve is directly related to the wage scales of these other three surrounding Counties. If the Department of Public Welfare enacts their proposed rule change every resident in an Armstrong County nursing home will be adversely affected.

For us to be able to attract and retain the best possible care givers we must be able to pay comparable wages. For us to be able to meet the resident's needs in a timely and fulfilling manner we must have adequate numbers of quality staff. Unless we receive appropriate reimbursement we can not answer both needs. One of these two needs will go unmet and inevitably the people of Armstrong County will be required to suffer.

If the current method of determining MSA remains the cost to the Commonwealth is nominal as is the cost to the Counties that are currently in this higher wage scale area. The cost to the smaller rural Counties if the proposed policy change is implemented would be immense and unbearable.

We thank you in advance for your time and consideration as we attempt to have all people in our Commonwealth treated equally and fairly.

Yours truly,

A handwritten signature in black ink, appearing to read "Kenneth R. Tack", is written over a horizontal line.

Kenneth R. Tack
 Chief Executive Officer

Chicora Medical Center * Countryside * Emlenton's Laurel Manor * Sugar Creek Rest * Trinity Living Center
 Chicora, PA Mercer, PA Emlenton, PA Worthington, PA Grove City, PA

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF MEDICAL ASSISTANCE OPERATIONS
BUREAU OF LONG TERM CARE PROGRAMS
DIVISION OF LTC CLIENT SERVICES
LTC POLICY SECTION

1401 N. 7th Street
Harrisburg, PA 17102

Phone #: 717-705-3705
Fax #: 717-772-2527

FAX TRANSMITTAL SHEET

TO: Rich Sandusky - Name
IRRC - Agency
783-2664 - Fax Number

15 ~~14~~ pages, including this cover sheet

FROM:

Date:

- Gail Weidman
- Alice Gustitus
- Tom Jayson

MESSAGE:

SENATOR DAN White
RE: MSA Proposed Reqs

The documents accompanying this FAX transmission contain information that is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named on this FAX sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this faxed information is strictly prohibited. If you have received this FAX in error, please notify us by telephone at (717) 705-3705 immediately so that we can arrange for the return of the original documents at no cost to you. Thank you.

SEP 15 2004 2:16 PM
DIVISION OF LONG TERM CARE

Original: 2414

RECEIVED
2004 SEP 21 AM 10:03
REVIEW COMMISSION

Julia Ribaldo Senior Services, LLC
1404 Golf Park Drive
Lake Ariel, PA 18436
1-570-698-5647

September 13, 2004

The Honorable Estelle B. Richman
Secretary of Public Welfare
Department of Public Welfare
Room 333 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

RE: PETITION FOR REGULATORY RELIEF
1 Pa. Code § 35.18; Rule 21 of Final Standing Practice Order
Request that the Secretary Not Implement the Proposed Freeze
On MSA Groups (April 3, 2004, 34 Pa.B. 1863, and August 14, 2004, 34
Pa.B. 4465) - 55 Pa. Code, Chapter 1187 AND COMMENTS,
SUGGESTIONS, AND OBJECTIONS FOR PROPOSED RULE
CHANGES

Dear Secretary Richman:

Our nursing facility is a participating provider in Pennsylvania's Medical Assistance Program and is located in Wayne County, Pennsylvania. This Petition for Regulatory Relief requests that the Department withdraw its proposals to amend 55 Pa. Code § 1187.94(1).

The Department has proposed to amend the regulation effective July 1, 2004. We are requesting the Department to withdraw the proposal as inconsistent with the cost-based underpinnings of Medical Assistance Program payments for nursing facility care and services (62 P.S. § 443.1). The problem addressed in the proposed rulemaking affects every nursing facility provider in Pennsylvania except those in Peer Groups 13-14 (whose rates are not based on differences in MSA's or size), as recognized in the Department's Notices, because changes in the counties making up Peer Groups 1-12 affect the costs used to determine the net operating components of the rates for providers in those Peer Groups and, as a result, can result in increases or decreases to the Peer Group Prices and Limited Prices for those providers.

The Department, however, has historically made such changes in the past in compliance with the Department's acknowledgment, repeated when the Department developed the present case-mix system, of the relationship between provider costs and MSA assignments. Freezing

the current MSA Groups, which are based on provider cost data that is more than ten (10) years old, is inconsistent with the design of the case-mix system and undercuts the statistical validity of the grouping methodology, which may skew price- and rate-setting for providers. Freezing out-of-date Peer Groups also deprives providers with atypical labor-related costs any opportunity for reclassification and fails to consider relevant factors supporting a reclassification process such as those on which Congress based its authorization of a reclassification process for Medicare skilled nursing facility providers in Section 315 of BIPA in 2000. Such a reclassification system could significantly dampen the negative impact posited in the Department's proposed rulemaking from implementation of the OMB's update of MSA's, since most of the negative impact of the update impacts the rural provider Peer Groups (11 & 12) in the data model publicly shared by the Department using the Year 8 NIS Database.

The Medicare Program recently determined to implement the OMB MSA changes for inpatient hospital providers for FY 2005 because they found it would be inappropriate to deny providers wage index adjustments based on real changes in labor market costs as defined by OMB MSA changes (69 FR 28250-28252, May 18, 2004; 69 FR 48915, August 11, 2004). The very same conclusion and analysis supports the use of updated OMB MSA changes in determining Pennsylvania's payment rates for nursing facilities as well as provision for reclassification of rural providers to urban MSA grounds based on atypical labor-related costs. Freezing out-of-date Peer Groups also precludes later realignments based on later updates to the OMB MSA assignments, as well as good cause reclassifications of facilities or counties such as those currently permitted for wage index adjustments for Medicare hospital rates. We submit that the Department's cost-based mandate, is best met where the Department retains flexibility in the rate- and price-setting process, just as the Medicare Program does, rather than through freezing outdated grouping methods.

We also believe that it is inappropriate for the Department to propose to eliminate possible increases in rates due to changes economic conditions and costs without making public the affected database and information on how the Department's proposal will affect provider rates in comparison with how provider rates would change were the Department to implement the OMB MSA changes. To date, the Department has refused to make available for public review and analysis the Year 10 NIS database that the Department currently has in its possession and is required by its own regulations to use to set rates of FYE June 30, 2005 (Year 10). There is simply no way the public or providers can meaningfully comment on the Department's proposed changes to the regulations with respect to the OMB MSA changes without prior access to the Year 10 NIS database. Only by reference to the Year 10 NIS database can anyone, including the Department, assess the fiscal impact on the MA Program or providers of different alternatives solutions to the problem asserted by the Department in the proposed rulemaking. We suggest that the Department convene a workgroup of provider and Department technical staff to develop the most equitable method, using the Year 10 NIS Database, to both recognize the changes in economic realities represented by the OMB MSA updates and minimize disruptive shifts in reimbursement rates.

We do not understand why the Department cannot implement the OMB changes under its existing regulations, since the OMB previously defined the system for determining whether the population of an MSA may be labeled as A, B, C, or D, and the population information for each

of the MSA's is a matter of public record. In addition, only six (6) Pennsylvania counties (Armstrong, Columbia, Lebanon, Mercer, Somerset, and Pike) have changes to their prior MSA assignments; and, the Pittsburgh MSA to which Armstrong County shifts was and remains qualified as an "A"; the Youngstown OH MSA to which Mercer shifts was and remains qualified as a "B"; the Newark, NJ MSA to which Pike shifts was and remains qualified as an "A"; and the non-MSA area to which Columbia and Somerset may shift was and remains the non-MSA area. The shift of Lebanon County into a separate MSA can be resolved by the Department interpreting Lebanon to remain a part of the Greater Harrisburg MSA because OMB finds them still connected.

We therefore request that you withdraw the proposal to change the regulations by freezing the current MSA Group and that you issue an interpretation of general applicability on the application of the current regulations instead. A proposed form of Order is attached. In addition, we request that you order the Bureau of Long Term Care Programs to immediately make available for public review and analysis the Year 10 NIS database.

Please let us know if you require any additional information or documentation to schedule this matter for hearing and determination. We submit that a determination of this Petition for Regulatory Relief prior to the Department's publication of proposed or final rates for FYE June 30, 2004 or FYE June 30, 2005 is appropriate.

We are also sending a copy of this Petition to Gail Weidman, the person designated in the proposed rulemaking to receive comments, to also constitute our comments to, suggestions about and objections to the proposed rulemaking.

Respectfully submitted,



Michael J. Callan, Sr.
Chief Financial Officer

cc: Gail Weidman, Division of Long Term Care Client Services,
Department of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105-2675
Wm. Russ McDaid, Public Policy Officer, PANPHA, 1100 Bent Creek Boulevard,
Mechanicsburg, PA 17050
Robert E. Nyce, Executive Director, Independent Regulatory Review Commission,
333 Market Street (14th floor), Harrisburg, PA 17101
Senator Howard Mowery, Jr., Senate Public Health & Welfare Committee
Senator Vincent J. Hughes, Senate Public Health & Welfare Committee
169-C State Capital, Harrisburg, PA 17120
Representative George T. Kenney, Jr., House Health & Human Services Committee
Room 108, Ryan Office Building, State Capitol, Harrisburg, PA 17120
Representative Frank Oliver, House Health & Human Services Committee
Room 34, East Wing, State Capitol, Harrisburg, PA 17120

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

Re: Petition for Regulatory Relief

Seeking Withdrawal of April 3, 2004 Notice at 34 Pa.B. 1863, and August 14, 2004 Proposed Rulemaking at 34 Pa.B. 4465, relating to changes in 55 Pa. Code § 1187.94(1), relating to MSA Groups

ORDER

AND NOW, this _____ day of _____, 2004, pursuant to the Petition for Regulatory Relief, concerning the Department's April 3, 2004 Notice at 34 Pa.B. 1863, and the Notice of Proposed Rulemaking of August 14, 2004 at 34 Pa.B. 4465, requesting that such Notices be withdrawn, finding merit in the Petition, the Petition is hereby GRANTED and the proposed rulemaking is hereby withdrawn without prejudice to later renewal or amendment.

The Bureau of Long Term Care Programs shall immediately make available for public review and analysis an electronic spreadsheet of the Year 10 NIS database as of June 30, 2004; and, shall schedule open meetings during the months of September and October 2004 with providers and provider representatives to discuss and develop alternative proposals for possible amendments to 55 Pa. Code Chapter 1187 relating to changing the method of determining the membership of Peer Groups used to collect data to determine Peer Group Prices and/or to determine individual provider rates, including criteria for reclassification of counties based on atypical labor-related costs such as those used to reclassify hospitals in the Federal Medicare Program. The results of these open meetings shall be reported to the Deputy Secretary for Medical Assistance Programs for consideration in proposing amendments to the regulations with respect to the determination of the membership of Peer Groups, which proposed amendments shall be published in the *Pennsylvania Bulletin* prior to November 1, 2004.

ESTELLE B. RICHMAN
Secretary of Public Welfare

FINAL ADMINISTRATIVE
ACTION AND DATE OF MAILING
