

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DANIEL F. CLARK, ESQ.
ARTHUR COCCODRILLI
MURRAY UFBERG, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

October 13, 2004

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

Re: Regulation #14-483 (IRRC #2414)
Department of Public Welfare
Metropolitan Statistical Area

Dear Secretary Richman:

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

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

Sincerely,

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable George T. Kenney, Jr., Majority Chairman, House Health and Human Services Committee
Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee
Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation #14-483 (IRRC #2414)

Metropolitan Statistical Area

October 13, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Public Welfare (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on September 13, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 1187.94. Peer grouping for price setting. - Fiscal impact; Reasonableness

This proposed rulemaking amends the method the Department uses to establish peer groups used to set net operating per diem rates under the case-mix payment system. Currently, peer groups are based on the most recent Metropolitan Statistical Areas (MSA) group classifications established by the Federal Office of Management and Budget (OMB) and a nursing facility's bed complement. In June of 2003, the OMB changed their method for categorizing MSAs. The Department contends that this change makes it impossible to classify nursing facilities into peer groups under the current case-mix payment system regulations. Therefore, the Department has decided to adopt the MSA group classifications published in OMB Bulletin No. 99-04. This change will retain the MSA group classifications currently used by the Department to establish per diem rates.

In the Preamble, the Department noted that it considered adopting the new MSA group classifications. However, its analysis indicated that "a majority of nursing facility providers would be adversely affected (that is, the case-mix payment system would compute lower rates for the majority)."

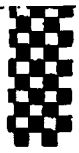
Several commentators have expressed concern with the approach taken by the Department. They believe that maintaining the historical MSA group classifications does not accurately reflect the true cost of operating a nursing facility in their specific geographic location.

We agree. Incorporating the new MSA group classifications would allow the Department to establish per diem rates that reflect more current costs associated with operating a nursing facility. Why has the Department decided to retain the historical MSA group classifications instead of using the most recent MSA data available?

2. Effective date of the regulation. - Conflict with existing regulations; Reasonableness; Implementation procedures.

This rulemaking is proposed to take effect for the July 1, 2004 rate-setting. Existing regulations at 55 Pa. Code § 1187.95(a), relating to general principles for rate and price setting, state the following: “Prices will be set **prospectively** on an annual basis during the second quarter of each calendar year and be in effect for the subsequent July 1 through June 30 period.” (Emphasis added.)

This rulemaking process was initiated August 14, 2004, well after the effective date of the proposed regulation. Establishing a retroactive effective date conflicts with the existing regulation noted above. This regulation is binding on the Department as it is on the regulated parties. Given this conflict, can the Department implement this rule change retroactively?



Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



Phone: (717) 783-5419
Fax #: (717) 783-2664
E-mail: kriss@irrc.state.pa.us
Website: www.irrc.state.pa.us

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

To: Shirley A. Nace
Stephanie Schubert
Ruth O'Brien, Esq.
Agency: Department of Public Welfare
Phone 3-2201; 7-4063; 3-2800
Fax: 2-0717
Date: October 13, 2004
Pages: 3

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-483 (IRRC #2414). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Stephanie Schubert* Date: 10/13/04