

315 North Second Street / Harrisburg, Pennsylvania 17101 / (717) 221-1800 / FAX (717) 221-8687



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Hershey, PA
Secretary/Treasurer

ALAN G. ROSENBLOOM
Harrisburg, PA
President and CEO

September 8, 2004

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

RECEIVED
DIVISION OF LTC
CLIENT SERVICES

SEP 09 2004

REF: _____

Re: Proposed Rulemaking MA Day of Care Definition 34 Pa.B. 4462

Dear Ms. Weidman:

The Pennsylvania Health Care Association ("PHCA") represents over 200 nursing homes across the Commonwealth that care for more than 15,000 individuals who qualify for Pennsylvania's Medical Assistance ("MA") program each day. We respectfully submit these comments in response to the proposed rulemaking by the Department of Public Welfare (the "Department") concerning the definition of "MA day of care" as described in the Notice of Proposed Rulemaking published at 34 Pa.B. 4462 (August 14, 2004).

PHCA strongly supports the Department's proposal to expand the definition to include individuals currently authorized by Medical Assistance Managed Care Organizations or the Long Term Care Capitated Assistance Program to receive care in nursing facilities. The proposed expansion will allow nursing facilities to receive more accurate reimbursement for the cost of care. In addition, by including hospice services in the definition, the proposed change will contribute to more equitable funding for these specific services when provided in a nursing facility.

We appreciate the Department's ongoing efforts to make appropriate changes to the Medical Assistance program, as well as the continuing opportunity to work with the Department on issues of importance to some of the Commonwealth's most frail and vulnerable citizens and to the provider community that serves them.

Sincerely,

Alan G. Rosenbloom
President and CEO

9:11 AM 9/15/04
RECEIVED

14-486-2
c letter # 3

Original: 2415



PENNSYLVANIA ASSOCIATION OF COUNTY AFFILIATED HOMES

17 NORTH FRONT STREET • HARRISBURG, PA 17101-1624 • (717) 232-7554 • FAX (717) 232-2162

7

September 8, 2004

RECEIVED
DIVISION OF LTC
CLIENT SERVICES

SEP 09 2004

Gail Weidman
Division of Long Term Care Client Services
P.O. Box 2675
Harrisburg, PA 17105

REF: _____

RE: DPW Regulation #14-486 (#2415) MA Day of Care Definition

Dear Ms. Weidman:

The Pennsylvania Association of County Affiliated Homes (PACAH) is writing in full support of the Department of Public Welfare's (DPW) proposed rulemaking regarding the MA Day of Care Definition (#14-486). PACAH represents all 55 county and county affiliated nursing facilities in the Commonwealth, and is an affiliate organization of the County Commissioners Association of Pennsylvania.

PACAH has been urging DPW to change its definition of an MA Day of Care for several years for precisely the reasons DPW is explaining in the "Need for the Proposed Rulemaking" section. County nursing facilities and other nursing facilities have been providing service to many Medicaid HealthChoices residents and their days of care have not previously been counted in determining whether the facility qualifies for a disproportionate share incentive payment or in calculating the case-mix index of the facility. This has become a financial disincentive over the years for nursing facilities to accept residents in HealthChoices. PACAH also supports the change to clarify that days of care provided to an MA resident receiving hospice services in a nursing facility which are paid by the Department are also considered MA days of care. The adoption of these regulations to include these days of care as MA days will correct this situation. PACAH urges these regulations be approved as written.

Thank you for the opportunity to comment on these proposed regulations. Feel free to contact me if you need any additional information.

Sincerely,

Michael J. Wilt
Executive Director

cc: Independent Regulatory Review Commission

RECEIVED
SEP 14 11:46
INDEPENDENT REGULATORY REVIEW COMMISSION

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: 2/13
Capozzi & Associates, P.C.
Attorneys at Law



14-486-1
C-Letter #1

2933 North Front Street
Harrisburg, PA 17110

Telephone: (717) 233-4101

Fax: (717) 233-4103

www.capozziassociates.com

Of Counsel:

Steven T. Hanford, Esquire

August 24, 2004

RECEIVED
DIVISION OF LTC
CLIENT SERVICES

SEP 02 2004

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

REF: _____

RE: COMMENTS AND REQUEST FOR ADDITION TO
PROPOSED RULEMAKING - 55 Pa. Code Chapter 1187
34 Pa.B. 4462 (August 14, 2004)
MA DAY OF CARE DEFINITIONS

RECEIVED

SEP 03 2004

Dear Ms. Weidman:

PROGRAM ANALYSIS
AND REVIEW SECTION

This responds to the Department's invitation to submit comments and suggestions regarding the proposed rulemaking. This correspondence provides you with our suggestion that the Department add to the proposed rule a procedure for nursing facility providers to correct Picture Date CMI Report transmittals to make them consistent with the new definitions for a period of at least thirty (30) days from the date on which the final rule is published in the *Pennsylvania Bulletin*, and with our comment expressing concern about the proposed effective date. We believe that such an extension of time is needed and appropriate because: (1) there was confusion as to the effective date of the changes in the notices about the changes that the Department sent to providers and (2) the extension appears harmless to the MA Program given the on-going delay in publishing proposed and final rates for FYE June 30, 2005 (Year 10), the first fiscal period when the new definitions will begin to apply to determine MA rates for nursing facility providers.

When the Department first indicated in its December 27, 2003 Notice in the *Pennsylvania Bulletin* (33 Pa.B. 6468) that the Department intended to make changes in the definition of "MA Day of Care", the Notice did not mention any change in Picture Date CMI reporting procedures. The Department treated the December 27, 2003 Notice of intent to propose the changes as "effective January 1, 2004", when the Department posted a March 12, 2004 on its MA Provider Information Website at:

2004 SEP -9 PM 3:22
Division of Long Term Care

Gail Weidman

RE: COMMENTS AND REQUEST FOR ADDITION TO
PROPOSED RULEMAKING – 55 Pa. Code Chapter 1187
34 Pa.B. 4462 (August 14, 2004)
MA DAY OF CARE DEFINITIONS

August 24, 2004

Page Two

<http://www.dpw.state.pa.us/omap/provinf/ltc/omapdayofcare.asp>. The March 12, 2004 Website posting extended the time for providers to submit the February 1, 2004 CMI Report to conform with the “effective” definition as described in that posting.

Since an Internet posting is not an accepted replacement for publication in the *Pennsylvania Bulletin* in the process required by Pennsylvania law to propose and adopt regulations and since the Department has now published the August 14, 2004 proposed rulemaking in the *Pennsylvania Bulletin* to be effective as of January 1, 2004, some providers may not have had reasonable and proper notice of the change and may have submitted CMI Reports that do not reflect the proposed change in the definitions. In order to assure that the CMI database is consistent with the proposed change and to assure that all providers have had reasonable and proper notice of the change, we suggest that DPW include in the final rule one last extension of time for corrections by providers to their CMI Reports to conform with the new definitions.

We are also concerned that the Department’s proposal to amend the regulations as of January 1, 2004 using a proposed rulemaking issued on August 14, 2004 may be contrary to State and Federal Law. The Centers of Medicare & Medicaid Services (CMS), the federal agency that supervises the Department’s compliance with federal requirements for the administration of the Medicaid Program, advised the Department by a State Medicaid Directors Letter dated December 10, 1997, that the Federal Medicaid Act requires any changes in payment rates or payment methodologies to be published **prior to** the effective date of such changes. Under the prospective payment system established by the Department’s regulations and pursuant to the mandate of 62 P.S. § 443.1(3), providers’ rights to payment under the Department’s existing regulations and State Plan for Medical Assistance vested on July 1, 2004 and may not now be subject to change retroactively by the Department as proposed in this rulemaking. Since the proposed change to the Department’s method for setting payment rates was not made prior to July 1, 2004, the Federal guidance indicates that it cannot be effective for the setting of July 1, 2004 rates. Publication by means on an Internet posting does not meet the Federal requirements for prior public notice (42 CFR § 447.205(d)).

Gail Weidman

RE: COMMENTS AND REQUEST FOR ADDITION TO
PROPOSED RULEMAKING – 55 Pa. Code Chapter 1187
34 Pa.B. 4462 (August 14, 2004)
MA DAY OF CARE DEFINITIONS

August 24, 2004

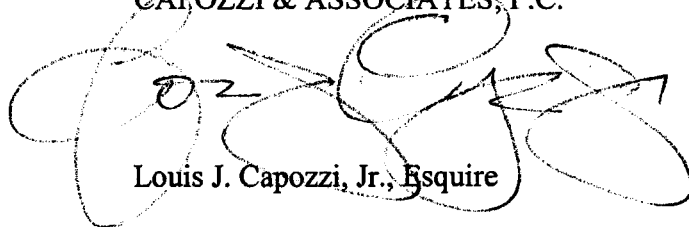
Page Three

We appreciate this opportunity to provide you with our comments and suggestions on the proposed rulemaking.

Best wishes.

Very truly yours,

CAPOZZI & ASSOCIATES, P.C.

A large, stylized handwritten signature in black ink, appearing to read 'L. Capozzi, Jr.', is written over the typed name below.

Louis J. Capozzi, Jr., Esquire

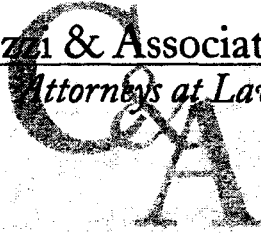
cc: IRRC Executive Director

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
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Karen L. Fisher, Paralegal
Dollie D. Himes, Paralegal
Susan Courchesne, Paralegal

Capozzi & Associates, P.C.
Attorneys at Law



Original: 2415

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Of Counsel:

Steven T. Hanford, Esquire

August 24, 2004

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

RE: COMMENTS AND REQUEST FOR ADDITION TO
PROPOSED RULEMAKING – 55 Pa. Code Chapter 1187
34 Pa.B. 4462 (August 14, 2004)
MA DAY OF CARE DEFINITIONS

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2004 SEP -3 PM 9:21
RECEIVED
DEPARTMENT OF PUBLIC WELFARE

Gail Weidman

RE: COMMENTS AND REQUEST FOR ADDITION TO
PROPOSED RULEMAKING – 55 Pa. Code Chapter 1187
34 Pa.B. 4462 (August 14, 2004)
MA DAY OF CARE DEFINITIONS

August 24, 2004

Page Two

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Gail Weidman

RE: COMMENTS AND REQUEST FOR ADDITION TO
PROPOSED RULEMAKING – 55 Pa. Code Chapter 1187
34 Pa.B. 4462 (August 14, 2004)
MA DAY OF CARE DEFINITIONS

August 24, 2004

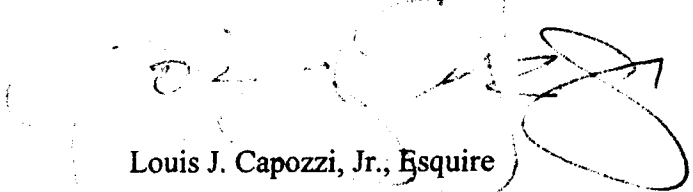
Page Three

We appreciate this opportunity to provide you with our comments and suggestions on the proposed rulemaking.

Best wishes.

Very truly yours,

CAPOZZI & ASSOCIATES, P.C.



Louis J. Capozzi, Jr., Esquire

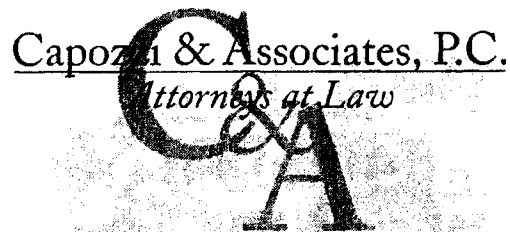
cc: IRRC Executive Director

Original: 2415

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

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Of Counsel:
Steven T. Hanford, Esquire

April 25, 2005

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

RE: PROPOSED 2004-2005 (YEAR 10) NURSING FACILITY RATES
Our Matter No. 465-03

Dear Ms. Weidman:

This letter provides Comments on the Notice of Proposed Payment Rates for Nursing Facilities published at 35 Pa.B. 1939 (3/26/2005). This Firm represents Kittanning Care Center in connection with these Comments.

MSA ISSUES

In the Proposed Payment Rates Notice, the Department states that:

“The Department has calculated new annual case-mix per diem payment rates for FY 04-05 for MA nursing facility providers. The Department is proposing to adopt and make payments to MA nursing facility providers using these rates. For purposes of calculating these proposed rates, the Department assumed that the Metropolitan Statistical Area (MSA) regulations, which were published as proposed at 34 Pa.B. 4465 (August 14, 2004), will be adopted in final-form without further change and effective July 1, 2004.”

The Department’s authority to implement the MSA regulation changes retroactively as proposed was raised by the Independent Regulatory Review Commission (“IRRC”) in their Comments on the proposed MSA regulation. 34 Pa.B. 5850 (10/23/2004) (noting conflict of retroactive effective date with existing DPW regulations). The Proposed Payment Rates Notice does not respond to IRRC’s concerns and we believe that the proposed retroactive date is contrary to the Department’s existing regulations, as indicated by IRRC. In addition, the Proposed Payment Rates Notice reflect a proposed determination by the Secretary of the Petition submitted on our facility’s behalf on April 8, 2004, requesting Declaratory Relief to require Armstrong County to be recognized as part of the Pittsburgh MSA for Year 9-10 rate-setting

RECEIVED
MAY 28 AM 9:51
DEPARTMENT OF PUBLIC WELFARE

Gail Weidman

RE: Comments on Notice at 34 Pa.B. 1863 (April 3, 2004)

Change in State Plan and 55 Pa. Code Chapter 1187

April 25, 2005

Page Two

purposes. The Proposed Payment Rates Notice does not recognize Armstrong County providers as part of the Pittsburgh MSA and continues to classify them into the Non-MSA Peer Groups.

For the reasons stated in the proceedings before the Secretary with respect to the Petition filed on April 8, 2004, as well as the concerns expressed by IRRC, we believe that the Department is precluded by federal law (see attached Exhibit "A") and its own regulations from retroactively changing the methods and standards for rate-setting for Year 10 and from failing to recognize OMB's reclassification of Armstrong County providers as part of the Pittsburgh MSA for Year 10.

The Department has established the case-mix reimbursement system as a prospective payment system; and, federal guidelines for the Department's rate determinations under the Medicaid Act require the Department to announce proposed rates prior to the effective date for the rates. The Department's current regulations require the Department to recognize Armstrong County providers as part of the Pittsburgh MSA for Year 10 (55 Pa. Code §§ 1187.94(1)(i), 1187.95(a)(3)). The most recent MSA Group Classification for the Pittsburgh MSA is "A." For Year 10, the OMB has determined that Armstrong County is part of the Pittsburgh MSA. The Proposed Year 10 Rates should be amended to reflect this OMB change and to classify Armstrong County providers into the "A" Peer Groups, as required by DPW's own regulations. DPW should not "assume" that IRRC will adopt DPW's proposed MSA regulation, given IRRC's significant concerns previously expressed to DPW and DPW's lack of a reasonable or rational basis for proposing same. DPW's failure to implement the OMB changes results in a loss to the MA Program of more than \$2 Million in Year 10.

INFLATION FACTORS

The inflation factors used by the Department are to be based on the "HCFA Nursing Home Without Capital Market Basket Index" (55 Pa. Code § 1187.91(1)(vii)). The Index values posted by the Department on the OMAP Website for Year 10 are not consistent with this requirement and the OMAP Website provides no source reference for where and how the Department obtained the Index values. The current CMS Market Basket Website contains no such Index values; and, we are advised by CMS Office of the Actuary staff who update the CMS Market Basket Website that CMS rebases their inflation index data every five (5) years and that they last rebased to 1997. Review of the Department's Index values indicates that the Department may still be using 1992 base-year data.

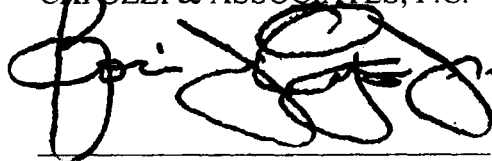
Gail Weidman
RE: Comments on Notice at 34 Pa.B. 1863 (April 3, 2004)
Change in State Plan and 55 Pa. Code Chapter 1187
April 25, 2005
Page Three

The Department's failure to provide a source reference for their inflation factors used to compute the proposed Year 10 rates precludes further or more complete public review and comment on this issue. We request that the Department provide us with the source reference for the Index values the Department used to compute the Proposed Year 10 rates; and, that the Index values used to compute the Final Year 10 rates be amended to conform with the Department's regulatory requirement.

Thank you for this opportunity to provide you with our Comments.

Very truly yours,

CAROZZI & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read "Louis J. Capozzi, Jr.", written over a horizontal line.

Louis J. Capozzi, Jr., Esquire

Attachment.

cc: Client Contacts
Independent Regulatory Review Commission
Senator Jake Corman
Senator Vincent J. Hughes
Representative George T. Kenney, Jr.
Representative Frank L. Oliver

EXHIBIT A

Center for Medicare & Medicaid Services[Home](#) | [Search](#) | [Sitemap](#)

Please note that this is a printer-friendly version of <http://www.cms.hhs.gov/states/letters/bbaboren.asp>. Links from this page may not function correctly. If you experience problems, please [view the original page](#). [Print this page now](#)

December 10, 1997

Dear State Medicaid Director:

This letter is one of a series that provides guidance on the implementation of the Balanced Budget Act of 1997 (BBA). Section 4711 of BBA repeals Sections 1902(a)(13)(A), (B), and (C) of the Social Security Act (the Act), requires states to implement a public process when changes in payment rates or payment methodologies are proposed, and applies to payments for items and services furnished on or after October 1, 1997. (See [Enclosure 1](#) for background on Section 4711.)

Section 4711 of BBA replaced the Boren requirements with a new Section 1902(a)(13)(A) of the Act, which requires states to (a) use a public process for determining rates, (b) publish proposed and final rates, the methodologies underlying the rates, and justifications for the rates, and (c) give interested parties a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications. In the case of hospitals, such rates must take into account the situation of hospitals which serve a disproportionate number of low-income patients with special needs.

The intent of Section 4711 is to provide states with maximum possible flexibility, as well as to minimize HCFA's role in reviewing inpatient hospital and long-term care state plan amendments involving payment rate changes. HCFA would consider the state to be in compliance with this provision if it elected to use a general administrative process similar to the Federal Administrative Procedures Act that satisfies the requirements for a public process in developing and inviting comment in Section 4711. This will allow states the flexibility to follow current state public procedures. If a state's public process is not currently being applied to rate setting, or does not currently include a comment period, then the state would need to modify the process. (See [Enclosure 2](#) for public process options.)

The repeal of the Boren amendment cannot be interpreted to be retroactively effective; the Boren amendment still applies to payment for items and services furnished before October 1, 1997. Thus, inpatient hospital and long-term care state plan amendments that are currently pending approval by HCFA, including those where Boren requirement questions are the only outstanding issues, need to have these issues resolved before the amendments can be approved. However, we recognize that the intent in repealing the Boren amendment was to reduce HCFA's role in the institutional payment rate setting process and to increase state latitude in this area. In light of the less restrictive requirements now in place, HCFA is committed to working with states to expedite the resolution of outstanding Boren issues in existing pending amendments.

States that are not proposing changes in their payment methods and standards, or changes in rates for items and services furnished on or after October 1, 1997, need not immediately implement a BBA public process. States need only publish proposed rates, methodologies, and justifications prior to the proposed effective date of any changes in payment rates or payment methodologies. In other words, states are not required to subject their existing rates to a public process to the extent that those existing rates were validly determined in accordance with legal

standards in effect prior to October 1, 1997. In the event changes are already underway, states are to submit the preprint page (or comparable language inserted elsewhere in the hospital and long-term care payment sections of the plan) with the next proposed amendment. (See Enclosures 3 and 4 for preprint pages.) We envision a streamlined Federal review process due to the fact that state plan amendments previously submitted under the Boren requirements were subjected to a more rigorous statutory standard both in terms of Federal review of their substance and the review process itself.

Comments or questions regarding this letter may be directed to Marge Lee via e-mail at mlee1@hcfa.gov, or by phone at 410-786-4361. You may also submit them directly to your HCFA regional office contacts. We will all strive to provide you answers in a timely manner.

Sincerely,

Sally K. Richardson

Sally K. Richardson
Director
Center for Medicaid and State Operations

Enclosures

cc:
Jennifer Baxendell
National Governors' Association

Joy Wilson
National Conference of State Legislatures

Lee Partridge
American Public Welfare Association

All HCFA Regional Administrators

All HCFA Associate Regional Administrators for Medicaid and State Operations

Enclosure 1

Background on Section 4711

Under prior law, the Boren amendment required states to pay hospitals and long-term care providers (nursing facilities and intermediate care facilities for the mentally retarded) rates that were "...reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards" States were required to find and make assurances satisfactory to the Secretary that their rates met those requirements and that individuals eligible for medical assistance had reasonable access to inpatient services of adequate quality. Additional assurances were also required.

As a result of the repeal of the Boren amendment, many of the Federal requirements related to

the state plan amendment process for institutional reimbursement state plan amendments have been eliminated, with the intent of allowing greater state flexibility in setting payment rates. States no longer need to make annual findings that their payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers. In addition, for institutional reimbursement state plan amendments with proposed effective dates of October 1, 1997 and beyond, states are not required to submit assurances and related rate information to HCFA.

However, while the Boren-related requirements have been eliminated, a number of existing statutory and regulatory requirements which were the subject of assurances remain, even though the applicable assurances themselves are not required. These are:

- The plan needs to specify comprehensively the methods and standards used by the state agency to set payment rates (42 CFR 430.10 and 447.252),
- A state must provide that aggregate payments to each group of health care facilities do not exceed the amount that can reasonably be estimated would have been paid for those services under Medicare payment principles (42 CFR 447.272), and
- In establishing payment rates, states must still take into account the situation of hospitals which serve a disproportionate number of low-income patients with special needs, as this requirement was incorporated in the new law (1902(a)(13)(A)(iv)).

The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) comprehensively revised the statutory authority that applies to nursing homes participating in Medicaid. This revision, often referred to as nursing home reform, responded to general concern about the quality of nursing home care paid for by the Medicaid and Medicare programs, as well as findings and recommendations of a 1986 Institute of Medicine report. The repeal of the Boren amendment eliminated the requirement that states provide an assurance that, effective October 1, 1990, their rates:

"take into account the costs of complying with subsections (b) (other than paragraph (3)(F) thereof), (c) and (d) of section 1919 and provide, in the case of a nursing facility with a waiver under section 1919(b)(4)(C)(ii) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care."

However, states are still required to comply with all of the subsections of Section 1919 of the Act. The repeal of the Boren amendment has not relieved states of the responsibility of promoting quality of care for their beneficiaries served in nursing homes.

Enclosure 2

Public Process Options

States that do not use their existing administrative procedures to satisfy the public process requirements may use, at their option, one of the public processes established in the Federal Register for Section 1115 waiver demonstrations (see 59 FR 49250, September 27, 1994). This allows states the flexibility to design their public process based on examples of what we find acceptable. Options which HCFA considers acceptable and which states may elect to follow include:

- Hold one or more public hearings, at which the proposed rates, methodologies, and justifications are described and made available to the public, and time is provided during which comments can be received. Hold one or more additional public hearings, at which the final rates, methodologies, and justifications are described and made available to the public.

- Use a commission or similar process, where meetings are open to members of the public, in the development of proposed and final rates, methodologies, and justifications.

- Include notice of the intent to submit a state plan amendment in newspapers of general circulation, and provide a mechanism for members of the public to receive a copy of the proposed and final rates, methodologies, and justifications underlying the amendment, and an opportunity, which shall not be less than 30 days prior to the proposed effective date, to comment on the proposed rates, methodologies, and justifications.

- Include any other similar process for public input that would afford an interested party a reasonable opportunity to learn about the proposed and final rates, methodologies, and justifications, and to comment on the proposed rates, methodologies, and justifications.

Clarification of Public Process Requirements In Relation to Existing Public Notice Regulation

Although we believe that Sections 1902(a)(4)(A) and 1902(a)(30) of the Act may authorize a separate Federal requirement for public notice, it would be unduly burdensome to continue to hold states to a separate Federal requirement for institutional services when all states are required to establish their own public process for determination of rates under BBA. HCFA believes that whatever public process states elect to implement which meets the requirements of the new 1902(a)(13)(A) will satisfy HCFA's general requirements on public notice at 42 CFR 447.205, provided that states publish their proposed rates, methodologies underlying the establishment of such rates, and justifications for the proposed rates prior to the effective date of new amendments.

Insofar as states are required to publish their proposed and final rates, methodologies, and justifications, HCFA interprets "published" to mean "made public," rather than a more narrow definition that would require states to issue an actual written publication to meet the new public process requirements. Therefore, states that elect to implement one of the first two options for a public process need not also publish a written public notice.

State Plan Preprints Since Federal law requires a public process for determining rates, and it is

HCFA's intent to provide the maximum flexibility to states in developing that public process, the least burdensome way to accomplish that end is for states to submit a preprint page which becomes a part of the state plan and indicates that the state has in place a public process which meets the requirements of Section 4711 of BBA. Accordingly, we have attached two preprint pages, one each to be included in the inpatient hospital (4.19 A) and long-term care (4.19 D) sections of the Medicaid state plan.

Enclosure 3

?

Attachment 4.19 A

?

The State has in place a public process which complies with the requirements of Section 1902(a) (13)(A) of the Social Security Act.

?

Approval Date _____ Plan # _____

Effective Date _____ Supersedes Plan # _____

Enclosure 4

?

Attachment 4.19 D

?

The State has in place a public process which complies with the requirements of Section 1902(a) (13)(A) of the Social Security Act

?

?

?

Approval Date _____ Plan # _____

Effective Date _____ Supersedes Plan # _____

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September 8, 2004

Gail Weidman
Division of Long Term Care Client Services
P.O. Box 2675
Harrisburg, PA 17105

RE: DPW Regulation #14-486 (#2415) MA Day of Care Definition

Dear Ms. Weidman:

The Pennsylvania Association of County Affiliated Homes (PACAH) is writing in full support of the Department of Public Welfare's (DPW) proposed rulemaking regarding the MA Day of Care Definition (#14-486). PACAH represents all 55 county and county affiliated nursing facilities in the Commonwealth, and is an affiliate organization of the County Commissioners Association of Pennsylvania.

PACAH has been urging DPW to change its definition of an MA Day of Care for several years for precisely the reasons DPW is explaining in the "Need for the Proposed Rulemaking" section. County nursing facilities and other nursing facilities have been providing service to many Medicaid HealthChoices residents and their days of care have not previously been counted in determining whether the facility qualifies for a disproportionate share incentive payment or in calculating the case-mix index of the facility. This has become a financial disincentive over the years for nursing facilities to accept residents in HealthChoices. PACAH also supports the change to clarify that days of care provided to an MA resident receiving hospice services in a nursing facility which are paid by the Department are also considered MA days of care. The adoption of these regulations to include these days of care as MA days will correct this situation. PACAH urges these regulations be approved as written.

Thank you for the opportunity to comment on these proposed regulations. Feel free to contact me if you need any additional information.

Sincerely,

Michael J. Wilt
Executive Director

cc: Independent Regulatory Review Commission

Original: 2415

IRRC

From: Mike Wilt [MWILT@pacounties.org]
Sent: Wednesday, September 08, 2004 1:31 PM
To: IRRC
Subject: DPW Regulation #14-486

PACAH is sending the attached letter of support for DPW regulation #14-486 (#2415), MA Day of Care Definition.

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9/9/2004