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**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 #14-486 (IRRC #2415)  
Department of Public Welfare  
MA Day of Care Definition

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](http://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 #14-486 (IRRC #2415)**

**MA Day of Care Definition**

**October 13, 2004**

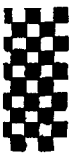
We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Public Welfare (Department) must respond to these comments when it submits the final-form regulation. The public comment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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**Effective date of the regulation. - Conflict with existing regulations; reasonableness; implementation procedures.**

The Department states that the effective date for the change to the definition of an “MA day of care” will be January 1, 2004, and “apply to disproportionate share incentive payments for fiscal year ending on and after December 31, 2003, and the MA CMI for picture dates beginning February 1, 2004.”

However, existing regulations at 55 Pa. Code § 1187.95(a) state, “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 after the effective date of the proposed regulation. Therefore, the Department should explain how it can retroactively make these changes.



### Facsimile Cover Sheet

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Administrative Officer



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> 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

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**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-486 (IRRC #2415). 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

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