

GEORGE KENNEY, MEMBER

DISTRICT OFFICES:
LEO MALL SHOPPING CENTER
11749-C BUSTLETON AVENUE
PHILADELPHIA, PENNSYLVANIA 19116
PHONE: (215) 934-5144
FAX: (215) 560-3286

1317 COTTMAN AVENUE
PHILADELPHIA, PA 19111
PHONE: (215) 342-1700
FAX: (215) 214-4073

HARRISBURG OFFICE:
HOUSE POST OFFICE BOX 202020
ROOM 108 RYAN OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 787-8523
FAX: (717) 787-4810
e-mail: gkenney@pahousegop.com

RESIDENCE:
14020 TREVOSE ROAD
PHILADELPHIA, PENNSYLVANIA 19116



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Original: 2416

COMMITTEES

HEALTH & HUMAN SERVICES, CHAIRMAN

CONSUMER AFFAIRS
MAJORITY POLICY
COMMITTEE ON COMMITTEES

INDUSTRIAL RESOURCE CENTER
ADVISORY BOARD, MEMBER

DELAWARE VALLEY VETERANS
HOME ADVISORY COUNCIL

RECEIVED
2004 NOV -8 PM 3:29
REVIEW COMMISSION

November 8, 2004

Estelle Richman, Secretary
Pennsylvania Department of Public Welfare
Health and Welfare Building, Room 333
Harrisburg, Pennsylvania 17105

Estelle
Dear Secretary Richman:

I am writing to express my concerns regarding the Department's proposed regulation #14-488, published in the *Pennsylvania Bulletin* on August 14, 2004, and which governs procedures before the Bureau of Hearings and Appeals (BHA). As you know, Act 142 of 2002 resulted from an agreement between the General Assembly, the Governor's office, the Department and the provider community that changes were necessary to BHA rules of procedure in order to establish more fair and balanced hearings regarding provider concerns. The act also required the Department to establish rules of procedure, which resulted in the promulgation of regulation #14-488.

I understand the public comment period has closed; however, as Chairman of the House Health and Human Services Committee, I feel strongly about sharing my concerns about this regulation prior to it being released in final form and sent to the Legislature and IRRC for review.

I am convinced that the proposed regulation is not consistent with both the letter and intent of Act 142. For example, the act clearly states that providers are entitled to *de novo* review before the BHA. The proposed regulation, however, deprives providers of such review. I also believe that the proposed regulation is contrary to Pennsylvania law. The Commonwealth Court has ruled, in a case to which the Department was a party, that the burden of proof for any issue rests with the party asserting the fact. The proposed regulation places the burden of proof on the provider in all cases, which is clearly contradictory to the Court's ruling.

Finally, I believe the proposed regulation is fundamentally unfair to providers. Although the general Assembly intended that the procedural rules emerging from Act 142 would be fair and balanced to providers and the Department, the proposed regulation is biased heavily in favor of the Department. While the provider must make their complaints at the beginning of a case with

detailed specificity, the Department need not answer those complaints. While the provider must make detailed disclosures concerning their case, the Department need not reciprocate until discovery has ended and the provider has revealed its entire case, including expert opinion. While the provider must disclose the names of all individuals with information relevant to its claims, the Department need only disclose its witnesses. This is grossly unfair to providers.

I respectfully urge you to revise this proposed regulation substantially so that it is consistent with Pennsylvania law, as well as the letter and intent of Act 142, and so it creates fair and balanced procedures applicable equally to both providers and the Department. I would greatly appreciate being kept abreast of the Department's efforts regarding this proposed regulation.

Thank you for your attention to this matter.

Sincerely,



GEORGE KENNEY
State Representative
170th Legislative District

GK:hc

cc: Mr. John Hewitt, Regulatory Analyst
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

FRANK L. OLIVER, MEMBER
1319 N. 29TH STREET
PHILADELPHIA, PENNSYLVANIA 19121
PHONE: (215) 684-3738
FAX: (215) 235-4629

MAIN CAPITOL BUILDING
HOUSE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 787-3480
FAX: (717) 772-2284

Original: 2416



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG
October 25, 2004

COMMITTEES

HEALTH & HUMAN SERVICES,
DEMOCRATIC CHAIRMAN

RECEIVED
2004 OCT 29 AM 8:55
REVIEW COMMISSION

The Honorable Estelle Richman
Secretary, Department of Public Welfare
Health and Welfare Bldg., Rm. 333
7th and Forester Sts.,
P.O. Box 2675
Harrisburg, PA 17105

Re: Proposed Rules for Bureau of Hearings and Appeals

Dear Secretary Richman:

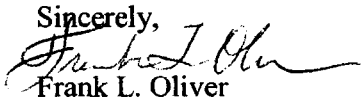
The proposed regulations dealing with procedures for the Bureau of Hearings and Appeals bring me pause.

The proposed regulations do not appear to be consistent with the spirit and intent of Act 142 of 2002 which requires the Department to issue these regulations. As I understand the matter, Act 142 states that providers are entitled to *de novo* review before the Bureau. The proposed regulations do not provide providers of such review! These proposed regulations are contrary to existing law and are plainly unfair to providers. For instance, the burden of proof is on the provider in all cases as opposed to the burden resting with the party asserting the fact to be argued. Indeed, the proposed rules are clearly unfair to providers, providing an arbitrary artificial advantage to the Department.

This is not the American way.

I strongly urge you to reconsider these proposed regulations to make them consistent with Pennsylvania law.

I would appreciate your reasonably prompt reply.

Sincerely,

Frank L. Oliver

C: J. Hewitt