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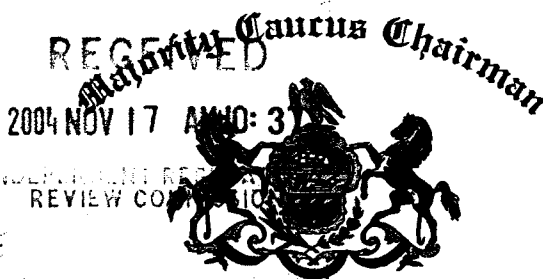
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November 16, 2004

Honorable Estelle B. Richman
Secretary of Public Welfare
333 Health & Welfare Building
Harrisburg, PA 17120

Re: Proposed Rules for Bureau of Hearings and Appeals

Dear Secretary Richman:

I am writing to express my grave concerns regarding the Department's proposed regulations governing procedures before the Bureau of Hearings and Appeals (BHA) 34 PA Bull. 4447 (August 13, 2004). As you know, Act 142 of 2002 required the Department to issue these regulations. Act 142, in turn, resulted from an agreement between the General Assembly, the Governor's Office, the Department and the provider community that procedures before BHA required changes to establish more fair and balanced hearings regarding provider concerns.

I am convinced that the proposed regulations are not consistent with both the letter and intent of Act 142. For example, Act 142 clearly states that providers are entitled to *de novo* review before BHA. The proposed regulations, however, deprive providers of such review.

I also believe that the proposed rules are contrary to Pennsylvania law. For example, 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 rule, however, places the burden of proof on the provider in all cases.

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

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detailed specificity, the Department need not answer those complaints at all. 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 obviously is grossly unfair to providers.

I urge you to revamp these proposed regulations substantially so that they are consistent with Pennsylvania law, as well as the letter and intent of Act 142, and so they create fair and balanced procedures applicable equally to providers and the Department. Please keep me informed of the Department's efforts regarding these proposed regulations.

Sincerely,

Noah W. Wenger
State Senator

NWW/djs

~~Cc:~~ Mr. John Hewitt, IRRC