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

January 26, 2005

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

Re: Regulation #14-490 (IRRC #2449)
Department of Public Welfare
Special MA Eligibility Provisions

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. We will send a copy to the standing committees when they are designated.

If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Mary S. Wyatt, Esq.
Acting Executive Director/Chief Counsel
wbg
Enclosure

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation #14-490 (IRRC #2449)

Special MA Eligibility Provisions

January 26, 2005

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 December 27, 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.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 140.621. Conditions of eligibility. – Clarity.

This section references eligibility requirements applicable to the Breast and Cervical Cancer Prevention and Treatment program (BCCPT) which are found in several chapters of the Department's existing regulations. Paragraph (1)(iii) references Chapter 149 relating to citizenship and alienage. Community Legal Services, Inc. (CLS) commented that Chapter 149 relates to the former Aid to Families with Dependent Children program, not the Medical Assistance (MA) program. CLS suggests that the reference to Chapter 149 be replaced with a reference to Chapter 150 which pertains to the MA program. We agree and suggest that the Department make this change in the final-form regulation.

2. Section 140.631. Income eligibility limitations. – Clarity.

This section references income limits "necessary to be eligible for screening by the CDC's [Centers for Disease Control and Prevention] NBCCEDP [National Breast and Cervical Cancer Early Detection Program]." Clarity would be improved by specifically identifying or including a cross-reference to where these income limits can be found and how an individual's income is determined.

3. Section 140.681. Reporting of changes. – Clarity.

This section requires recipients to report "changes in circumstances that would affect eligibility for . . . BCCPT within 10 days from the date of the change." Clarity would be improved by listing the specific eligibility factors for which changes must be reported.

4. Definition of "treatment." – Clarity.

Throughout the regulation, the Department uses the phrase "need treatment" in defining "BCCPT" and describing the circumstances which qualify a woman for services under BCCPT. The Pennsylvania Health Law Project commented that the phrase "need treatment" is vague

because it is unclear if this phrase includes medication treatments designed to prevent the recurrence of cancer.

We note that Medical Assistance Bulletin 99-01-12, effective January 1, 2002, defines "treatment for breast or cervical cancer" as:

Medical services, which are, or are reasonably expected to:

- a. ameliorate the direct effects of the breast or cervical cancer; or
- b. aid in the clinical characterization of the breast or cervical cancer, including test of cure but excluding screening for recurrence or new primary cancers; or
- c. prevent the recurrence of breast or cervical cancer.

Under this definition, medication treatments designed to prevent the recurrence of cancer would fall under paragraph c. To prevent confusion in the implementation of this regulation, the Department should include the definition of "treatment for breast or cervical cancer" in the final-form regulation.



Facsimile Cover Sheet

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INDEPENDENT REGULATORY REVIEW COMMISSION
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Date: January 26, 2005
Pages: 4

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REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-490 (IRRC #2449). 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: Stephemi Gallo **Date:** 1/26/05

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