

Original: 2488

**IRRC**

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**From:** Wilmarth, Fiona E.  
**Sent:** Monday, August 29, 2005 9:57 AM  
**To:** IRRC  
**Cc:** Sandusky, Richard M.; Stephens, Michael J.; Wyatte, Mary S.  
**Subject:** FW: Comments on Proposed Reg #14-493 (IRRC #2488)

FYI – I received these comments via email this morning. They pertain to #2488.

-----Original Message-----

**From:** Stephanie Zweitzig [mailto:SZweitzig@pacounties.org]  
**Sent:** Monday, August 29, 2005 9:44 AM  
**To:** Wilmarth, Fiona E.  
**Subject:** Comments on Proposed Reg #14-493 (IRRC #2488)

August 26, 2005

Fiona Wilmarth  
Independent Regulatory Review Commission

Dear Ms. Wilmarth:

Attached please find the PA Association of County Affiliated Homes' comments regarding Proposed Regulation #14-493 (IRRC #2488), the Preadmission Requirements and Civil Rights Compliance for Nursing Facilities. If you have any questions, please feel free to call Mike Wilt at (717) 232-7554 ext. 3133.

Sincerely,  
Stephanie Zweitzig  
PACAH

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8/29/2005

August 25, 2005

Department of Public Welfare  
Office of Medical Assistance Programs  
Attn: Regulations Coordinator  
Room 515 Health & Welfare Building  
Harrisburg, Pa. 17105

Re: Nursing Facility Services; Preadmission Requirements and Civil Rights  
Compliance for Nursing Facilities

Dear Sir/Madam:

The Pennsylvania Association of County Affiliated Homes (PACAH) appreciates the opportunity to comment on the above-reference proposed regulations. PACAH represents all 54 county and county affiliated nursing facilities in Pennsylvania, as well as non-county nursing facilities, and is an affiliate of the County Commissioners Association of Pennsylvania.

PACAH requests that the Department of Public Welfare (DPW) withdraw these proposed regulations. These regulations will impose further unnecessary and burdensome record keeping requirements on nursing facilities, require thousands more assessments to be conducted on applicants for nursing facilities by a system that cannot handle the current workload, and they would further promote an anti-nursing facility policy that has become all too familiar within DPW.

Once again, DPW is acting under the false assumption that nursing facilities do everything they can to admit residents that would be better served in other settings and resist placing residents back into the community. The issue is not, nor has it been, about the resistance of the facility; rather it is the lack of services and housing available in the community. This is frequently affirmed when the nursing facilities attempt to discharge residents to a community setting only to find services and housing dismally lacking. Of course, when given the option, most people would indicate they would rather live in a home or community based setting than a nursing home. The problem is, the option is not there in many circumstances. No amount of consumer education leading to informed decisions is relevant if the services are not available.

Local Area on Agency staff have difficulties now in performing the assessments in a timely manner. Even if additional staff is hired, the requirement to do thousands more assessments, (along with a confusing statement that there will be no fiscal impact), will

result in much longer delays in assessments being completed. The resultant ripple effect will have many individuals backed up in hospitals waiting for placement. They will be forced to remain in the most expensive care setting or be inappropriately discharged to home without appropriate and necessary services. Neither consumers nor referring facilities will be happy.

Since the vast majority of residents in county and county affiliated homes are Medicaid eligible on day one of admission or “spend down” shortly thereafter, the requirement for an assessment of all individuals likely to be Medicaid eligible within 12 months is not as big an issue with our facilities as with others in the long term care spectrum. However, the delays that would be caused in eligibility determination by adding many thousands more assessments into the system will be enormous. How will applicants be identified as “likely to be an MA conversion within 12 months...”? Add to this that residents and families are often reluctant to give such information until they are nearer to the time of needing MA coverage.

Regarding the requirements for gathering, keeping and reporting civil rights data for four years is a colossal waste of scarce resources for the nursing facilities. If DPW believes there are isolated instances of discrimination occurring at nursing facilities, they should by all means use their resources and investigate that facility. There are already regulations in place to address this issue and the existing regulations can be, and should be appropriately enforced when violated. But once again, to have the entire 700 plus nursing facilities compile meaningless statistics makes no sense. It is the same Department of Public Welfare that has enacted rate cuts for nursing facilities this year that is seeking more administrative requirements with fewer funds available.

The following are some other specific comments:

- Fiscal Impact – PACAH disagrees with the DPW opinion that they will experience savings in the MA – Long Term Care appropriation because individuals will choose HCBS as opposed to placements in nursing facilities. The reality is that as Community Choice expands more people have entered the Medicaid program in those counties on waiver programs, yet the occupancy rate for nursing facilities has remained approximately the same.
- Fiscal Impact – Relying on Intergovernmental Transfer funds (IGT) for the first year of funding the increased costs is a risky supposition. It is not known at what point in time these regulations, if ever, will become effective, and IGT funds may no longer be available.
- Fiscal Impact – There is no documentation for PACAH to be able to ascertain if the 11,000 increase in number of preadmission assessments is an accurate figure. There needs to be an explanation of the number of assessments for the first year and subsequent years.
- Definitions – 1187.2 – nursing facility application. The definition of what constitutes a request made orally is not clear, and does not provide specific guidelines to a facility staff.

- Definitions – Clinical Evaluation – If DPW is going to continue to refer to the Area Agencies on Aging as an independent assessor, then how is it that they are a provider of home and community based services?
- 1187.22 – Civil Rights Compliance – There are serious HIPAA considerations that have not been resolved in this section. Facilities do not collect that information at the present, and nursing homes within PACAH are HIPAA compliant. What is the format that will be used to collect the data? What is the interval to be specified by the Department? Requiring a facility to keep this information for four years without knowing what type of reporting format would be required by DPW is an unreasonable request.
- 1187.31 (2) (ii) (B) (IV) – Preadmission Requirements - Allowing a person to remain in a hospital setting for up to three additional days past what is necessary in order to get the assessment completed is an unacceptable waste of scarce dollars.

In summary, at a time when Medicaid resources are scarce, these proposed regulations will have the opposite effect than that sought by DPW. Requirements for additional assessments will strain a fragmented assessment process further, resulting in longer delays in approval, longer waits for individuals needing services, longer delays in providers receiving payments, and longer than necessary hospital stays. Requiring new civil rights data information when DPW has not presented any evidence of discrimination is also a waste of scarce administrative dollars and valuable staff time, to say nothing of intrusions upon the private concerns of nursing facility applicants.

PACAH urges DPW to withdraw these regulations at its earliest convenience. Please feel free to contact me if you have questions.

Sincerely,  
Michael J. Wilt  
Executive Director