

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

Department of Public Welfare  
Office of Long-Term Living

(2) Agency Number:

Identification Number:

14-516

IRRC Number:

2778

(3) Short Title:

Act 44 & Miscellaneous Changes for Non-public & County Nursing Facilities.

(4) PA Code Cite:

55 Pa.Code Chapter 1187

55 Pa.Code Chapter 1189

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Gail Weidman  
Department of Public Welfare, Office of Long-Term Living  
P.O. Box 2675, Harrisburg, PA 17105.  
Email: [gweidmanjo@state.pa.us](mailto:gweidmanjo@state.pa.us)  
Phone: (717) 705-3705  
Fax: (717) 772-2527

Secondary Contact: Tom Jayson 705-3705

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this proposed regulation is amend the payment methodology for Medical Assistance (MA) nursing facility services as directed by Act 44 and to make other revisions to streamline and simplify rate-setting for non-public nursing facilities and to eliminate obsolete regulatory provisions.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:  
30-days following the publication of the proposed regulation.

B. The date or dates on which public meetings or hearings will be held:  
There are no public meetings or hearings planned.

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

March 20, 2010

D. The expected effective date of the final-form regulation:

July 1, 2009

E. The date by which compliance with the final-form regulation will be required:

July 1, 2009

F. The date by which required permits, licenses or other approvals must be obtained:

July 1, 2009

(10) Provide the schedule for continual review of the regulation.

The Department will review the regulation on an ongoing basis to ensure compliance with Federal and state law and to assess the appropriateness and effectiveness of the regulation. In addition, specific regulatory issues raised by members of the Medical Assistance Advisory Committee (MAAC) and the Long-Term Care Subcommittee of the MAAC will be researched and addressed as needed. The Department will also monitor the impact of the regulation through regular audits and utilization management reviews to determine the effectiveness of the regulation with respect to consumers of long-term care services and the industry.

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### SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21, §§ 201(2), 206(2), 403(b) and 443.1 (62 P.S. §§ 201(2), 206(2), 403(b) and 443.1) as amended by Act of July 4, 2008, P.L. 31, No. 44 (Act 2008-44), 62 P.S. § 443.1(7).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, in part. Act 2008-44 directed the Department to continue to include costs incurred by county nursing facilities in calculating rates for MA non-public nursing facilities for the 2008-2009 rate year and also directed the Department to develop regulations to phase-out the use of those costs incurred by county nursing facilities in calculating rates for MA non-public nursing facilities over a 3 year rate period beginning July 1, 2009, and ending June 30, 2012. Act 2008-44 also directed the Department to develop regulations that establish minimum occupancy requirements as a condition for MA non-public and county nursing facilities to receive hospital reserved bed day payments and that the minimum occupancy requirements be phased-in over a period of 2 rate years beginning July 1, 2009, and ending June 30, 2011.

The proposed provision at § 1187.97(2)(i) as it relates to county nursing facilities that undergo a change of ownership that results in privatization of county nursing facilities and the provisions at §§ 1187.57(1)-(2) (relating to capital cost policies) and 1187.91(2)(i)(ii) (relating to database), 1187.96(d)(1)-(2) (relating to price and rate setting computations) and § 1187.2 (relating to definitions), are not mandated by any Federal or State law, regulation or court order.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation is consistent with the Department's ongoing efforts to ensure that MA recipients continue to receive access to medically necessary nursing facility services while encouraging MA nursing facility efficiency and economy associated with nursing facility occupancy levels.

There are approximately 631 nursing facilities in Pennsylvania enrolled in the MA Program.

## Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

There were no scientific data, studies, or references used.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No adverse effects are anticipated by this regulation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All county and non-public nursing facilities enrolled in the MA Program.

## Regulatory Analysis Form

### SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Not applicable.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No fiscal impact is anticipated as a result of these changes through June 30, 2011. Future year's fiscal impact is predicated on the assumption that the revenue adjustment neutrality factor will continue past June 30, 2011.

*R. Culberson 4/25/05*

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
MA-Long Term Care	\$476,116,000	\$817,890,000	\$695,279,000	\$692,585,000

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This proposed regulation will benefit the Commonwealth's MA nursing facility residents by assuring they will continue to have access to medically necessary nursing facility services while providing for reasonable and adequate payments to MA nursing facility providers consistent with the fiscal resources of the Commonwealth.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Prior to the finalization of the 2008-2009 General Appropriations Act (Act 2008-38A) the Department met representatives of the Pennsylvania Association of County Affiliated Homes, the Pennsylvania Association of Non-profit Homes, the Pennsylvania Health Care Association and the Hospital and Healthsystems Association of Pennsylvania to discuss the provisions contained in Act 2008-44.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Act 2008-44 directed the Department to make changes to its case-mix system relating to the costs of county nursing facilities in calculating rates for MA non-public nursing facilities, develop regulations to phase-out the use of those costs incurred by county nursing facilities in calculating rates for MA non-public nursing facilities over a 3 year rate period beginning July 1, 2009 and to develop regulations that establish minimum occupancy requirements as a condition for MA non-public and county nursing facilities to receive hospital reserved bed day payments and that the minimum occupancy requirements be phased-in over a period of 2 rate years beginning July 1, 2009.

No alternative regulatory schemes were considered for the proposed provision at § 1187.97(2)(i) as it relates to county nursing facilities that undergo a change of ownership that results in privatization of county nursing facilities and the provisions at §§ 1187.57(1)-(2) (relating to capital cost policies) and 1187.91(2)(i)(ii) (relating to database), 1187.96(d)(1)-(2) (relating to price and rate setting computations) and § 1187.2 (relating to definitions) because those provisions effectively support the goals of the Department by providing access to quality of care for MA recipients.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions that are more stringent than Federal law.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation is consistent with the Department's ongoing efforts to ensure that MA recipients continue to receive access to medically necessary nursing facility services. This regulation will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect existing or proposed regulations of the Department or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation change should not affect reporting, record keeping or other paperwork requirements.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

This proposed regulation will benefit the Commonwealth's MA nursing facility residents by assuring they will continue to have access to medically necessary nursing facility services while providing for reasonable and adequate payments to MA nursing facility providers consistent with the fiscal resources of the Commonwealth.



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**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved  
as to form and legality.

Attorney General

*Angela M. Elliott*  
By: \_\_\_\_\_

(Deputy Attorney General)

JUL 08 2009

Date of Approval

Check if applicable  
Copy not approved.  
Objections attached.

Copy below is hereby certified to be a true and correct  
copy of a document issued, prescribed or promulgated  
by:

**DEPARTMENT OF PUBLIC WELFARE**

(Agency)

LEGAL COUNSEL: *Mary Frances Grabowski*

DOCUMENT/FISCAL NOTE NO. *14-516*

DATE OF ADOPTION: \_\_\_\_\_

BY: *Estelle B. Rickova*

TITLE: **SECRETARY OF PUBLIC WELFARE**  
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to  
form and legality. Executive or  
Independent Agencies

BY: *Andrew C. Clark*

Andrew C. Clark

JUN 12 2009

Date of Approval

(Deputy General Counsel)  
(~~Chief Counsel, Independent Agency~~)  
(~~Strike inapplicable title~~)

Check if applicable. No Attorney  
General approval or objection  
within 30 days after submission.

**NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF PUBLIC WELFARE**

**OFFICE OF LONG-TERM LIVING**

Act 44 & Miscellaneous Changes for Non-public & County Nursing Facilities

[55 Pa.Code Chapter 1187 Nursing Facility Services]  
[55 Pa.Code Chapter 1189 County Nursing Facility Services]

*Statutory Authority*

Notice is hereby given that the Department of Public Welfare (Department) under the authority of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21, §§ 201(2), 206(2), 403(b) and 443.1 (62 P.S. §§ 201(2), 206(2), 403(b) and 443.1) as amended by Act of July 4, 2008, P.L. 31, No. 44 (Act 2008-44), 62 P.S. § 443.1(7) intends to amend the regulations as set forth in Annex A.

*Purpose of Regulation*

The purpose of this proposed regulation is to amend the payment methodology for Medical Assistance (MA) nursing facility services as directed by Act 2008-44 (Act 44) and to make other revisions to streamline and simplify rate-setting for non-public nursing facilities and to eliminate obsolete regulatory provisions.

*Requirements*

The following is a summary of the specific provisions in the proposed rulemaking:

Act 44 Revisions:

1. Phase-out of County Costs in Non-public Nursing Facility Rate Setting – §§ 1187.96, 1187.97 and 1187.98 (relating to price - and rate-setting computations; rates for new nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities; and phase-out median determination).

Effective January 1, 1996, the Department began setting payment rates for both county and non-public MA nursing facility providers using the case-mix payment methodology in 55 Pa. Code Chapter 1187 (relating to nursing facility services). Under the case-mix payment methodology, nursing facilities, other than special rehabilitation facilities and hospital-based nursing facilities, are classified into peer groups based upon their size and geographic location. The MA audited allowable costs of the facilities in the peer group are used to establish prices for the net operating components of the facilities' case-mix per diem rates. The prices are used to cap the net operating rates components.

Beginning July 1, 2006, the Department established a new payment methodology for county nursing facility providers, which is based on the counties' certified public expenditures to provide nursing facility services to MA recipients. In establishing this separate payment methodology, the Department recognized that the county nursing facilities' MA audited allowable costs would no longer be included in the rate-setting database used to calculate peer group prices for non-public facilities, and

that as a result the rates for these facilities could decline. To mitigate any adverse impacts of this change on non-public nursing facilities, the Department adopted amendments to Chapter 1187 authorizing the continued use of county costs in the rate-setting process for non-public nursing facilities for a 2-year period, which ended June 30, 2008.

Act 44 directs the Department to include county costs in calculating rates for non-public nursing facilities for an additional rate year, and to propose regulations to phase-out the use of county costs over a 3-year period beginning July 1, 2009, and ending June 30, 2012. To comply with Act 44, the Department is proposing to revise the rate-setting methodology in §§ 1187.96, and 1187.98, and to make a related change to § 1187.97.

The Department is proposing to revise § 1187.96 to specify that it will use phase-out medians, as determined in accordance with § 1187.98 to set prices for the net operating cost centers (resident care, other resident related and administrative) for each peer group that contains a county nursing facility for the 3-year phase out period, rate years 2009-2010, 2010-2011 and 2011-2012.

The Department is proposing to revise § 1187.98 to specify how phase-out medians will be calculated for the 3-year phase-out period. Under the proposed revisions, the Department will continue to include county nursing facilities in determining peer group in accordance with § 1187.94(1) (relating to peer grouping for price setting) for rate years 2009-2010, 2010-2011 and 2011-2012. Once peer groups have been

determined, the Department will calculate an interim median by adding each county nursing facility's costs from the 3 most recent audited cost reports to a non-collapsed peer group based on bed size and MSA group. The Department will then calculate the phase-out median as follows:

For rate year 2009-2010, the phase-out median will equal 75% of the interim median plus 25% of the median calculated in accordance with § 1187.96.

For rate year 2010-2011, the phase-out median will equal 50% of the interim median plus 50% of the median calculated in accordance with § 1187.96.

For rate year 2011-2012, the phase-out median will equal 25% of the interim median plus 75% of the median calculated in accordance with § 1187.96.

For rate year 2012-2013 and thereafter, county nursing facility MA allowable costs will not be used in the rate-setting process for non-public nursing facilities.

The 3-year phase-out of the use of county nursing facility costs should provide a transition period for non-public nursing facilities to adjust their business practices accordingly.

In addition to providing authority for calculation and use of phase-out medians, the Department is proposing to make a related change to § 1187.97 to extend application of this provision, which specifies how payments for county nursing facilities

that privatize are calculated, to coincide with the phase-out of the county nursing facility costs in setting non-public nursing facility payment rates.

2. Bed Hold Day, Otherwise Referred to as a Hospital Reserved Bed Day -- §§ 1187.97, 1187.104 and 1189.103 (relating to limitations on payment for reserved beds).

Currently, the Department pays non-public and county nursing facilities a maximum of 15 consecutive reserved bed days per hospitalization to hold a bed for a resident who requires hospitalization. The payment is made at a rate of 1/3 of the nursing facility's per diem rate on file with the Department at the time of the hospitalization, and is paid regardless of the nursing facility's overall total occupancy rate.

Act 44 directs the Department to propose regulations to establish minimum occupancy requirements as a condition for MA non-public and county nursing facilities to receive reserved bed day payments for MA residents, and to phase-in the use of these requirements over a period of 2 rate years beginning July 1, 2009, and ending June 30, 2011. To comply with Act 44, the Department is proposing to revise the rate-setting methodology in §§ 1187.97, 1187.104, and 1189.103 as follows:

Beginning July 1, 2009, and ending June 30, 2010, the Department is proposing amend §§ 1187.104 and 1189.103 to specify that it will only pay a non-public or county MA nursing facility for a hospital reserved bed day if the facility's overall total occupancy for the applicable picture date is equal to or greater than 75%. Beginning July 1, 2010,

and thereafter, the Department is proposing to pay a facility for a hospital reserved bed day only if the facility's overall total occupancy for the applicable picture date is equal to or greater than 85%. The Department is also proposing to amend §§ 1187.97 and 1189.103 to exempt a new nursing facility from these occupancy requirements until CMI Reports for the three picture dates used to calculate overall occupancy are available for the rate quarter.

The intent of these proposed changes is to ensure that MA recipients continue to receive access to medically necessary nursing facility services while encouraging nursing facility efficiency and economy associated with nursing facility occupancy levels.

Other revisions:

1. Fixed property component of a non-public nursing facility's capital rate - §§ 1187.2, 1187.51, 1187.57, 1187.91, 1187.96 and 1187.112.

Currently under the case-mix payment system, the Department annually computes a facility-specific capital rate for each nursing facility. The nursing facility's capital rate consists of a fixed property component, a movable property component, and a real estate tax component. The fixed property component is based on the fair rental value of the nursing facility's fixed property which is determined by an appraisal completed by an independent appraisal firm under contract with the Department. The

nursing facility's fair rental value is adjusted by the appraised depreciated replacement cost of the nursing facility's fixed property to account for the per bed limitation of \$26,000 and the bed moratorium provision contained in § 1187.113 (relating to capital component payment limitation). The adjusted amount is then multiplied by the financial yield rate.

For fiscal year 2008-2009, only six of the 595 non-public nursing facilities participating in the MA program were appraised at a fair rental value under \$26,000. Therefore, the Department determined that to continue the use of an appraisal process in the establishing of a non-public nursing facility's fixed property component of their capital rate is unnecessarily burdensome and costly. Beginning in fiscal year 2009-2010, the Department is proposing to amend §§ 1187.51, 1187.57, 1187.91, and 1187.96 to eliminate references to the use of appraisals in the establishment of the fixed property component of a non-public nursing facility's capital rate, and to specify instead that the fixed property component of a non-public nursing facility's capital rate will be based on the number of MA allowable beds multiplied by an assigned per bed cost of \$26,000. The result of this calculation will then be multiplied by the financial yield rate. The Department will also add a new definition of "allowable bed" to § 1187.2 (relating to definitions).

The elimination of the use of appraisals in the establishment of the fixed property component of a non-public nursing facility's capital rate will make certain terms and other provisions of Chapter 1187 obsolete. Specifically, the terms, "appraisal", "bed



cost limitation", "FRV-fair rental value", "initial appraisal", "limited appraisal", "movable property appraisal", "reappraisal" and "updated appraisal" will no longer be used in the payment methodology. In addition, because all allowable beds will be assigned a fixed value of \$26,000, the cost per bed maximum limitation in § 1187.112 (relating to cost per bed limitation adjustment) will be obsolete. Therefore, the Department is proposing to remove these definitions from § 1187.2, and delete § 1187.112 in its entirety.

2. Obsolete moveable property provisions - §§ 1187.57, 1187.91, 1187.96 and 1187.97.

The Department is also proposing to delete the major movable property provisions that relate to cost report periods prior to January 1, 2001 contained in §§ 1187.57, 1187.91, 1187.96 and 1187.97. All nursing facility cost reports contained in the database used for rate setting are for a period beginning after January 1, 2001; therefore, the provisions related to the cost report periods prior to January 1, 2001, are obsolete. This deletion does not change the method used by the Department to determine a non-public nursing facility's major movable component of their capital rate. In accordance with current regulation a non-public nursing facility's major movable property component will be based on the nursing facility's audited cost of major movable property. Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and shall report the

cost of minor movable property and the cost of supplies as net operating costs in accordance with § 1187.51 (relating to scope) and instructions for the MA-11.

*Affected Individuals and Organizations*

This proposed regulation will affect all non-public and county nursing facilities enrolled in the MA Program.

*Accomplishments and Benefits*

This proposed regulation will benefit the Commonwealth's MA nursing facility residents by assuring they will continue to have access to medically necessary nursing facility services while providing for reasonable and adequate payments to MA nursing facility providers consistent with the fiscal resources of the Commonwealth.

*Fiscal Impact*

No fiscal impact is anticipated as a result of these changes through June 30, 2011.

*Paperwork Requirements*

There are no new or additional paperwork requirements.

*Effective Date*

The proposed effective date for the regulation is July 1, 2009.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: Gail Weidman, Department of Public Welfare, Office of Long Term Living, P.O. Box 2675, Harrisburg, PA 17105, within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14516 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

*Regulatory Review Act*

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **JUL 21 2009** the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the

House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations or objections to any portion of the proposed regulation, it may notify the Department and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

ANNEX A  
TITLE 55 PUBLIC WELFARE  
CHAPTER 1187 NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

\*\*\*\*\*

**§ 1187.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\*\*\*\*\*

Allowable bed – A nursing facility bed that is not subject to the limitation in § 1187.113 (relating to capital component payment limitation).

\*\*\*\*\*

Appraisal—A determination of the depreciated replacement cost of fixed or movable property, made by qualified personnel of an independent appraisal firm under contract with the Department.]

\*\*\*\*\*

Bed cost limitation—The fixed property cost limited by the amount identified in § 1187.112 (relating to cost per bed limitation adjustment).]

\* \* \* \* \*

[*FRV—Fair rental value*—The imputed rent for the fixed or movable property used at a nursing facility to provide nursing facility services to its MA residents.]

\* \* \* \* \*

[*Initial appraisal*—An appraisal of the fixed property of a new nursing facility, made for the purpose of computing the fixed property component of that nursing facility's initial capital rate. An initial appraisal will be based, in part, upon an onsite inspection of the new nursing facility's fixed property conducted by qualified personnel of an independent appraisal firm under contract with the Department.]

\* \* \* \* \*

[*Limited appraisal*—An appraisal requested by a nursing facility and conducted to determine the effect of changes in the fixed property of a nursing facility, where the cost of the changes to the nursing facility was more than \$200,000 or 10% of the most recent appraised depreciated replacement cost of the nursing facility's fixed property, whichever is lower. A limited appraisal results in the modification of the depreciated replacement cost set forth in an initial appraisal, a reappraisal or an updated appraisal.]

\* \* \* \* \*

*[Movable property appraisal—An appraisal of some or all of the movable property of a nursing facility. Depending upon circumstances, this appraisal may pertain to all movable property or only to major movable property. Movable property appraisals are conducted by qualified personnel of an independent appraisal firm under contract with the Department.]*

\* \* \* \* \*

*[Reappraisal—An appraisal of the fixed property of a nursing facility, made for the purpose of computing the fixed property component of that nursing facility's capital rate. A reappraisal will be based, in part, upon an onsite inspection of the nursing facility's fixed property conducted by qualified personnel of an independent appraisal firm under contract with the Department.]*

\* \* \* \* \*

*[Updated appraisal—An appraisal of a nursing facility's fixed property that is based upon the depreciated replacement cost set forth in the nursing facility's initial appraisal or most recent reappraisal and brought forward to a new date. An updated appraisal does not involve an additional onsite inspection of the nursing facility's fixed property. The depreciated replacement costs set forth in an updated appraisal are determined through the application of factors to allow for appreciation and depreciation estimated to have taken place between the two appraisal dates.]*

\* \* \* \* \*

## Subchapter E. ALLOWABLE PROGRAM COSTS AND POLICIES

### § 1187.51. Scope.

\* \* \* \* \*

(e) Within limits of this subchapter, allowable costs for purposes of cost reporting include those costs necessary to provide nursing facility services. These may include costs related to the following:

\* \* \* \* \*

#### (4) *Capital costs.*

- (i) [Fair rental value of] Assigned cost of fixed property.
- (ii) [Movable property.] Acquisition cost of major movable property.

[(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the fair rental value of major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the audited acquisition cost of major movable property.]



**§ 1187.57. Selected capital cost policies.**

The Department will establish a prospective facility-specific capital rate annually for each nursing facility. That rate will consist of three components: the fixed property component, the movable property component and the real estate tax component.

(1) *Fixed property component.*

[(i) The Department will base the nursing facility's fixed property component on the depreciated replacement cost of the nursing facility's fixed property and the associated financial yield rate.

(ii) On an annual basis, the Department will determine the depreciated replacement cost of each nursing facility's fixed property as of March 31, and will use that determination in setting the fixed property component for the rate year beginning on the following July 1.

(iii) The basis for the Department's determination of the depreciated replacement cost of the nursing facility's fixed property will be the most recent of the following appraisals, as modified by any limited appraisals, as of March 31:

- (A) An initial appraisal.
- (B) A reappraisal.
- (C) An updated appraisal.

(iv) An initial appraisal of the nursing facility's fixed property will be conducted for any new nursing facility.

(v) A reappraisal of the nursing facility's fixed property will be conducted at least every 5 years.

(vi) In situations where neither an initial appraisal nor a reappraisal has been done within the 12-month period preceding March 31, the depreciated replacement cost will be based upon an updated appraisal.

(vii) A limited appraisal will be conducted if the nursing facility notifies the Department that a limited appraisal is needed. For the results of a limited appraisal to be included in the determination of a nursing facility's fixed property component for the next rate year, a limited appraisal must be requested by the nursing facility by January 31 of the preceding rate year.

(viii) The depreciated replacement cost of the nursing facility's fixed property is subject to the cost per bed limitation in § 1187.112 (relating to cost per bed limitation adjustment) and, if applicable, the bed moratorium limitation in § 1187.113 (relating to capital component payment limitation).

(ix) The cost to purchase, construct or renovate the fixed property of the nursing facility will not be a factor in determining the appraised depreciated replacement cost.

(x) When there is a change in nursing facility ownership, the new nursing facility owner is deemed to have the same appraised depreciated replacement cost as the former owner.

(xi) The appraisals of fixed property will be performed by qualified personnel from an independent appraisal firm under contract with the Department.]

The Department will base the nursing facility's fixed property component on an assigned cost of \$26,000 per allowable bed.

(2) *Movable property component.*

[(i) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the Department will determine the movable property component of each nursing facility's capital rate as follows:

(A) The Department will base the nursing facility's movable property component on the depreciated replacement cost of the nursing facility's major and minor movable property and the associated financial yield rate.

(B) On an annual basis, the Department will determine the depreciated replacement cost of each nursing facility's movable

property as of March 31, and will use that determination in setting the movable property component for the rate year beginning on the following July 1.

(C) The Department will base the determination of the depreciated replacement cost of each nursing facility's movable property on a movable property appraisal.

(D) When there is a change in nursing facility ownership, the new nursing facility owner is deemed to have the same appraised depreciated replacement cost as the former owner.

(ii) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the] The Department will determine the movable property component of each nursing facility's capital rate as follows:

[(A)] (i) The Department will base the nursing facility's movable property component on the nursing facility's audited cost of major movable property, as set forth in that MA-11.

[(B)] (ii) Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and shall report the cost of minor movable property and the cost of

supplies as net operating costs in accordance with § 1187.51 (relating to scope) and instructions for the MA-11.

\* \* \* \* \*

## Subchapter G. RATE SETTING

### § 1187.91. Database.

The Department will set rates for the case-mix payment system based on the following data:

\* \* \* \* \*

(2) *Capital costs.*

(i) *Fixed property component.* The fixed property component of a nursing facility's capital rate will be based upon the [fair rental value of the] total assigned cost of the nursing facility's [fixed property] allowable beds.

(ii) *Movable property component.*

[(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the movable property component of a nursing facility's capital rate will be based

upon the fair rental value of the nursing facility's major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the] The movable property component of a nursing facility's capital rate will be based upon the audited costs of the nursing facility's major movable property as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

\* \* \* \* \*

**§1187.94 Peer grouping for price setting**

\* \* \* \* \*

(1) Nursing facilities participating in the MA Program, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, will be classified into 12 mutually exclusive groups based on MSA group classification and nursing facility certified bed complement.

\* \* \* \* \*

(v) For rate years 2009-2010, 2010-2011 and 2011-2012, county nursing facilities will be included when determining the number of nursing facilities in a peer group in accordance with subparagraph (iv).

**§1187.96 Price- and rate-setting computations.**

(a) Using the NIS database in accordance with this subsection and § 1187.91 (relating to database), the Department will set prices for the resident care cost category.

\* \* \* \* \*

(3) For rate years 2006-2007 [and], 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the resident care price will be the phase-out median as determined in accordance with § 1187.98 (relating to phase-out median determination).

\* \* \* \* \*

(b) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the other resident related cost category.

\* \* \* \* \*

(3) For rate years 2006-2007 [and], 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the other resident related price will be the phase-out median as determined in accordance with § 1187.98.

\* \* \* \* \*

(c) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the administrative cost category.

\* \* \* \* \*

(3) For rate years 2006-2007 [and], 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the administrative price will be the phase-out median as determined in accordance with § 1187.98.

\* \* \* \* \*

(d) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set a rate for the capital cost category for each nursing facility by adding the nursing facility's fixed property component, movable property component and real estate tax component and dividing the sum of the three components by the nursing facility's total actual resident days, adjusted to 90% occupancy, if applicable.

(1) The Department will determine the fixed property component of each nursing facility's capital rate as follows:

(i) The Department will [adjust the appraised depreciated replacement cost of the nursing facility's fixed property to account for the per bed limitation in § 1187.112 (relating to cost per bed limitation adjustment) and the bed moratorium addressed in § 1187.113 (relating to capital component payment limitation)] multiply the total number of the nursing facility's allowable beds as of April 1, immediately preceding the rate year, by \$26,000 to determine the nursing facility's allowable fixed property cost.

(ii) The Department will multiply the [adjusted depreciated replacement costs of the fixed property] result by the financial yield rate, [to determine the fair rental value for the nursing facility's fixed property.

(iii) The nursing facility's fixed property component will equal the fair rental value of its fixed property.]



(2) The Department will determine the movable property component of each nursing facility's capital rate [as follows:

(i) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001:

(A) The Department will multiply the depreciated replacement costs of the movable property by the financial yield rate to determine the fair rental value for the nursing facility's movable property.

(B) The nursing facility's movable property component will equal the fair rental value of its movable property.

(ii) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the amount of the movable property component will be] based [upon] on the audited actual costs of major movable property as set forth in the most recent audited MA-11 cost report available in the NIS database in accordance with § 1187.91(a)(ii). This amount is referred to as the nursing facility's [most recent] allowable movable property cost.

\* \* \* \* \*

**§ 1187.97. Rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities.**

The Department will establish rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities as follows:

(1) *New nursing facilities.*

\* \* \* \* \*

(ii) [For nursing facilities enrolled in the MA Program prior to January 1, 2001, the three components of the capital portion of the case-mix rate are determined as follows:

(A) The fixed property component will be determined in accordance with § 1187.96(d)(1) (relating to price and rate setting computations).

(B) The movable property component will be determined in accordance with § 1187.96(d)(2).

(C) The real estate tax cost component will be determined based on the audited actual real estate tax cost.

(iii) For nursing facilities enrolled in the MA Program on or after

January 1, 2001, the] The three components of the capital portion of the case-mix rate are determined as follows:

\* \* \* \* \*

(B) *Movable property component.* The movable property component will be determined as follows:

(I) The nursing facility's acquisition cost, as determined in accordance with § 1187.61(b) (relating to movable property cost policies), for any new items of movable property acquired on or before the date of enrollment in the MA program, will be added to the nursing facility's remaining book value for any used movable property as of the date of enrollment in the MA program to arrive at the nursing facility's movable property cost. [If the nursing facility does not have a depreciation schedule for its used movable property, the allowable cost for those items will be the depreciated replacement cost as determined by qualified personnel of the Department's independent appraisal contractor.]

\* \* \* \* \*

[(iv)] (iii) Newly constructed nursing facilities are exempt from the adjustment to 90% occupancy until the nursing facility has participated in the MA

Program for one full annual price setting period as described in § 1187.95 (relating to general principles for rate and price setting).

(iv) A new nursing facility is exempt from the occupancy requirements set forth in § 1187.104(1)(ii) (relating to limitations on payment for reserved beds) until a CMI Report for each of the three picture dates used to calculate overall occupancy as set forth in § 1187.104(1)(iii) is available for the rate quarter.

*(2) Nursing facilities with a change of ownership and reorganized nursing facilities.*

(i) *New provider.* The new nursing facility provider will be paid exactly as the old nursing facility provider, except that, if a county nursing facility becomes a nursing facility between July 1, 2006 and June 30, [2008] 2012, the per diem rate for the nursing facility will be computed in accordance with § 1187.96, using the data contained in the NIS database. Net operating and capital rates for the old nursing facility provider will be assigned to the new nursing facility provider.

\* \* \* \* \*

**§1187.98 Phase-out median determination.**

(a) For rate years, 2006-2007 and 2007-2008, the Department will determine a phase-out median for each net operating cost center for each peer group to calculate a peer group price. The Department will establish the phase-out median as follows:

\* \* \* \* \*

(b) For rate years, 2009-2010, 2010-2011 and 2011-2012, the Department will determine a phase-out median for each net operating cost center for each peer group to calculate a peer group price. The Department will establish the phase-out median as follows:

(1) The Department will establish an interim phase out median for the rate year as specified in subsection (a) of this section.

(2) The phase-out median for the 2009-2010 rate year will equal 75% of the interim median calculated in accordance with paragraph (1) plus 25% of the median calculated in accordance with § 1187.96 (relating to price-and rate-setting computations).

(3) The phase-out median for the 2010-2011 rate year will equal 50% of the interim median calculated in accordance with paragraph (1) plus 50% of the median calculated in accordance with § 1187.96.

(4) The phase-out median for the 2011-2012 rate year will equal 25% of the interim median calculated in accordance with paragraph (1) plus 75% of the median calculated in accordance with § 1187.96.

(c) For the rate year 2012-2013 and thereafter, county nursing facility MA allowable costs will not be used in the rate-setting process for non-public nursing facilities.

\* \* \* \* \*

**§ 1187.104. Limitations on payment for reserved beds.**

(a) The Department will make payment to a nursing facility for a reserved bed when the resident is absent from the nursing facility for a continuous 24-hour period because of hospitalization or therapeutic leave subject to the limits in subsection (b).

A nursing facility shall record each reserved bed for therapeutic leave on the nursing facility's daily census record and MA invoice. When the bed reserved for a resident who is hospitalized is temporarily occupied by another resident, a nursing facility shall record the occupied bed on the nursing facility's daily MA census record and the MA invoice. During the reserved bed period the same bed shall be available for the resident upon the resident's return to the nursing facility. [The following limits on payment for reserved bed days apply:]

(b) The payment for reserved bed days is subject to the following limits:

*(1) Hospitalization.*

(i) A resident receiving nursing facility services is eligible for a maximum of 15 consecutive reserved bed days per hospitalization. The Department will pay a nursing facility at a rate of 1/3 of the nursing facility's current per diem rate on

file with the Department for a hospital reserved bed day if the nursing facility meets the overall occupancy requirements of subparagraphs (ii).

(ii) [If the resident's hospital stay exceeds the Department's 15 reserved bed day payment limitation, the nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the nursing facility if, at the time of readmission, the resident requires the services provided by the nursing facility.] A nursing facility's overall occupancy rate shall equal or exceed the following:

(A) During the rate year 2009-2010, the nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs shall equal or exceed 75%.

(B) Beginning with the rate year 2010-2011 and thereafter, the nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs shall equal or exceed 85%.

(iii) [Hospital reserved bed days may not be billed as therapeutic leave days.] The Department will calculate a nursing facility's overall occupancy rate for a rate quarter as follows:

(A) The Department will identify the picture date for the rate quarter as specified in § 1187.96(a)(5) (relating to price-and rate-setting computations) and the two picture dates immediately preceding this picture date.

(B) The Department will calculate the nursing facility's occupancy rate for each of the picture dates identified in (iii) (A) by dividing the total number of assessments listed in the facility's CMI report for that picture date by the number of the facility's certified beds on file with the Department on the picture date and multiplying the result by 100%. The Department will assign the highest of the three picture date occupancy rates as the nursing facility's overall occupancy rate for the rate quarter.

(C) The Department will only use information contained on a valid CMI report to calculate a nursing facility's overall occupancy rate. If a nursing facility did not submit a valid CMI report for a picture date identified in (iii) (A), the Department will calculate the nursing facility's overall occupancy rate based upon the valid CMI reports that are available for the identified picture dates. If no valid CMI reports are available for the picture dates identified in (iii)(A), the nursing facility is not eligible to receive payment for hospital reserve bed days in the rate quarter.



(D) For purposes of this subsection, a valid CMI report is a CMI report that meets the requirements of § 1187.33(a)(5) and (6) (relating to resident data and picture date reporting requirements).

(iv) If the resident's hospital stay exceeds the Department's 15 reserved bed day payment limitation, the nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the nursing facility if, at the time of readmission, the resident requires the services provided by the nursing facility.

(v) Hospital reserved bed days may not be billed as therapeutic leave days.

\* \* \* \* \*

#### **Subchapter H. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS**

\* \* \* \* \*

**§ 1187.112. [Cost per bed limitation adjustment.] Reserved.**

\* \* \* \* \*

### **CHAPTER 1189**

#### **COUNTY NURSING FACILITY SERVICES**

#### **Subchapter E. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS**

\* \* \* \* \*

**§ 1189.103 Limitations on payment for reserved beds.**

(a) A county nursing facility may be eligible for payments [The Department will make payment to a county nursing facility] for a reserved bed when the resident is absent from the nursing facility for a continuous 24-hour period because of hospitalization or therapeutic leave. A county nursing facility shall record each reserved bed for therapeutic leave on the nursing facility's daily census record and MA invoice. When the bed reserved for a resident who is hospitalized is temporarily occupied by another resident, a county nursing facility shall record the occupied bed on the nursing facility's daily MA census record and the MA invoice. During the reserved bed period the same bed shall be available for the resident upon the resident's return to the nursing facility.

(b) The following limits on payment for reserved bed days apply:

(1) *Hospitalization.*

(i) A resident receiving nursing facility services is eligible for a maximum of 15 consecutive reserved bed days per hospitalization. The Department will pay a county nursing facility at a rate of 1/3 of the county nursing facility's current per diem rate on file with the Department for a hospital reserved bed day.

(ii) A county nursing facility's overall occupancy shall meet the occupancy requirements set forth in this subparagraph. For each rate quarter, the criteria for meeting the overall occupancy limits will be calculated and applied to the rate quarter based on the highest of the overall occupancy calculated for three picture dates. The three picture dates will be the picture date for the current rate quarter (July 1 rate quarter – February 1 picture date; October 1 rate quarter – May 1 picture date; January 1 rate quarter – August 1 picture date; and April 1 rate quarter – November 1 picture date) and the two picture dates directly preceding this picture date. Overall occupancy for each picture date will be calculated by dividing the total number of assessments listed in the facility's CMI report for the picture date by the number of the facility's certified beds on file with the Department on the picture date. The highest of the results will be used to determine whether the county nursing facility meets the overall occupancy criteria set forth as follows:

(A) During rate year 2009-2010, the county nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurred shall be equal or exceed 75%.

(B) Beginning with rate year 2010-2011 and thereafter, the county nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs shall equal or exceed 85%.

(iii) County nursing facilities not submitting a valid CMI report for the three picture dates do not meet the criteria for payment for reserved bed days, unless subparagraph (iv) applies.

(iv) New county nursing facilities are eligible for payment for reserved bed days as set forth in subparagraph (i) until CMI Reports for the three picture dates used to calculate overall occupancy as set forth in subparagraph (ii) are available for the rate quarter.

~~[(ii)]~~ (v) If the resident's hospital stay exceeds the Department's 15 reserved bed days payment limitation, the county nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the county nursing facility if, at the time of readmission, the resident requires the services provided by the county nursing facility.

~~[(iii)]~~ (vi) Hospital reserved bed days may not be billed as therapeutic leave days.

\* \* \* \* \*

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-516
SUBJECT: ACT 44 & MISCELLANEOUS CHANGES FOR NON-PUBLIC & COUNTY NURSING FACILITIES
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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2009 JUL 21 PM 2:43
INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

Table with 3 columns: DATE, SIGNATURE, DESIGNATION. Rows include House Committee on Health & Human Services, Senate Committee on Public Health & Welfare, Independent Regulatory Review Commission, and Legislative Reference Bureau.