

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

RECEIVED

APR 16 2012

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Department of Public Welfare/Department of Aging
Office of Long-Term Living

(2) Agency Number:

Identification Number: 14-524

IRRC Number: 2880

(3) PA Code Cite:

55 Pa.Code Chapter 1187

55 Pa.Code Chapter 1189

(4) Short Title:

Participation Review Process for Medical Assistance Nursing Facilities

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

Primary Contact: Judith Patrick
Email: judpatrick@pa.gov
Phone: (717) 705-3705

Secondary Contact: Marilyn Yocum
Email: myocum@pa.gov
Phone: (717) 772-2549

(6) 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

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

The regulation provides nursing facilities and other interested persons with the rules that the Department will use in exercising its authority to manage the enrollment and participation of nursing facilities as providers in the Medical Assistance (MA) Program. This regulation establishes a more transparent, standardized process for the submission of bed requests and bed transfer requests and identifies the factors that the Department will use to evaluate and respond to bed requests.

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

The Department has the authority to promulgate regulations to establish the process and criteria to review and respond to requests for increases in MA-certified beds under the authority of section 443.1(8) of the Public Welfare Code (62 P.S. § 443.1(8)).

(9) 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.

State law mandates that the Department establish regulations regarding nursing facility participation review no later than June 30, 2012. (62 P.S. § 443.1(8)).

(10) 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 final-form regulation is needed to comply with section 443.1(8) of the Public Welfare Code (62 P.S. § 443.1(8)), which was enacted by Act 16 of 2007. The process established by the regulation assures that the MA Program is administered in the best interest of MA recipients and in compliance with applicable Federal and State law. Nursing facilities will benefit by having a more reliable, transparent process for seeking additional MA beds. MA recipients will benefit by having assured access to medically necessary nursing facility services and a more balanced long-term living system.

There are approximately 591 nonpublic nursing facilities and 31 county nursing facilities in Pennsylvania enrolled in the MA Program. There are approximately 48,963 MA recipients currently residing in those nursing facilities and an average of 56,504 MA recipients who receive nursing facility services in a typical month.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The percentages for New York's and Maryland's overall utilization threshold were obtained from representatives of those states; the information for Ohio was obtained from their public website at

<http://www.odh.ohio.gov/ASSETS/CB769A30AF5E4F6385A8E657683C4EA5/InterCntyGuide.pdf>.

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

No one will be adversely affected by the regulation. Nursing facilities that are enrolled MA providers or wish to become MA providers and the MA recipients who are or may receive services from those facilities will be beneficially affected by this regulation. Facilities will benefit by having a more reliable, transparent process for seeking additional MA beds. MA recipients will also benefit by having assured access to medically necessary nursing facility services and a more balanced long-term living system.

(13) 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.

There are approximately 622 nursing facilities that currently participate in the MA Program. Should they choose to seek additional MA beds or to transfer MA beds to another facility, they would be required to comply with this regulation. In addition, any existing or newly constructed nursing facility that does not participate in the MA Program would be required to comply with this regulation if it seeks to enroll in the program in the future. Currently, a small number of nursing facilities in Pennsylvania do not participate in the MA Program.

(14) 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.

The costs to nursing facilities to comply with this final-form regulation are estimated to be equivalent to the costs of submitting an exception request under the current statement of policy. Therefore, the Department does not expect any costs or savings to the regulated community.

Costs associated with the existing statement of policy are estimated to be \$1900.00 per request and include approximately 15 hours of labor (10 at a professional level and 5 at a nonprofessional level), the cost of copies (one original package and two copies of between 20-100 pages each) and delivery. This estimate does not include costs associated with a facility's bed assessment independent of the statement of policy, such as feasibility or market studies, financial projections and other related data.

(15) 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.

This final-form regulation is not expected to have any cost or savings impact on local governments. To the extent that counties operate nursing facilities that participate in the MA Program, their costs to comply with this final-form regulation are estimated to be equivalent to the costs that would be borne under the existing statement of policy.

Costs associated with the existing statement of policy are estimated to be \$1900.00 per request and include approximately 15 hours of labor (10 at a professional level and 5 at a nonprofessional level), the cost of copies (one original package and two copies of between 20-100 pages each) and delivery. This estimate does not include costs associated with a facility's bed assessment independent of the statement of policy, such as feasibility or market studies, financial projections and other related data.

(16) 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.

The Department does not expect any additional costs or savings to state government associated with the implementation of the regulation. The staff time that will be required to administer the participation review process at the Department is equivalent to the staff time that is currently expended in the implementation of the statement of policy. The staffing cost to administer the statement of policy is \$323,211, however since existing Commonwealth resources will be utilized to administer this policy, this will be done at no additional cost to the Department.

Between July 1, 2006 and June 30, 2010, the number of additional beds requested to be enrolled in the MA Program totaled 1,271. Ninety-five were approved. If there had been no mechanism to control growth, on an annual basis, an additional 294 beds could have been added to the program. Assuming 65% MA occupancy, these additional beds would have increased annual MA days by 69,752 at an average reimbursement rate of \$186 or \$12.974 million (\$5.811 million in state funds) annually.

The savings shown in (17) are for informational purposes only. The long-term care budget includes a projection of patient days that has taken into account approved beds granted as a result of these regulations.

(17) 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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	\$5,811	\$11,622	\$17,433	\$23,244	\$29,055	\$34,866
Total Savings	\$5,811	\$11,622	\$17,433	\$23,244	\$29,055	\$34,866
COSTS:						
Regulated Community	\$2	\$2	\$2	\$2	\$2	\$2
Local Government	\$2	\$2	\$2	\$2	\$2	\$2
State Government						
Total Costs	\$4	\$4	\$4	\$4	\$4	\$4
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	0	0	0	0	0	0

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Long-Term Care	672,597	540,266	728,907	730,215

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

Both nursing facilities and the Department will benefit from having enforceable standards that control the participation review process. MA recipients will benefit from the assurance that they will have adequate access to medically necessary nursing facility services. These benefits outweigh the requirements of collection of data by facilities submitting bed/bed transfer requests.

(19) 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.

On November 1, 2008, the Department published a notice in the *Pennsylvania Bulletin* proposing to amend the original statement of policy that was published on January 10, 1998. The Department invited public comment on the proposed changes to the statement of policy. Written comments were received from the Pennsylvania Health Care Association (PHCA), LeadingAge PA (formerly PANPHA), Mount Hope Nazarene Retirement Community and a nursing home administrator in a Continuing Care Retirement Community (CCRC).

On April 3, 2010, the Department published the final amended statement of policy in the *Pennsylvania Bulletin* as well as its responses to the public comments. Also, on April 22, 2010 an advance draft of the proposed Nursing Facility Participation Review regulations were shared with the Medical Assistance Advisory Committee (MAAC) and the Long-Term Care Delivery System Subcommittee of the MAAC members. Comments received on or before May 3, 2010 were reviewed prior to the final draft of the proposed regulation. The draft was also sent to the Pennsylvania Association of County Affiliated Homes (PACAH), LeadingAge PA, the PHCA and the Hospital and Healthsystems Association of Pennsylvania.

The proposed regulations were published in the *Pennsylvania Bulletin* at 40 Pa.B. 6405 (November 6, 2010) with a 30-day comment period. Also, during the February 9, 2011 LTC subcommittee meeting, participants were updated on the participation review regulations and had an opportunity to comment. The Department received nine comment letters as a result of the 30-day public comment process, which included written comments from three of the nursing facility trade associations (LeadingAge PA, PACAH and PHCA), nursing facility providers, Senator Stewart J. Greenleaf, Representative Bernard T. O'Neill, as well as comments from the Independent Regulatory Review Commission. Several commentators expressed their support for the proposed regulation while others expressed concerns, most of which related to the provisions for CCRCs.

The Department also met with representatives of the nursing facility trade associations on August 15 and September 26, 2011, to discuss the provisions in the final-form regulations. The Department carefully reviewed and considered all comments for final-form regulations when responding or incorporating changes.

(20) 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.

The Department drafted these regulations to conform with applicable State and Federal law as well as its obligations to administer the MA Program in the best interests of MA recipients. The final-form regulation represents the least burdensome acceptable alternative among various methods of allocating MA beds to requesters. Also, the provisions effectively support the goals of the Department by providing access to quality care for MA recipients.

(21) 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.

These regulations assure Medicaid care and services will be provided in an efficient and economic manner and in a manner consistent with simplicity of administration and the best interests of the recipients pursuant to section 1902 of the Social Security Act.

(22) 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. Pennsylvania will not be competing with other states, as this regulation controls the participation of MA nursing facilities that are located in this Commonwealth.

(23) 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.

(24) 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.

Section 1187.172 describes the required content of an applicant's bed request; however, there are no required forms or reports required of facilities.

Under § 1187.173, the Department will compile a workbook for each review period and post the workbook, a list of bed requests, comments received by the Department and applicant's responses to the public comments on the Department's website. By making information available online, the regulation promotes public access in an efficient and cost-effective manner.

(25) 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.

A significant majority of the MA recipients receiving care in a nursing facility are older adults, and the overall impact of the regulation on that group is beneficial.

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

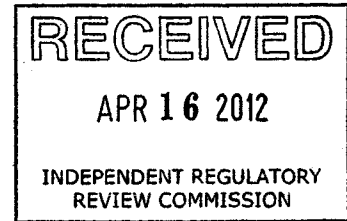
- | | |
|---|-------------------------------|
| A. The date by which the agency must receive public comments: | <u>December 6, 2010</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>June 30, 2012</u> |
| D. The expected effective date of the final-form regulation: | <u>upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>upon final publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(27) 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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>DEPARTMENT OF PUBLIC WELFARE (Agency)</p> <p>LEGAL COUNSEL: <u>Edward J. King</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>14-524</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>[Signature]</u></p> <p>TITLE: <u>SECRETARY OF PUBLIC WELFARE</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Megan L. Consedine</u></p> <p>APR 15 2012</p> <p>_____ Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
---	--	--

NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF LONG-TERM LIVING

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

Participation Review Process for Medical Assistance Nursing Facilities

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the regulations set forth in Annex A pursuant to the authority of section 443.1(8) of the Public Welfare Code (code) (62 P.S. § 443.1(8)). Notice of proposed rulemaking was published at 40 Pa.B. 6405 on November 6, 2010.

Purpose of Regulation

The purpose of this final-form rulemaking is to provide nursing facilities and other interested persons with the rules that the Department will use in exercising its authority to manage the enrollment and participation of nursing facilities as providers in the Medical Assistance (MA) Program.

This final-form rulemaking establishes a transparent, standardized process for the submission of bed requests and bed transfer requests and identifies the factors that the Department will use to evaluate and respond to bed requests. The final-form rulemaking also promotes a more balanced long-term living (LTL) system in this Commonwealth consistent with applicable Federal law. The overall goal of the final-form rulemaking is to serve the best interests of MA recipients by supporting the growth of home and community-based services (HCBS), which consumers prefer as a setting for LTL services, while ensuring that MA recipients continue to have access to medically necessary nursing facility services.

Background

This final-form rulemaking implements state law at 62 P.S. § 443.1(8), which requires the Department to promulgate regulations to establish the process and criteria for reviewing and responding to requests by nursing facilities to enroll in the MA Program or to increase their certified MA bed complements. This statutory requirement was enacted by the General Assembly in response to the Commonwealth Court's decision in *Eastwood Nursing and Rehabilitation Center v. Department of Public Welfare*, 910 A.2d 134 (2006). In *Eastwood*, the Court held that the Department's statement of policy published at 28 Pa.B.138 (January 10, 1998) regarding its treatment of requests by facilities to increase MA beds was unpromulgated and, therefore, an unenforceable "binding norm."

Pending the issuance of regulations or until June 30, 2012, (whichever comes first), Section 443.1(8) authorized the Department to continue to review pending and future requests for enrollment or expansion in accordance with the process and guidelines contained in the 1998 statement of policy. It also authorized the Department to amend the 1998 statement of policy, after soliciting public comments, if the Department determined such changes to the Statement of Policy would "facilitate access to medically necessary nursing facility services or . . . assure that long-term living care and services under the medical assistance program will be provided in a manner consistent with applicable Federal and State law, including Title XIX of the Social Security Act." After soliciting and considering public comments, the Department published an amended statement of policy and its responses to the public comments at 40 Pa.B. 1766 (April 3, 2010).

Affected Individuals and Organizations

This final-form rulemaking will affect nonpublic and county nursing facilities that currently participate in the MA Program or plan to enroll in the MA Program. MA recipients who choose to receive care in a nursing facility may also be affected.

Accomplishments and Benefits

The final-form rulemaking provides clear guidance to nursing facilities who seek to enroll in the MA Program or expand their current complement of MA beds. The final-form rulemaking gives nursing facilities notice of the standards that will be applied to these requests so that they can better plan their operations in the long-term. Both nursing facilities and the Department will benefit from having enforceable standards that control the participation review process. MA recipients will benefit from the assurance that they will have adequate access to medically necessary nursing facility services. Finally, the rulemaking also accomplishes the mandate of 62 P.S. § 443.1(8) by promulgating regulations to control the participation review process.

Fiscal Impact

No cost to MA recipients is anticipated as a result of this regulation. The Department expects any costs or savings to the regulated community, local governments or state government associated with the implementation of the regulation

to be the equivalent to the costs and savings under the existing statement of policy. Under the statement of policy, the estimated cost to nursing facility providers or counties operating nursing facilities is \$1,900 per request. For state fiscal year 2011-2012, the Commonwealth's estimated cost to administer the participation review process is \$323,211 and the estimated savings is \$5.811 million in state funds.

Paperwork Requirements

This rulemaking contains paperwork requirements for the Commonwealth and for nursing facilities who apply for enrollment in the MA Program or an expansion of their existing MA bed complement. There are no required forms associated with the regulation. Each application submitted by a nursing facility to the Department must include the information listed in § 1187.172 (relating to contents and submission of bed requests). The time required to comply with these requirements is estimated to be equivalent to that required to comply with the submission of exception requests under the existing statement of policy.

Public Comment

The Department received nine letters through the public comment process, which included written comments from three of the nursing facility trade associations (LeadingAge PA (formerly PANPHA), the Pennsylvania Association of County Affiliated Homes (PACAH) and the Pennsylvania Health Care Association (PHCA)), nursing facility providers, Senator Stewart J. Greenleaf and Representative Bernard T. O'Neill.

The Independent Regulatory Review Commission (IRRC) also commented on the proposed rulemaking. In addition, the Department met with representatives of the nursing facility trade associations on August 15 and September 26, 2011, to discuss the provisions contained in the final-form regulations.

Discussion of Comments and Major Changes

Following is a summary of the major comments received within the public comment period following publication of the proposed rulemaking and the Department's response to those comments.

General – Brain injury and Olmstead planning process

One commentator asked the Department to identify all residents of nursing homes within specific age ranges who have a traumatic or non-traumatic brain injury, and to provide information on an individual Olmstead planning process that assures brain injury rehabilitation is needed to prepare the individuals for participation in community services under the Independence or CommCare waivers.

Response

This final-form rulemaking regulates the enrollment and participation of nursing facilities as providers in the MA Program. Although the Department requests data relating to specialized medical services if an applicant proposes to serve individuals

needing those services, under §§ 1187.174(7) and 1187.176(a)(2)(iii), this final-form rulemaking does not specifically address or identify individuals with brain injury. Therefore, this comment, which is more in the nature of an information request, is outside the scope of the comment and response process.

Economic impact – Regulatory Analysis Form

IRRC asked what costs are associated with the statement of policy because the Regulatory Analysis Form (RAF) stated the cost and savings imposed by the rulemaking will be equivalent to the costs associated with the current statement of policy. IRRC also requested an estimate of the fiscal savings and costs associated with implementation and compliance for the current year and 5 subsequent years.

Response

As noted above, nursing facility costs associated with the statement of policy are estimated to be \$1,900 per request and include approximately 15 hours of labor (10 at a professional level and 5 at a nonprofessional level), the cost of copies (one original package and two copies of between 20-100 pages each) and delivery. This estimate does not include costs associated with a facility's bed assessment independent of the statement of policy, such as feasibility or market studies, financial projections and other related data.

In addition, the RAF reflects an estimate of the fiscal savings and costs associated with implementation and compliance for the current year and 5 subsequent years.

General – MA nursing facility beds

One commentator offered a general objection to the addition of any MA nursing facility beds in the Commonwealth. The commentator suggested there should be a moratorium on any new Medicaid licensed beds in the Commonwealth. The commentator further suggested that the Department delete all sections that refer to the addition of licensed Medicaid beds either at a nursing facility or a continuing care retirement community (CCRC).

Response

The Department does not agree that there should be a moratorium on additional MA nursing facility beds. There may be instances in which the enrollment of a new MA nursing facility provider or an increase in the bed capacity of an existing MA nursing facility provider is needed to assure that MA recipients continue to have access to medically necessary nursing facility services. For example, an increase in bed capacity may be needed if nursing facility services are not available for MA recipients who reside in a particular locale or who have specialized medical needs that are not being met by the current MA nursing facility provider complement.

§ 1187.162 – Definitions – Closed-campus CCRC

A commentator suggested changing the definition of “closed-campus CCRC” by allowing for the CCRC to have a nursing facility component no more than 30 miles from the campus on which the CCRC’s independent living units are located. IRRC questioned what the phrase “same campus” means and if the nursing facility component of the closed-campus CCRC has to be located within a specific distance of the independent living units.

Response

As discussed later in further detail, the Department received comments expressing opposite opinions regarding CCRC bed requests. After carefully considering all the varying viewpoints, the Department has decided not to include separate CCRC provisions and has eliminated the provisions pertaining solely to closed-campus CCRCs in these regulations. A nursing facility within a CCRC will continue to have the opportunity to submit a bed request, including bed transfer requests, under the criteria under §§ 1187.175 and 1187.176 (relating to criteria for the approval of bed transfer requests; and criteria for the approval of bed requests other than bed transfer requests).

§ 1187.162 – Definitions – Closed-campus CCRC – Entrance fee, resident agreement and marketing

One commentator suggested broadening the criteria pertaining to paid entrance fees under the definition of “closed-campus CCRC.” The commentator suggested criteria regarding payment, amount and availability of the entrance fee as an asset to pay expenses. In addition, the commentator suggested modifying the criteria around the resident agreement. The commentator suggested striking the language “that is effective at least 30 days and” and recommended additional language related to the rights and privileges of subscribers to move between types of care and language related to prohibiting subscribers from inappropriately shifting assets. The commentator stated that the subparagraph relating to marketing nursing facility components is overly broad and has the potential of restricting important information about CCRCs to consumers. The commentator recommended the following language: “The CCRC markets its nursing facility as a component of the larger CCRC.” IRRRC also questioned the need for this requirement.

Response

As previously stated, the Department has decided not to include separate CCRC provisions and has eliminated the provisions pertaining solely to closed-campus CCRCs in these regulations. Nursing facilities within CCRCs may submit bed requests and bed transfer requests under §§ 1187.175 and 1187.176.

§ 1187.172(a)(4) – Contents and submission of bed requests – Compliance history

One commentator suggested that because licensure surveys vary from state to state and considerably within regions in states, it is unfair to consider the licensure and certification history of out-of-state facilities in evaluating a bed request by a Pennsylvania facility. The commentator requested that the language regarding licensure, participation, sanctions and remedies imposed on any other nursing facilities owned or controlled by the same applicant be limited to Pennsylvania facilities only.

Another commentator recommended removing the language “sanctions or remedies” and revising the language to consider only civil monetary penalties for repeated resident rights violations. IRRC also asked what the phrase “imposition of remedies” means and why an applicant must provide information to the Department about the “imposition of remedies”. Both IRRC and the commentator suggested the provisions focus on violations that lead to the imposition of fines instead of the “imposition of remedies.”

Response

The Department has determined that it is relevant to the review process to consider the history of an owner's Medicare and Medicaid compliance. Under this final-form regulation, applicants will not be required to disclose every citation of regulatory noncompliance. Rather, an applicant must disclose whether the legal entity, an owner of the subject facility or a related party involved in the proposed project owned, operated or managed a nursing home that had such serious deficiencies that it was precluded from participating in the Medicare and Medicaid programs, had its license to operate

revoked or suspended, was subject to sanctions or remedies because it violated the rights of its residents or had deficiencies that immediately jeopardized their health and safety, or was designated a special focus facility by the Federal government. An owner's experience in other states becomes particularly relevant in instances where the owner may not be currently operating a nursing facility in this Commonwealth but is, or has operated, a nursing facility in another state that has been sanctioned or closed due to noncompliance issues. Limiting consideration of compliance history to this Commonwealth's nursing facilities will not afford the Department the capability to consider this critical information.

The regulation uses the terms "civil monetary penalties, sanctions and remedies" because these terms are used in Federal law and regulations (42 U.S.C.A. § 1396r(h) (relating to requirements for nursing facilities); 42 CFR 488.406 (relating to available remedies)) and by State licensing entities. Further, sanctions or remedies may be imposed that do not involve imposition of fines or civil monetary penalties. For example, under Federal law and regulations, other remedies that may be imposed depending on the violations include imposition of a temporary manager, the denial of payment for new admissions, directed plans of correction, directed in-service training and State monitoring. See 42 CFR 488.406(a). If the language was changed to focus solely on civil monetary penalties, instances of potential or actual harm or immediate jeopardy of a resident's health or safety could be excluded from the review. The Department, however, added language to clarify that imposition of civil monetary penalties, sanctions or remedies for resident rights violations are under State or Federal law.

§ 1187.173(a)(1) and (2) – Groups

IRRC recommended removing the language “the Department will use its best efforts” because it is non-regulatory and does not establish a binding norm. In addition, a commentator recommended the Department shorten the decision timeframe for bed requests by developing four review groups with quarterly reviews as opposed to two review groups with biannual reviews.

Response

The Department agrees with IRRC’s comment and has deleted the language “use its best efforts to.” Instead, the Department added language extending the review process an additional 90 days, if public comments are received. This will allow an appropriate amount of time to research, analyze and process the request. Further, such extensions are consistent with past practice and have not resulted in any access issues.

§ 1187.173(c) – Expedited review

One commentator requested clarifications or examples of “good cause” that would constitute an approval for an expedited review. In addition, IRRC asked the Department to include the criteria that will be used to determine “good cause.”

Response

Specifically limiting the criteria used to determine good cause for the expedited review of bed requests in the final-form regulations may not benefit the regulated community. By retaining the discretion and flexibility of determining good cause for each request on a case-by-case basis, the Department will avoid denying good cause based solely on a finite set of circumstances and criteria that may not encompass all scenarios. The Department intends this exception to apply only in limited situations, such as a catastrophic event or natural disaster. In determining whether good cause exists, the Department will consider among other things whether operational urgency is critical to MA recipients and the MA Program.

§ 1187.173(d) – Public process

IRRC asked the Department to identify the website where information will be posted and questioned whether the Department will consider posting the comments it receives. One commentator questioned where and when the online workbooks will be posted, the period of time for data in the workbook and how applicants will be made aware of their availability. The commentator also recommended the workbook contain the day-one MA days and the occupancy for the county and Commonwealth. In addition, the commentator requested the Department provide detailed information regarding the publication and public comment period for bed requests and asked how applicants will be made aware of their availability. Another commentator endorsed the transparency in the public process. This commentator requested that the public process include bed

transfer requests, closed-campus CCRC bed requests and the posting of comments received by the Department.

A commentator also suggested that under the public process provisions, closed-campus CCRC bed requests are treated in the same manner as bed transfer requests by providing for a monthly posting and a 15-day public comment period. The commentator suggested removing the CCRC provisions or modifying the provisions.

Response

The Department amended subsection (d) to clarify that the data book will be available on the Department's website. The website address is www.dpw.state.pa.us/provider/doingbusinesswithdpw/longtermcarecasemixinformation/index.htm. The Department will update the data book as information becomes available and reports are completed. Each piece of data will be clearly labeled with the period of time it represents. The MA day-one admission rates and MA occupancy rates are considered data relating to availability of MA nursing facility services under subsection (d)(1)(i), therefore, it will be included in the workbook.

In addition, subsection (d) was amended to clarify that the bed requests and bed transfer requests will be posted on the Department's website. Further, language was added to subsection (d) that the Department will post both the written public comments relating to bed and bed transfer requests received by the Department as well as the applicant's responses to those comments. Public comments will be posted to the Department's website after the public comment period. Applicant's responses to those

comments will be posted to the Department's website upon receipt. Since the bed request information will be accessible online, the Department removed language pertaining to providing copies of the requests to the public.

In response to the comment related to the public process for a closed-campus CCRC bed request, as previously discussed, the Department has deleted the separate CCRC provisions. Therefore, there is not a public process specifically for CCRCs.

§ 1187.174 – Information and data relevant to bed requests

One commentator requested that closed-campus CCRC beds not be included when calculating the MA occupancy rates in either the county or primary service area (PSA) when used to determine the need for additional MA beds. The commentator also requested that the regulations be modified to clarify what beds will be used in this MA occupancy rate calculation if the CCRC provisions remain as part of the final regulations.

Response

As previously stated, the Department has decided not to include separate CCRC provisions and has eliminated the provisions pertaining solely to closed-campus CCRCs in these regulations.

§ 1187.174(3) – Data relating to the availability of HCBS

IRRC and a commentator questioned what is the need for the data relating to the availability of HCBS and admissions and discharges at MA nursing facilities. The commentator suggested that expansion of both HCBS and availability of nursing facility beds is needed but that one does not necessitate preclusion of the other. The commentator also requested HCBS not be considered when determining the need for additional MA beds and that it be deleted from these regulations.

Response

The Department disagrees with the commentator's recommendation to eliminate this provision. Consideration of the availability of HCBS has been a part of the Department's needs assessment for additional MA-certified beds in a particular area since the first statement of policy was issued in 1998. The Department explained:

In considering its MA Program needs, the Department will also examine whether those needs can be appropriately met through the provision of HCBS rather than additional nursing facility beds. The Department views HCBS to have several important benefits. Among other things, many older residents of this Commonwealth and residents with disabilities prefer HCBS over institutional services. Given a choice, the Department believes that many people would choose to remain in their own homes and communities rather than reside in a nursing facility. Moreover, in many, if

not most, instances, the Department has found that HCBS are less expensive than institutional services. 28 Pa.B. 141 (January 10, 1998).

The Department also noted that an underlying objective of the statement of policy was to promote the Department's ongoing efforts to develop a fuller array of service and support options for consumers. *Id.*, at 139. The Department's experience during the past 10 years has only reinforced these views and its commitment to balance the LTL service system to provide MA recipients with more service choices to meet their needs.

For many consumers, HCBS continues to be a more preferable and less costly option than institutional care. By enabling consumers to receive necessary care and services in their own homes, HCBS can delay or prevent institutionalization of individuals who would otherwise require care in nursing facilities. As a result, as the Department has worked to steadily increase the supply of HCBS throughout this Commonwealth, there has been a decline in the use of nursing facility services. The Department expects this trend to continue as HCBS and support options for consumers are further expanded.

Balancing the LTL service system does not mean that the Department will never approve increases in MA nursing facility beds. It does mean, however, that the Department intends to evaluate requests for the increases in the context of creating a balanced continuum of publicly-funded care. By directing the Department to continue to use the statement of policy and develop regulations in reviewing and responding to bed requests, the General Assembly endorsed this approach. See Act 2007-16. Consequently, as has been done ever since the first statement of policy was issued in

1998, the Department will continue to consider the availability of HCBS as a relevant factor in assessing the need for additional institutional capacity in the MA Program.

§ 1187.174(5) – Data relating to admissions and discharges

IRRC and a commentator questioned the need for data relating to admissions and discharges of the MA nursing facility and the MA nursing facilities in the PSA in determining adequate access for MA eligible individuals. The commentator requested that it be deleted from these regulations.

Response

The Department disagrees that data relating to admissions and discharges at MA nursing facilities should be deleted. Such information can provide useful data that is indicative of MA recipients' access to nursing facility services in a particular area.

§ 1187.174(7) – Specialized medical services

One commentator questioned how the Department intends to assure that a nursing facility which requests new MA beds to provide specialized services will actually provide that service, and whether the Department plans to decertify MA beds if a provider does not fulfill the specialized services.

Response

The Department has monitored the status of approved projects since the first statement of policy in 1998 and intends to continue monitoring approved projects to ensure that the beds are licensed, certified and available for occupancy within the required timeline as agreed to by the Department and subject facility. As a condition of the approval, the Department has required a semi-annual project status report to be submitted 6 months after receiving approval and every 6 months thereafter. Upon completion of a project involving specialized medical services, the Department will continue to monitor to determine if the conditions agreed to continue to be met by reviewing an annual status report submitted by the nursing facility.

§ 1187.175 – Criteria for the approval of bed transfer requests

One commentator suggested the provisions related to bed transfer requests are written in a manner that will limit a provider's ability to make modifications to their physical plant, provide the highest quality care and meet regulatory expectations. This commentator questioned if the Department intends for the capital component payment to follow the bed from the surrendering provider to the receiving provider. The commentator recommended the capital component payment follow the bed, but at a minimum requests that the Department includes language in the regulation to clarify this issue.

Another commentator expressed support for the concept of bed transfers between facilities and agrees that a facility receiving the MA licensed beds should be held to an

established minimum MA occupancy level. The commentator asserted that population and demographic shifts within Pennsylvania do occur and that the Commonwealth and interested nursing facilities should have the ability to negotiate bed transfers.

Response

The Department does not agree that the regulations limit a provider's ability to make modifications to its physical plant, provide the highest quality care and meet regulatory expectations. To the contrary, regardless of whether they transfer beds, nursing facility providers can and must modify their physical plant as may be necessary to provide quality care consistent with Federal and State MA Program participation requirements.

Although the participation review regulations do not address whether the beds that are transferred to the receiving facility will be eligible for the capital component of payments, the Department's regulations relating to payment for nursing facility services provide the guidelines for the waiver of the capital component payment limitation in certain circumstances. 55 Pa. Code §§ 1187.113 and 1187.113b (relating to capital component payment limitation; capital cost reimbursement waivers - statement of policy). In accordance with those provisions, the provider can include a request for capital component payments with its bed request, and the Department will act upon the payment request in the context of reviewing the bed transfer request.

The Department appreciates the commentator's support of the concept of bed transfers between nursing facilities and the requirement that the receiving provider achieve and maintain a specific MA day-one admission rate as stated under § 1187.175(a)(2).

§ 1187.175(a)(2) – MA day-one admission rate

One commentator asked the Department to clarify how it will calculate the surrendering provider's MA day-one admission rate that the receiving provider's MA day-one admission rate will be required to meet or exceed.

Response

The Department will determine the MA day-one admission rate using the most recent MA day-one report completed and posted to its website prior to the application date of the bed transfer request. This report is generally updated quarterly using data obtained from Minimum Data Set (MDS) submissions. Each report spans a full year which ends on the day prior to each picture date. A picture date is the first calendar day of the second month of each calendar quarter as defined under § 1187.2 (relating to definitions) and shows a "snapshot" of residents in Pennsylvania nursing facilities.

Section 1187.174(2) has been amended to provide additional clarification as to which report the Department will use to determine the MA day-one admission rate. In addition, the definition of "MA day-one admission rate" has been amended by replacing the language "fiscal year" with "12-month period" and a definition for "MA day-one report" has been added under § 1187.162 (relating to definitions).

*§ 1187.175(a)(5)-(7) – Change in peer group and costs to the MA Program
(renumbered as § 1187.175(a)(4)-(6))*

One commentator questioned whether a bed transfer request will be disapproved if the request results in one of the nursing facilities changing peer groups, or will only be approved if both nursing facilities remain in the same peer groups as prior to the bed transfer.

Another commentator expressed the concern that the criterion related to increased MA cost resulting from bed transfers will benefit Pennsylvania's Medicaid budget, but not MA recipients. The commentator recommended modifying the language to allow for increased costs to the MA Program if it results in improving or maintaining access to care. IRRC requested an explanation of how the criteria for the approval of bed transfer requests will benefit MA recipients.

Response

These provisions avoid the excessive shifting of nursing facility beds as a means to manipulate peer groups for an increased per diem rate. If the per diem rates would increase as a result of peer group manipulation, it would be at the expense of other facilities and ultimately the MA recipients and the MA Program.

The Department uses peer groups, peer group medians and peer group prices to determine case-mix rates for nonpublic nursing facilities for each state fiscal year. The Department uses geographic location and bed size to group facilities, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, into one of 12 peer groups in accordance with 55 Pa. Code

§ 1187.94 (relating to peer grouping for price setting). The median of each peer group is used to calculate prices for three of the four cost centers (resident care, other resident related, administrative) of each peer group in accordance with 55 Pa. Code § 1187.96 (relating to price- and rate-setting computations). These peer group prices are a major component in the per diem rates.

The Department will not disapprove a bed transfer request if either of the facilities changes peer groups unless the change in peer groups results in increased reimbursement for either the surrendering or receiving provider or decreased reimbursement for any other providers. Data used to make the determination of whether an increase in either the surrendering or receiving provider's MA rate or whether there is a decrease in any other providers' MA rate will occur will be from the most recent rate quarter as of the date of the request for the bed transfer. If the rates for the most recent rate quarter are not final, the data used for the proposed rates will be used. The surrendering or receiving provider will stay in the originating peer group if it still meets the criteria for that group since these regulations do not supersede the current regulations relating to peer groups at § 1187.94.

§§ 1187.175(a)(1)-(8) and 1187.177(a)(1)-(4) – Bed requests and bed transfer requests (§ 1187.177 renumbered as § 1187.176)

One commentator questioned whether it is the Department's intent to disapprove a request if all the criteria are not met. The commentator requested clarification on how the approval criteria will be applied and recommended that the Department provide some room for flexibility in the provisions to allow for the exchange of information

between the applicant and the Department as well as exceptions to the established provisions.

Response

The Department will disapprove a bed transfer request or bed request if any of the items in §§ 1187.175(a) and 1187.176(a) are not satisfied.

In addition, for bed transfer requests under § 1187.175, the Department added subsection (c) and amended paragraphs (3) and (4) to clarify that approval of a bed transfer request is not a determination that additional MA-certified beds are needed in a particular region to maintain or improve MA recipients' access to medically necessary services. Bed transfers pertain to the redistribution of existing beds in the MA Program, not the addition of new beds. In reviewing a bed transfer request, the Department will assess whether or not approval of a bed request would create a need for additional beds in a particular region under § 1187.175(a)(3) and (4). The Department also added criterion under paragraph (8) to clarify that the receiving provider shall be licensed, MA-certified and available for immediate occupancy prior to the surrendering provider decertifying and closing beds.

§§ 1187.175(b), 1187.176(b) and 1187.177(c) – Goal of rebalancing

IRRC requested the Department to point to the statutory language that would support the Department's goal to rebalance the Commonwealth's publicly-funded long-

term living system to create a fuller array of service options for MA recipients. IRRC also asked the Department to explain what criteria will be used to make this determination. A commentator asked how the Department will determine whether or not a request will negatively affect the goal to rebalance the long-term care delivery system, how it will be measured and whether the Department will consider the negative impact on affected nursing facilities as part of the determination.

Response

Consideration of the availability of HCBS has been a part of the Department's needs assessment for additional MA-certified beds in a geographic area since the first statement of policy was issued in 1998. By directing the Department to continue to use the existing statement of policy and develop regulations in reviewing and responding to bed requests, the General Assembly sanctioned this approach. *Id.*, 62 P.S. § 443.1(8). Moreover, the General Assembly has specifically endorsed a balance of institutional and home-and-community based long term care as "in the best interests of all Pennsylvanians." Act of July 25, 2007 (P.L. 402, No.56) (Act 56).

As noted above, balancing the LTL service system does not mean that the Department will never approve increases in MA nursing facility beds. What it does mean, however, is that the Department will evaluate requests for increases in the context of creating a balanced continuum of publicly-funded care.

The Department will consider the availability of both existing nursing facility services and alternative HCBS in assessing the need for additional institutional capacity in the

MA Program and if the county or PSA of the requesting facility has sufficient nursing facility beds.

§§ 1187.175(b)(2), 1187.176(b)(2) and 1187.177(c)(2)– Alternatives to nursing facility bed requests

A commentator contends that the focus in considering alternatives to nursing facility services should be solely on the needs of the recipient and not the cost to the MA Program and recommended modifying the language and eliminating consideration of costs to the MA Program.

Response

The criteria relating to alternatives allows for the Department to manage and target increases in MA beds and determine where the beds are required. This process assures MA recipients have appropriate access to care. Careful stewardship of institutional resources permit the expansion of other service options for MA recipients, such as more HCBS.

§ 1187.176 – Criteria for the approval of closed-campus CCRC bed requests

The Department received varying comments regarding CCRC bed requests. Senator Steward J. Greenleaf, Representative Bernard T. O'Neill and several commentators expressed their support for allowing CCRCs to access MA certified beds

under limited circumstances to allow residents to age in place. Another commentator, however, suggested the regulation is crafted for the benefit of the Department's Medicaid budget and not for the benefit of MA recipients and asks that CCRCs be allowed temporary certification so residents may age in place.

Another commentator supports the overall intent of the proposed rule to provide a limited bed process for CCRCs, but suggests refining the language to better meet the Department's policy objectives.

In contrast, several commentators expressed concerns with the special provisions provided for closed-campus CCRCs. They suggest the provisions are too restrictive or offer a strategic advantage and special treatment to one small segment of nursing facilities. Another commentator asserts the MA day-one requirement for closed-campus CCRC requests must be consistent with the requirements for any other nursing facility provider seeking to add MA beds. The commentators requested reexamination of the CCRC provisions, amendment of the provisions or deletion of the provisions. IRRC also questioned the need for separate criteria for CCRC bed requests compared to non-CCRC bed requests and asked for this criteria to be explained. One of the commentators requested the Department provide information on how it will monitor whether or not the provider continues to meet the definition of a "closed-campus CCRC."

Finally, IRRC and a commentator also expressed concern with the ratio of CCRC's independent living units to its nursing facility beds, which must be equal to or less than 17 independent living units to 1 nursing facility bed. IRRC requests an explanation of the basis for the ratio. The commentator contended the provision is unduly limiting,

arbitrary and not reflective of industry practice. The commentator requested the provision be deleted.

Response

As previously stated, after careful consideration, the Department has decided not to include separate CCRC provisions in the final-form regulations. The provisions pertaining solely to closed-campus CCRCs, including § 1187.176 (relating to criteria for the approval of closed-campus CCRC bed requests), have been deleted and §§ 1187.176 – 1187.178 have been renumbered accordingly. Under the final-form regulation, the process and criteria for reviewing a CCRC nursing facility bed request for participation in the MA Program is the same process and criteria for all nursing facility bed requests. The Department does not agree that establishing a uniform process and set of criteria for bed requests will prohibit MA recipients from accessing medically-necessary nursing facility services. To the contrary, having a separate set of criteria for nursing facility beds associated with a CCRC may inhibit the Department's efforts to develop a fuller array of services.

§ 1187.177(a)(3)(ii) and (iv) – Criteria for the approval of bed requests other than bed transfer requests – MA occupancy rate (renumbered as § 1187.176)

A commentator suggested that the requirement of an MA occupancy rate for bed requests places an unreasonable burden on nursing facilities because it will impose an artificial application of a mandated percentage of MA residents inhibiting them from expanding their outreach to MA-eligible individuals. The commentator requested the

paragraph be deleted from these regulations. IRRC also inquired regarding the need for this criterion.

The commentator also questioned the provision to employ welfare or MA recipients in its subject facility and suggested the deletion of the provision.

Response

The requirement to maintain a specified MA occupancy rate does not inhibit outreach to MA eligible individuals. Since the provision permits a facility to exceed the average MA occupancy rate, it contemplates and allows expanded outreach. In addition, this provision is needed to ensure that MA eligible individuals will have adequate access to medically necessary nursing facility services. Maintaining a minimum MA occupancy rate suggests that MA recipients are occupying the additional beds as necessary.

After careful consideration, the Department has deleted the requirement to employ welfare or MA recipients in the subject facility as a regulatory requirement.

§ 1187.177(b) – Bed request overall occupancy rates (renumbered as §1187.176)

IRRC asked the Department to explain how it determined the numeric percentages relating to average annual occupancy rate to be appropriate and reasonable. A commentator also recommended that an occupancy rate threshold of 90% or less be

deemed sufficient in assessing the need for additional MA-certified beds in a particular PSA and county.

Response

Although the Department considers individual nursing facilities to be fully occupied with an occupancy ratio in the range of 90% to 95% with smaller facilities (119 beds or less) at the lower end of the range the Department disagrees with the recommendation that the occupancy rate threshold be lowered from 95% to 90%. The overall occupancy rate in section 1187.176(b) refers to the overall occupancy rate for a particular region, not an individual facility. An individual nursing facility currently enrolled in the MA Program submitting a request for additional beds may be at full capacity while an adequate number of beds are still available in the requesting facility's county and PSA to meet the needs of MA recipients. The Department will not approve additional nursing facility beds unless they are needed to provide access to medically necessary nursing facility services in a particular region.

Other states have varying overall occupancy criteria for adding new nursing facility beds. For example, Ohio has a moratorium on new beds, New York's overall utilization threshold is 97%, and Maryland's overall regional occupancy target is 95% for bed need projections.

Additional changes

In addition to the changes previously discussed, the Department has amended § 1187.173 (b) by changing the word “those” to “bed transfer” and adding language to clarify the timeline for decisions pertaining to bed transfer requests. Subject to expedited review, the Department will issue decisions on bed transfer requests within 120 days after the expiration of the 30-day public comment period. This change will provide nursing facility providers with a specific timeline for decisions relating to bed transfer requests. Also, the Department amended § 1187.175(a)(6), renumbered as § 1187.175(a)(5). For purposes of consistency, the language “receiving facility” was changed to “receiving provider”. Further, the Department made a correction to § 1187.176(a)(2)(i) and (ii). The subparagraphs incorrectly stated “primary service” instead of “primary service area.”

Regulatory Review Act

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on **APR 16 2012** the Department submitted a copy of this regulation to the IRRC and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Public Health and Welfare. In compliance with the Regulatory Review Act the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered comments received from the Committees, the IRRC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was approved by the Committees on . The IRRC met on and approved the regulation.

In addition to submitting the final-form 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.

Order

The Department finds:

- (a) The public notice of intention to adopt the administrative regulation by this Order has been given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa.Code §§ 7.1 and 7.2.
- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting pursuant to section 443.1(8) of the Public Welfare Code (62 P. S. § 443.1(8)) orders:

- (a) The regulation of the Department is adopted to read as set forth in Annex A of this Order.
- (b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.
- (c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon final publication in the *Pennsylvania Bulletin*.

Commentator List—Participation Review

Barb Dively
Executive Director
Acquired Brain Injury Network of Pennsylvania
b2272@prodigy.net

Stewart J. Greenleaf
State Senator
Senate of Pennsylvania
Senate Box 203012
The State Capitol
Harrisburg, PA 17120-3012

Michael J. Wilt
Executive Director
PACAH
17 North Front Street
Harrisburg, PA 17101

Barbara Creighton
Chair, Resident Advisory Council
Maris Grove
100 Maris Grove Way
Glen Mills, PA 19342

Robert Jacoby
Chair, Resident Advisory Council
Ann's Choice
10000 Ann's Choice Way
Warminster, PA 18974

Adam Kane
Esq., Senior Vice President of Corporate Affairs
Erickson Living
5525 Research Park Drive
Baltimore, MD 21228

W. Russell McDaid
V.P. of Public Policy
PANPHA
1100 Bent Creek Blvd.
Mechanicsburg, PA 17050

Anne Henry
Chief Operating Officer
PHCA
315 North Second Street
Harrisburg, PA 17101

Bernard T. O'Neill
PA House Representative
29th Legislative District-Bucks County
PO Box 202029
Harrisburg, PA 17120-2029

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter C. NURSING FACILITY PARTICIPATION

§ 1187.21. Nursing facility participation requirements.

In addition to meeting the participation requirements established in Chapter 1101 (relating to general provisions), a nursing facility shall meet the following requirements:

* * * * *

(5) The nursing facility shall meet the requirements of Subchapter L (relating to nursing facility participation requirements and review process).

**Subchapter L. NURSING FACILITY PARTICIPATION REQUIREMENTS AND
REVIEW PROCESS**

GENERAL PROVISIONS

Sec.

1187.161. Applicability.

1187.162. Definitions.

BED REQUESTS

1187.171. Enrollment in the MA Program and expansion of existing providers.

1187.172. Contents and submission of bed requests.

1187.173. Review and public process relating to bed requests.

1187.174. Information and data relevant to bed requests.

1187.175. Criteria for the approval of bed transfer requests.

1187.176. [Criteria for the approval of closed-campus CCRC bed requests.

1187.177.] Criteria for the approval of bed requests other than bed transfer requests, [or closed-campus CCRC bed requests.

1187.178.] 1187.177. Time lines for completion of approved projects.

GENERAL PROVISIONS

§ 1187.161. Applicability.

This subchapter applies to applicants as defined in § 1187.162 (relating to definitions).

§ 1187.162. Definitions.

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

Applicant—A legal entity or a person authorized by and acting on behalf of a legal entity who submits a bed request to the Department.

Bed request—A request by an applicant for the Department's approval to increase the number of MA-certified beds in a subject facility that is a provider or a request by an applicant to increase the number of MA-certified beds in the MA Program by enrolling a subject facility as a new provider.

Bed transfer request—A bed request in which the following conditions apply:

(i) The applicant seeks the Department's approval to increase the number of MA-certified beds in a provider.

(ii) The applicant represents that, if the Department approves the request, at least the same number of MA-certified beds will be decertified and closed at a different provider.

(iii) The providers are located in the same county, or the driving distance between providers is no greater than 25 miles if both providers are in MSA Level A, as specified by the Federal Office of Management and Budget in the OMB Bulletin No. 99-04, or no greater than 50 miles in all other cases.

[*CCRC*—Campus continuing care retirement community.

Closed-campus CCRC—An entity certified as a CCRC by the Insurance Department in accordance with the Continuing-Care Provider Registration and Disclosure Act (CCRC Act) (40 P. S. §§ 3201—3225) that meets the following conditions:

(i) The CCRC has a nursing facility component that is located on the same campus as the CCRC's independent living units and identified in the CCRC's Disclosure Statement and Resident Agreement under the CCRC Act.

(ii) The CCRC's nursing facility component only admits individuals who have completed both of the following:

(A) Paid the CCRC's entrance fee.

(B) Entered into an enforceable resident agreement with the CCRC that is effective for at least 30 days and that provides the individual the right to occupy the CCRC's independent living units.

(iii) The CCRC does not market its nursing facility component directly to the general public.

Closed-campus CCRC bed request—A bed request submitted by a closed-campus CCRC in which the subject facility is the CCRC's nursing facility component.]

Legal entity—One of the following:

(i) A person who is a licensee of a licensed nursing facility, as authorized by the Department of Health of the Commonwealth.

(ii) A person proposing to develop or construct a long-term care nursing facility as defined in Chapter 8 of the Health Care Facilities Act (35 P. S. §§ 448.801—448.821).

MA—Medical Assistance.

MA day-one admission rate—The quotient of the number of MA day-one recipients admitted to the subject facility during a [fiscal year] 12-month period, divided by the total

number of individuals admitted to the nursing facility during the same [fiscal year] 12-month period.

MA day-one recipient—An individual who is eligible for nursing facility services under the MA Program or who becomes eligible for nursing facility services under the MA Program within 60 days of the date of the individual's admission to a nursing facility.

MA day-one report – A document displaying admission rates of MA day-one recipients for a 12-month period using data obtained from Federally-approved PA specific MDS submissions for each nursing facility enrolled in the MA Program.

MA occupancy rate—The quotient of the total MA days of care reported in an MA cost report, divided by the total actual days of care reported in the same MA cost report.

Nonpublic nursing facility—A nursing facility other than a county nursing facility or a facility owned or operated by the State or Federal government.

Overall occupancy rate—The quotient of the total actual days of care reported in an MA cost report, divided by the total available days of care reported in the same MA cost report.

Owner—A person having an ownership or control interest, as defined in section 1124(a) of the Social Security Act (42 U.S.C.A. § 1320a-3(a)), in the subject facility.

Person—A natural person, corporation (including associations, joint stock companies and insurance companies), partnership, trust, estate, association, the Commonwealth, and any local government unit, authority and agency thereof.

Primary service area—One of the following:

- (i) The county in which the subject facility is or will be physically located.
- (ii) The geographic area from which the subject facility draws or is expected to draw at least 75% of its resident population, as determined by the Department.

Proposed project—Any one of the following:

- (i) An increase in the number of licensed beds in a provider.
- (ii) The construction of a new county or nonpublic nursing facility if there is an expectation that the facility will become a provider.
- (iii) The enrollment of a county or nonpublic nursing facility as a provider.

Provider—A licensed county or nonpublic nursing facility that is certified and enrolled as a nursing facility provider in the MA Program.

Receiving provider—The provider identified in a bed transfer request which will increase the number of its MA-certified beds if the bed transfer request is approved. The receiving provider is the subject facility of the bed transfer request.

Related party—A person who is or would be identified as a related party in a subject facility's MA cost report if the person were to provide goods, services or property to the subject facility.

Specialized medical services—Services that require staffing with advance training and need-specific equipment, including services needed by an individual who has severe dementia or traumatic brain injury or who requires a respirator for survival, or who receives bed side hemodialysis. Specialized medical services are not routinely provided in general nursing facilities and do not include the services of a dedicated Alzheimer's unit or infection isolation wing, osteopathic treatment or similar services.

Subject facility—An existing or proposed county or nonpublic nursing facility identified on a bed request that will increase the number of its licensed nursing facility beds or enroll as a provider in the MA Program if the bed request is approved.

Surrendering provider—The provider identified on a bed transfer request which will decertify and close at least the same number of MA-certified beds as the receiving provider identified in the same bed transfer request, if the request is approved.

BED REQUESTS

§ 1187.171. Enrollment in the MA Program and expansion of existing providers.

(a) As a condition of participation in the MA Program, an applicant shall submit a bed request to the Department and obtain the Department's advance written approval before increasing the number of MA-certified beds in a subject facility that is a provider, or before applying for the enrollment of a subject facility as a new provider.

(b) As a condition of participation in the MA Program, an applicant shall submit its bed request to the Department prior to commencing a proposed project that involves the construction of a new nursing facility or an expansion of an existing nursing facility.

§ 1187.172. Contents and submission of bed requests.

(a) *Required contents.* An applicant's bed request must contain the following information:

(1) *Ownership information.*

(i) The applicant shall provide the name and address of each person who is any of the following:

(A) The applicant, and a description of the applicant's involvement in the proposed project.

(B) The legal entity of the subject facility.

(C) An owner of the subject facility.

(D) A related party involved in the proposed project and a description of the related party's involvement with the project.

(ii) For each person identified, the applicant shall specify whether:

(A) The person is a spouse, parent, child or sibling of another person identified.

(B) During the 3-year period preceding the bed request, the person is or was an owner of a nursing facility, whether or not located in this Commonwealth, and if so the name and address of each of the nursing facilities.

(2) *Project overview.*

(i) The applicant shall provide an overview of the proposed project which includes a description of the population and primary service area the applicant intends to serve.

(ii) The applicant shall include a narrative and supporting documentation addressing each criterion in [§§ 1187.175—1187.177] §§ 1187.175 and 1187.176 (relating to criteria for the approval of bed transfer requests[; criteria for the approval of a closed-campus CCRC bed requests;] and criteria for the approval of bed requests other than bed transfer requests [or closed-campus CCRC bed requests]), as applicable, and indexed to the criterion being addressed.

(3) *Financial information.*

(i) The applicant shall provide a feasibility or market study and financial projections prepared for the project that identify the following:

(A) Project costs.

(B) Sources of project funds.

(C) Projected revenue sources by payor type.

(D) Specific assumptions used and expected occupancy rates by payor type.

(ii) The applicant shall provide independent audited or reviewed financial statements of the subject facility for the most recent year prior to the fiscal year in which the bed request is filed. If the financial statements are not available for the subject facility, the applicant shall provide independent audited or reviewed financial statements of the legal entity or parent corporation of the subject facility for the most recent year prior to the fiscal year in which the bed request is filed.

(4) *Compliance history.* For each person identified in the ownership information section of the bed request as specified under paragraph (1), an applicant shall specify whether or not any of the following applies, and, if so, the applicant shall attach copies of all documents relating to the applicable action, including notices, orders or sanction letters received from the Federal Centers for Medicare and Medicaid Services or any state Medicaid, survey or licensing agency:

(i) The person is currently precluded, or at any time during the 3-year period preceding the bed request, was precluded from participating in the Medicare Program or any State Medicaid Program.

(ii) The person is or, at any time during the 3-year period preceding the date of the bed request, was a party to, or the owner of a party to a corporate integrity agreement with the Department or the Federal government.

(iii) The person owned, operated or managed a nursing facility, including the subject facility, and, at any time during the 3-year period preceding the date of the bed request, one of the following applies:

(A) The facility was precluded from participating in the Medicare Program or any State Medicaid Program.

(B) The facility had its license to operate revoked or suspended.

(C) The facility was subject to the imposition of civil monetary penalties, sanctions or remedies under State or Federal law for resident rights violations.

(D) The facility was subject to the imposition of remedies based on the failure to meet applicable Medicare and Medicaid Program participation requirements, and the facility's deficiencies were graded as immediate jeopardy to resident health and safety.

(E) The facility was designated a special focus facility by the Federal Centers for Medicare and Medicaid Services, indicating a poor performing facility.

(5) [*Closed-campus CCRC bed request information.* In addition to the information specified in paragraphs (1)—(4), an applicant submitting a closed-campus CCRC bed request shall include the following information:

(i) An overview of the mission of the CCRC and the services offered by the CCRC, including the community-based services provided by the CCRC and the number of independent, personal care, and assisted living units available in which to provide those services.

(ii) A copy of the Certificate of Authority issued by the Insurance Department.

(iii) A copy of the CCRC's standard resident's agreement for each component of the CCRC's continuum.

(iv) A copy of the CCRC's disclosure statement.

(v) A copy of all marketing materials related to the CCRC.

(6)] *Certification and authority.*

(i) A bed request shall be signed by the applicant.

(ii) The applicant shall certify that the representations made and the information provided in the bed request are true and correct to the best of the applicant's knowledge, information and belief.

(iii) If the applicant is a person other than the legal entity of the subject facility, the applicant shall certify that the applicant is authorized to submit the bed request on behalf of the legal entity and that the legal entity has reviewed and approved the contents of the bed request.

(b) *Optional information.* In addition to the required content specified under subsection (a), an applicant may include in its bed request whatever information the applicant feels is relevant to or supports its bed request.

(c) *Submission.* An applicant shall submit an original and two copies of its bed request to the Department.

§ 1187.173. Review and public process relating to bed requests.

(a) *Groups.* Except as specified in subsection (b), the Department will consider bed requests in two groups, as follows:

(1) Group one will consist of bed requests received January 1 through June 30. Subject to subsection (c), the Department will [use its best efforts to] issue decisions on group one by the following December 31[.]; provided that, if the Department receives public comments under subsection (d), then the Department may extend the review process an additional 90 days.

(2) Group two will consist of bed requests received from July 1 through December 31. Subject to subsection (c), the Department will [use its best efforts to] issue decisions on group two by the following June 30[.]; provided that, if the Department receives public comments under subsection (d), then the Department may extend the review process an additional 90 days.

(b) *Bed transfer requests.*

(1) The Department will consider bed transfer requests in the order in which they are received.

(2) Subject to subsection (c), the Department will issue decisions on [those] bed transfer requests [on an ongoing basis] within 120 days after the expiration of the public comment period under subsection (d).

(c) *Expedited review.* If an applicant demonstrates to the satisfaction of the Department that good cause exists, the Department, within its sole discretion, may expedite its review and respond to a bed request before the target date; provided that the Department will not respond prior to the close of the applicable public comment period specified in subsection (d).

(d) *Public process.*

(1) *Data book.* The Department will compile and make available [online] on the Department's website a workbook for each review period containing the following:

(i) Data relating to the availability and cost of MA nursing facility services Statewide and by county.

(ii) Data relating to the availability and cost of home and community-based services Statewide and by county.

(iii) Commonwealth and county demographic data.

(2) *Publication of and public comment period for bed requests.* Following the close of each 6-month request period, the Department will post [online] on the Department's website a list of bed requests, other than bed transfer requests [and closed-campus CCRC bed requests,] included in the group under consideration. The Department will make [copies of] the requests in that group available for review by the public during regular business hours, and will accept written comments related to the requests in the group for a 30-day period following the date that the notice is posted online. Written

comments received by the Department and the applicant's responses to the public comments will be posted on the Department's website.

(i) The group one list will be posted [online] on the Department's website on or before July 31.

(ii) The group two list will be posted [online] on the Department's website on or before January 31.

(3) *Publication of and public comment period for bed transfer requests [and closed-campus CCRC bed requests].* No later than 15 calendar days following the last day of each calendar month, [the Department will post online] a list of the bed transfer requests [and closed-campus CCRC bed requests] received by the Department during that calendar month will be posted on the Department's website. The Department will make [copies of] the requests listed for that calendar month available for review by the public during regular business hours, and will accept written comments related to the requests for a 15-calendar-day period following the date that the list is posted online. Written comments received by the Department and the applicant's responses to the public comments will be posted on the Department's website.

§ 1187.174. Information and data relevant to bed requests.

In reviewing an applicant's bed request, the Department will consider the information provided by the applicant and any public comments received on the request. In addition, the Department may consider information contained in the Department's books and

records or obtained from persons other than the applicant that is relevant to the applicant's bed request, including the following:

(1) Data relating to the overall occupancy rates of MA nursing facilities in the primary service area identified in the bed request, the county in which the subject facility is or will be located, and, in the case of a bed transfer request, the county in which the surrendering provider is located.

(2) Data relating to the MA day-one admission rates and the MA occupancy rates of MA nursing facilities in the primary service area identified in the bed request, the county in which the subject facility is or will be located, and, in the case of a bed transfer request, the county in which the surrendering provider is located.

(i) The Department will determine the MA day-one admission rate using the most recent MA day-one report completed and posted to the Department's website prior to January 1 for Group one and July 1 for Group two as provided under § 1187.173(a) (relating to review and public process relating to bed requests).

(ii) The Department will determine the MA day-one admission rate using the most recent MA day-one report completed and posted to the Department's website prior to the application date of the bed transfer request.

(3) Data relating to the availability of home and community-based services in the primary service area identified in the bed request, the county in which the subject facility is or will be located, and, in the case of a bed transfer request, the county in which the surrendering provider is located.

(4) Data relating to the demographics of the primary service area identified in the bed request, the county in which the subject facility is or will be located, and, in the case of a bed transfer request, the county in which the surrendering provider is located.

(5) Data relating to admissions and discharges at MA nursing facilities in the primary service area identified in the bed request, the county in which the subject facility is or will be located, and, in the case of a bed transfer request, the county in which the surrendering provider is located.

(6) Data relating to the compliance history of the subject facility and the persons identified in the ownership information section of the bed request, as specified under § 1187.172(a)(1) (relating to contents and submission of bed requests).

(7) If the applicant is proposing to provide specialized medical services in the subject facility, data relating to the availability of those services in the primary service area identified in the bed request the county in which the subject facility is or will be located, and, in the case of a bed transfer request, the county in which the surrendering provider is located.

§ 1187.175. Criteria for the approval of bed transfer requests.

(a) Upon consideration of the information specified in § 1187.174 (relating to information and data relevant to bed requests), the Department may approve a bed transfer request only if the following are satisfied:

(1) The bed transfer request contains the information required in § 1187.172(a) (relating to contents and submission of bed requests).

(2) The receiving provider agrees to achieve and maintain an MA day-one admission rate that is equal to or greater than the surrendering provider's MA day-one admission rate or another MA day-one admission rate as may be agreed-to by the Department.

(3) The [decrease in beds at the surrendering provider will not result in access barriers to nursing facility services] change in the bed complements of the receiving and surrendering providers will maintain or improve access to medically necessary nursing facility services for MA recipients.

(4) [The increase in beds at the receiving provider will maintain or improve access to medically necessary facility services for MA recipients.

(5) Neither provider will receive an increase in reimbursement as a result of a change in its peer group if the bed transfer request is approved.

[(6)] (5) If the proposed bed transfer will result in a change in peer group assignments under this chapter for the surrendering or receiving [facility] provider, the change will not have a negative effect on the MA Program, on MA recipients or on other facilities which are members of the affected peer group.

[(7)] (6) Approval of the bed transfer request will not result in increased costs to the MA Program.

[(8)] (7) None of the circumstances specified in § 1187.172(a)(4) applies.

(8) Both the surrendering provider and the receiving provider agree that the new or additional beds at the receiving provider shall be licensed, MA-certified and available for immediate occupancy before the surrendering provider decertifies and closes any beds.

(b) The Department may deny a bed transfer request even if the conditions specified in subsection (a) are satisfied if the Department determines one of the following:

(1) Approval of the request would negatively affect the Department's goal to rebalance the Commonwealth's publicly-funded long-term living system to create a fuller array of service options for MA recipients.

(2) There are alternatives to the transfer of beds, such as an increase in home and community-based services, that would be less costly, more efficient or more appropriate in assuring that long-term living care and services will be provided under the MA Program in a manner consistent with applicable Federal and State law.

(c) Approval of a bed transfer request is not a determination that additional MA-certified beds are needed to maintain or improve MA recipients' access to medically necessary services in the primary service area or county in which the receiving provider is located.

§ 1187.176. [Criteria for the approval of closed-campus CCRC bed requests.]

(a) The Department may approve a closed-campus CCRC bed request only if the following are satisfied:

(1) The closed-campus CCRC bed request contains the information required in § 1187.172(a) (relating to contents and submissions of bed requests).

(2) The closed-campus CCRC shall be enrolled as an MA waiver provider and shall provide MA waiver services to its individuals residing in the CCRC's residential living units.

(3) The closed-campus CCRC shall have a written policy that allows individuals who are admitted to CCRC's independent living units to remain in their independent living unit and receive home and community-based services.

(4) The ratio of CCRC's independent living units to its nursing facility beds must be equal to or less than 17 independent living units to 1 nursing facility bed.

(5) The closed-campus CCRC and the legal entity of the subject facility of closed campus CCRC request shall agree in a form acceptable to the Department to close and decertify any additional MA-certified beds that are approved through this process if the CCRC no longer meets the definition of a closed-campus CCRC.

(6) None of the circumstances specified in § 1187.172(a)(4) applies.

(b) The Department may deny a closed-campus CCRC bed request even if the conditions specified in subsection (a) are satisfied if the Department determines one of the following:

(1) Approval of the request would negatively affect the Department's goal to rebalance the Commonwealth's publicly-funded long-term living system to create a fuller array of service options for MA recipients.

(2) There are alternatives to nursing facility beds such as an increase in home and community-based services, that would be less costly, more efficient or more appropriate in assuring that long-term living care and services will be provided under the MA Program in a manner consistent with applicable Federal and State law.

§ 1187.177.] Criteria for the approval of bed requests other than bed transfer requests [or closed-campus CCRC bed requests].

(a) The Department may approve a bed request, other than a bed transfer request [or a closed-campus CCRC bed request,] only if the following are satisfied:

(1) The bed request contains the information required in § 1187.172(a) (relating to contents and submission of bed requests).

(2) The additional MA-certified nursing facility beds are needed in the primary service area or the county in which the subject facility is located to maintain or improve MA recipients' access to medically necessary nursing facility services based on any of the following:

(i) The existing MA-certified bed capacity in the primary service area or the county in which the subject facility is or will be located is insufficient to assure that MA recipients have access to medically necessary nursing facility services.

(ii) Systemic barriers prevent MA recipients from accessing the existing MA-certified bed capacity in the primary service area or the county in which the subject facility is or will be located.

(iii) The applicant is proposing to admit and serve MA recipients who require specialized medical services in the subject facility and MA recipients do not have access to the specialized medical services in the existing MA-certified bed capacity in the primary service area or the county in which the subject facility is or will be located.

(3) The legal entity agrees, in a form acceptable to the Department, to the following:

(i) The subject facility will admit and serve MA day-one recipients.

(ii) The subject facility will maintain an MA occupancy rate that equals or exceeds the average MA occupancy rate of MA nursing facilities in the county in which the subject facility is or will be located or, in the case of a subject facility that is proposing to offer specialized medical services, the MA occupancy rate as may be agreed-to by the Department.

(iii) The construction and operation of the new or additional beds will be economically and financially feasible without the receipt of MA fixed property capital component payments, and it is not entitled to MA capital component payments for fixed property related to the new or additional beds.

[(iv) The legal entity will employ welfare or MA recipients in its subject facility.]

(4) None of the circumstances specified in § 1187.172(a)(4) applies.

(b) In determining whether a need for additional MA-certified beds exists under subsection (a), the following will apply:

(1) MA-certified bed capacity will be deemed sufficient if the average annual overall occupancy rates of providers in the primary service area and county in which the subject facility is or will be located is 95% or less, based on the most recent MA cost report data submitted by those providers.

(2) If the average annual overall occupancy rates of providers in the primary service area or county in which the subject facility is located exceeds 95%, based on the most recent MA cost report data submitted by those providers, the Department will consider the following information in assessing whether a need for additional MA-certified beds exists:

(i) The total number of MA-certified nursing facility beds in the primary service area.

(ii) The total number of licensed nursing facility beds in the primary service area.

(iii) The annual overall occupancy rates of providers in the primary service area based on the most recent MA cost report data submitted by those providers.

(iv) The annual actual bed days in the primary service area for the most recent 3-year period including the most recent cost report period, as submitted by nursing facility providers in the primary service area.

(3) No systemic barrier that prevents MA recipients from accessing MA-certified bed capacity will be deemed to exist if the average MA occupancy rate and the average MA

day-one admission rate of providers in the primary service area and county in which the subject facility is or will be located are above the Statewide average rates or within one percentage point below the Statewide rates.

(c) The Department may deny a bed request even if the conditions specified in subsection (a) are satisfied if the Department determines one of the following:

(1) Approval of the request would negatively affect the Department's goal to rebalance the Commonwealth's publicly-funded long-term living system to create a fuller array of service options for MA recipients.

(2) There are alternatives to the bed request, such as an increase in home and community-based services, that would be less costly, more efficient or more appropriate in assuring that long-term living care and services will be provided under the MA Program in a manner consistent with applicable Federal and State law.

[§ 1187.178.] § 1187.177. Time lines for completion of approved projects.

(a) If the Department approves a bed request, the approved project shall be completed in sufficient time so that the beds may be licensed, certified and available for occupancy within 3 years from the date of the Department's decision, or by another date as may be agreed to by the Department.

(b) The provider will make documentation available upon the Department's written request at any time and for so long as the nursing facility is an MA provider, as may be

necessary to demonstrate compliance with the terms of the approved exception request.

CHAPTER 1189. COUNTY NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1189.3. Compliance with regulations governing noncounty nursing facilities.

(a) Unless a specific provision of this chapter provides to the contrary, the following subchapters of Chapter 1187 ([related] relating to nursing facility services) are applicable to county nursing facilities:

* * * * *

(6) Subchapter L (relating to nursing facility participation requirements and review process).

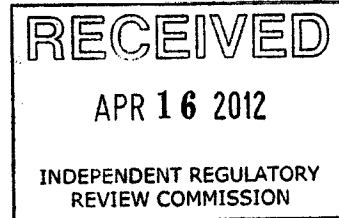
* * * * *

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 14-524
 SUBJECT: PARTICIPATION REVIEW PROCESS FOR MEDICAL ASSISTANCE
 NURSING FACILITIES
 AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
- X 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



FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
X 4/10/12	<i>Jim Casey</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
X 4/16/12	<i>Jennifer Korac</i>	MAJORITY CHAIRMAN <u><i>DiGirolamo</i></u>
X 4/16/12	<i>Deborah Loomis</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
X 4/16/12	<i>Vict Davis</i>	MAJORITY CHAIRMAN <u><i>Vance</i></u>
4/16/12	<i>Steph J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)