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2013 JUL 31 PM 2:38

# Regulatory Analysis Form

(Completed by Promulgating Agency)

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

(1) Agency  
Department of Public Welfare  
Office of Long-Term Living

(2) Agency Number:  
Identification Number: 14-537

IRRC Number: 3016

(3) PA Code Cite:  
55 Pa.Code Chapter 1187

(4) Short Title:  
Payment for Nursing Facility Services Provided by Special Rehabilitation Nursing Facilities

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

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(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)

This proposed regulation changes the Department's methods and standards for payment of Medical Assistance (MA) nursing facility services provided by Special Rehabilitation Facilities (SRFs), effective November 1, 2011. 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. SRFs are assigned to Peer Group (PG) 13. The amendment would establish two different formulae for calculating peer group medians and prices for PG 13.

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

The Department has the authority under the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1).

(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.

This proposed regulation is not mandated by any federal or state law, regulation or court order.

(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.

The proposed regulation is needed to amend the regulations to provide for a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000.

This proposed rulemaking will primarily affect the four nursing facilities classified as SRFs in the MA Program on or before July 1, 2000. Other nonpublic nursing facilities may see a minimal positive impact estimated to be an average of 9¢ per bed day or \$2,458 per nonpublic nursing facility for Fiscal Year (FY) 2012-2013. This change does not adversely impact the facilities classified as SRFs after July 1, 2000.

In addition, this change is consistent with the currently approved State Plan. State Plan Amendment (SPA) 11-028 was submitted by the Department on December 28, 2011. It was approved by the Centers for Medicare and Medicaid Services (CMS) on March 13, 2012, and effective November 1, 2011.

This change will also ensure that the Commonwealth's MA nursing facility residents with chronic impairments continue to have access to medically necessary nursing facility services.

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

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

(12) How does this regulation compare with those of the 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 proposed regulation relates to payment rates for SRFs enrolled in the MA Program located in this Commonwealth.

(13) 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 any other existing or proposed regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department published a notice in the *Pennsylvania Bulletin* at 40 Pa.B. 7441 (December 25, 2010), proposing to change its methods and standards for payment of MA nursing facility services provided by SRFs. On October 29, 2011, the Department published a subsequent public notice superseding the notice published at 40 Pa.B. 7441. This second notice announced that the Department was considering changing its methods and standards for payment of MA nursing facility services provided by SRFs.

During the 30-day public comment period for the notice published October 29, 2011, one comment was received from Pennsylvania Health Care Association (PHCA). PHCA expressed concern that without additional funding this proposed change in rate methodology would redistribute dollars away from the other nonpublic nursing facilities with the application of the budget adjustment factor (BAF). They requested that the public notice be republished to reflect the impact on varying groups of nursing facilities instead of the aggregate. A similar comment was also received from LeadingAge PA immediately following the public comment period.

As provided in the response to question #15, this proposed rulemaking will primarily affect the four nursing facilities classified as SRFs in the MA Program on or before July 1, 2000. Other nonpublic nursing facilities may see a minimal positive impact estimated to be an average of 9¢ per bed day or \$2,458 per nonpublic nursing facility for FY 2012-2013 if rates for the four initial SRFs remain lower under this proposed methodology than the existing methodology.

Also, on December 13, 2011, the proposed change in rate methodology was discussed with members of the Long-Term Care Delivery System Subcommittee of the Medical Assistance Advisory Committee (LTC Sub).

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are approximately 621 nursing facilities (590 nonpublic and 31 county) in Pennsylvania enrolled in the MA Program. Using full year MA-11s (cost reports) available as of July 30, 2012 and grouping the nursing facilities by common ownership, 150 nonpublic nursing facilities, one of which is a SRF, had annual receipts of less than \$25.5 million and thus were identified as small businesses. See 13 CFR §§ 121.201 (relating to small business size standards) and 121.104 (relating to Small Business Administration calculation of annual receipts). Revenue data from cost reports was substituted for revenue data from federal tax returns in the determination of annual receipts. All nursing facilities enrolled in the MA Program are required to submit an MA-11 form as directed in Chapter 1187, Subchapter F (relating to cost reporting and audit requirements) and Chapter 1189, Subchapter C (relating to cost reporting and audit requirements). Cost reports are typically submitted on an annual basis and cover a 12-month period. They contain financial and statistical report schedules which are used in setting per diem rates.

This proposed rulemaking will primarily affect the four nursing facilities classified as SRFs in the MA Program on or before July 1, 2000. This proposed rulemaking has the potential to affect the other nonpublic nursing facilities that participate in the MA Program. This is because the Department uses a budget adjustment factor (BAF) to confine rates to the amounts appropriated by the General Assembly for MA payments. Therefore, any change in the SRF's rates will result in a corresponding change in the rates of the other nonpublic nursing facilities.

Although 25% of nursing facilities are identified as a small business, all the nonpublic nursing facilities (with the exception of the initial SRFs) may see a minimal positive impact. This change in rate methodology will provide three of the four initial SRFs, including the one SRF identified as a small business, an estimated additional \$0.739 million in revenue for the period November 1, 2011 thru June 30, 2012. For FY 2012-2013 and beyond, this change in rate methodology will provide an estimated decrease of \$1.684 million in revenue for the initial four SRFs. Also, there are no additional reporting requirements under this proposed regulation.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

This proposed regulation will affect nursing facilities enrolled in the MA Program classified as SRFs. Currently, there are eight SRFs in total.

There are approximately 621 nursing facilities (590 nonpublic and 31 county) in Pennsylvania enrolled in the MA Program. Of the 621 nursing facilities, 150 were identified as small businesses, one of which is a SRF. (See the response to question #15 for more details.)

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This proposed rulemaking will primarily affect the initial SRFs, one of which is a small business, enrolled in the MA Program. This change in rate methodology will provide three of the four initial SRFs, including the SRF identified as a small business, an estimated additional \$0.739 million in revenue for the period November 1, 2011 thru June 30, 2012. For FY 2012-2013 and beyond, this change in rate methodology will provide an estimated decrease of \$1.684 million in revenue for the initial four SRFs. This change does not adversely impact the facilities classified as SRFs after July 1, 2000. Other nonpublic nursing facilities may see a minimal positive impact estimated to be an average of 9¢ per bed day or \$2,458 per nonpublic nursing facility for FY 2012-2013 if rates for the four original SRFs remain lower under this proposed methodology than the existing methodology.

This change will provide a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000. In addition, this change will ensure that MA residents with chronic impairments continue to have access to medically necessary nursing facility services.

Finally, this change will align MA payment methodology to the currently approved State Plan. SPA 11-028 was submitted by the Department on December 28, 2011. It was approved by the Centers for Medicare and Medicaid Services on March 13, 2012, and effective November 1, 2011.

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

This change will provide a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000. In addition, this change will ensure that MA residents with chronic impairments continue to have access to medically necessary nursing facility services.

Finally, this change will align MA payment methodology to the currently approved State Plan. SPA 11-028 was submitted by the Department on December 28, 2011. It was approved by the Centers for Medicare and Medicaid Services on March 13, 2012, and effective November 1, 2011.

(19) 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 fiscal impact to the regulated community for the period November 1, 2011 through June 30, 2012 is a \$ 0.736 million (\$0.331million in state funds) increase in nursing facilities' rates. There are no new costs or savings to the regulated community for FY 2012-2013. Act 22 of 2011 directs the Department to apply a budget adjustment factor (BAF) in the calculation of rates for nonpublic and county nursing facilities through FY 2012-2013. The application of a BAF in the nursing facility rate setting process assures that nursing facility payment rates are limited to the percentage rate of change permitted by the funds appropriated by the General Assembly. Additional funding was added to the 2011-2012 nursing facility appropriation so that this change in peer group methodology would not be a factor in the quarterly BAF calculations for the period November 1, 2011 through June 30, 2012 as specified in the Commonwealth's currently approved State Plan.

The fiscal impact will remain budget neutral as long as the BAF is reauthorized. The fiscal impact after 2012-2013 makes the assumption that the BAF is not reauthorized beyond June 30, 2013. The implication of the proposed change in payment rates related to the SRFs is that nursing facilities' rates would be reduced by approximately \$1.684 million (\$0.770 million in state funds) on an annual basis.

An explanation of how the dollar estimates were derived is provided in the response to question #21.

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

This proposed regulation will not have any cost or savings impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **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 estimated cost to the state government for the proposed change in payment rates related to the SRFs for the period November 1, 2011 through June 30, 2012 is \$0.331 million in State funds. For FY 2013-2014 and beyond the estimated savings, assuming use of a BAF is not reauthorized after June 30, 2013, is \$0.770 million in State funds.

The dollar estimates for the two time periods described above were derived by comparing each of the initial four SRFs' MA payment rates calculated using the methodology currently in effect and their MA payment rates calculated as if the proposed methodology was final for the same time period. The difference between the two rates was multiplied by an estimated number of paid MA days for the defined period. The resulting amount reflected the expected difference in total MA payments caused by the change in methodology. The state portion of that total payment was calculated as 100% minus the estimated federal medical assistance percentage. This state portion percentage was then multiplied by the total payments to result in the estimated costs to state government for FY 2011-2012 and estimated savings, assuming use of a BAF is not reauthorized after June 30, 2013 to the state government for FY 2013-2014 and beyond.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

No new reports, forms, recordkeeping or paperwork are required by this regulation.

*Ford Spahr*

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	\$0	\$0	\$770	\$770	\$770	\$770
<b>Total Savings</b>	\$0	\$0	\$770	\$770	\$770	\$770
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government	\$331	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$331	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
Regulated Community	\$0	\$0	\$1,684	\$1,684	\$1,684	\$1,684
Local Government						
State Government						
<b>Total Revenue Losses</b>	\$0	\$0	\$1,684	\$1,684	\$1,684	\$1,684

(23a) 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	737,356



(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This proposed regulation will primarily affect nursing facilities classified as SRFs on or before July 1, 2000 enrolled in the MA Program. This change in rate methodology will provide three of the four initial SRFs, including the SRF identified as a small business, an estimated additional \$0.739 million in revenue for the period November 1, 2011 thru June 30, 2012. For FY 2012-2013 and beyond, this change in rate methodology will provide an estimated decrease of \$1.684 million in revenue for the initial four SRFs. This change will provide a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000.

(a) There are approximately 621 nursing facilities (590 nonpublic and 31 county nursing facilities) in Pennsylvania enrolled in the MA Program. Of the 621 nursing facilities enrolled in the MA Program, 150 were identified as small businesses, one of which is a nursing facility classified as a SRF on or before July 1, 2000.

(b) No new reports, forms, recordkeeping or paperwork by nursing facilities is required under this proposed regulation.

(c) Although 25% of nursing facilities are identified as a small business, all the nonpublic nursing facilities (with the exception of the four nursing facilities classified as SRFs on or before July 1, 2000, one of which is a small business) may see a minimal positive impact as stated in question #15. This change in rate methodology will provide three of the four initial SRFs, including the SRF identified as a small business, an estimated additional \$0.739 million in revenue for the period November 1, 2011 thru June 30, 2012. For FY 2012-2013 and beyond, this change in rate methodology will provide an estimated decrease of \$1.684 million in revenue for the initial four SRFs.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. This change is consistent with the currently approved State Plan.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the 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 description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Although an alternative methodology was considered, no alternative regulatory provisions were developed. Notice of the alternative methodology was published at 40 Pa.B. 7441(December 25, 2010). The current proposed methodology was agreed upon by the initial four SRFs.

In addition, this change is consistent with the currently approved State Plan. State Plan Amendment (SPA) 11-028 was submitted by the Department on December 28, 2011. It was approved by the Centers for Medicare and Medicaid Services (CMS) on March 13, 2012, and effective November 1, 2011.

The provisions effectively support the goals of the Department by providing access to quality care for MA recipients.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This change will align MA payment methodology to the currently approved State Plan. SPA 11-028 was submitted by the Department on December 28, 2011. It was approved by CMS on March 13, 2012, and effective November 1, 2011.

There are approximately 621 nursing facilities (590 nonpublic and 31 county nursing facilities) in Pennsylvania enrolled in the MA Program. Using full year MA-11s (cost reports) available as of July 30, 2012, and grouping the nursing facilities by common ownership, 150 nonpublic nursing facilities, one of which is a SRF, had annual receipts of less than \$25.5 million and thus identified as small businesses.

Although 25% of nursing facilities are identified as a small business, all the nonpublic nursing facilities (with the exception of the four nursing facilities classified as SRFs on or before July 1, 2000, one of which is a small business) may see a minimal positive impact as stated in question #15.

No new reports, forms, recordkeeping or paperwork by nursing facilities is required under this proposed regulation.

(28) 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.

No data other than what is used in the rate determination was considered. The data elements necessary to calculate rates are located at:  
<http://www.dpw.state.pa.us/provider/doingbusinesswithdpw/longtermcarecasemixinformation/index.htm>.

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

- |   |  |
|---|--|
| A. The date by which the agency must receive public comments:                               | <u>30 days after publication of proposed regulations</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | _____  |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>May 17, 2014</u>                                      |
| D. The expected effective date of the final-form regulation:                                | <u>November 1, 2011</u>                                  |
| E. The date by which compliance with the final-form regulation will be required:            | <u>November 1, 2011</u>                                  |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>Not applicable</u>                                    |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

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Copy below is hereby approved  
as to form and legality.  
Attorney General

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

(Deputy Attorney General)

JUL 24 2013

Date of Approval

Check if applicable  
Copy not approved.  
Objections attached.

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

DEPARTMENT OF PUBLIC WELFARE

(Agency)

LEGAL COUNSEL: *Edward H. Cherry*

DOCUMENT/FISCAL NOTE NO. #14-537

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

BY: *Beverly Mackenith*

TITLE: SECRETARY OF PUBLIC WELFARE

(Executive Officer, Chairman or Secretary)

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

*Shawn E. Smith*  
BY: \_\_\_\_\_

SHAWN E. SMITH

JUN 25 2013

Date of Approval

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

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

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF LONG-TERM LIVING

[55 Pa.Code Chapter 1187 Nursing Facility Services]

Payment for Nursing Facility Services Provided by Special Rehabilitation Nursing  
Facilities

### *Statutory Authority*

Notice is hereby given that the Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1), intends to amend the regulation as set forth in Annex A.

### *Purpose of Regulation*

The purpose of this proposed rulemaking is to change the Department's methods and standards for payment of Medical Assistance (MA) nursing facility services provided by Special Rehabilitation Facilities (SRFs) effective November 1, 2011. The proposed rulemaking is needed to amend the manner in which the peer group medians and peer group prices are set for facilities classified as SRFs as defined in § 1187.2 (relating to definitions).

The Department is proposing to amend § 1187.94 (relating to peer grouping for price setting) to provide for a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000. Specifically, the Department is proposing to establish two different formulae for calculating peer group medians and prices for SRFs.

### *Background*

Currently, the MA Program pays for nursing facility services provided to MA-eligible recipients in SRFs at per diem rates that are computed using the

case-mix payment system set forth in the Department's regulations at 55 Pa. Code Chapter 1187, Subchapter G (relating to rate setting). The case-mix rates for SRFs are calculated using the same methodology as all other nonpublic nursing facilities except that, for the purposes of establishing peer group medians and prices, SRFs are classified in one statewide peer group without regard to their size or geographic location.<sup>1</sup> For a nursing facility to be classified in the SRF peer group, more than 70% of the nursing facility's residents must have a neurological/neuromuscular diagnosis and severe functional limitations. See 55 Pa. Code § 1187.2.

When the case-mix system was implemented on January 1, 1996, three nursing facilities were approved as SRFs. In addition, a nursing facility related to one of the original three SRFs was approved in 2000. Between 2004 and 2008, the Department recognized and approved four other nursing facilities as SRFs because they met the existing SRF definition. These four nursing facilities tend to specialize in care for ventilator-dependent residents rather than the type of resident care provided by the SRFs initially approved. A public notice was published at 41 Pa.B. 5826 (October 29, 2011) in which the Department announced it was considering changing its methods and standards for payment of MA nursing facility services provided by SRFs.

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<sup>1</sup> Hospital-based nursing facilities are also classified in a state-wide peer group. See 55 Pa. Code § 1187.94 (relating to peer grouping for price setting).

In addition, this change is consistent with the currently approved State Plan. State Plan Amendment 11-028 was submitted by the Department on December 28, 2011. It was approved by the Centers for Medicare and Medicaid Services on March 13, 2012, and effective November 1, 2011.

### *Requirements*

Peer group medians and prices will be established for facilities classified as SRFs on or before July 1, 2000, separate from any other facilities meeting the definition of a "SRF". The methodology used to establish peer group medians and prices for facilities classified as SRFs after July 1, 2000 will not change. The four nursing facilities classified as SRFs after July 1, 2000, as well as any nursing facilities classified as a SRF in the future, will continue to have peer group medians and prices established using data from all facilities meeting the definition of a SRF.

### *Affected Individuals and Organizations*

This proposed rulemaking will primarily affect the initial SRFs enrolled in the MA Program. This change in rate methodology will provide three of the four initial SRFs an estimated additional \$0.739 million in revenue for the period November 1, 2011 thru June 30, 2012. For FY 2012-2013 and beyond, this change in rate methodology will provide an estimated decrease of \$1.684 million in revenue for the initial four SRFs. Other nonpublic nursing facilities may see a minimal positive impact estimated to be an average of 9¢ per bed day or \$2,458



per nonpublic nursing facility for Fiscal Year (FY) 2012-2013. This change does not adversely impact the facilities classified as SRFs after July 1, 2000.

#### *Accomplishments and Benefits*

This proposed rulemaking will provide a distinct method of calculating peer group medians and prices between the initial four SRFs and the facilities classified as SRFs after 2000. In addition, this change will ensure that residents with chronic impairments continue to have access to medically necessary nursing facility services.

#### *Fiscal Impact*

The estimated fiscal impact for the proposed change in payment rates related to the four special rehabilitation nursing facilities for the period November 1, 2011 through June 30, 2012 is \$0.331 million in State funds. The estimated fiscal impact for FY 2013-2014 and beyond is (\$0.770) million in State funds assuming use of a budget adjustment factor (BAF) is not reauthorized. The application of a BAF in the nursing facility rate setting process assures that nursing facility payment rates are limited to the percentage rate of change permitted by the funds appropriated by the General Assembly. Additional funding was added to the 2011-2012 nursing facility appropriation so that this change in peer group methodology would not be a factor in the quarterly BAF calculations for the period November 1, 2011 through June 30, 2012 as specified in the Commonwealth's currently approved State Plan.

*Paperwork Requirements*

There are no new or additional paperwork requirements.

*Effective Date*

This regulation is effective November 1, 2011.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Marilyn Yocum, Department of Public Welfare, Office of Long-Term Living, Bureau of Policy and Regulatory Management, P.O. Box 8025, Harrisburg, PA 17106-8025 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-537 when submitting comments.

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

*Regulatory Review Act*

Under § 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on JUL 31 2013, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the

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

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

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART III. MEDICAL ASSISTANCE MANUAL**

**CHAPTER 1187. NURSING FACILITY SERVICES**

**Subchapter G. RATE SETTING**

**§ 1187.94. Peer grouping for price setting.**

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

\* \* \* \* \*

(2) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a special rehabilitation facility into one peer group, peer group number 13. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of special rehabilitation facilities.

- (i) Effective November 1, 2011, the Department will establish peer group medians and prices for facilities classified as special rehabilitation facilities on or before July 1, 2000, by using data from only the nursing facilities classified as special rehabilitation facility on or before July 1, 2000.

- (ii) Effective November 1, 2011, the Department will establish peer group medians and prices for facilities classified as special rehabilitation facilities after July 1, 2000, by using data from all nursing facilities classified as special rehabilitation facilities.

\* \* \* \* \*

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-537
SUBJECT: PAYMENT FOR NURSING FACILITY SERVICES PROVIDED BY SPECIAL REHABILITATION NURSING FACILITIES
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

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

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DELIVERY OF REGULATION

Table with columns: DATE, SIGNATURE, DESIGNATION. Rows include House Committee on Health Services or Human Services (Majority Chair: The Honorable Gene Di Girolamo), Senate Committee on Public Health & Welfare (Majority Chair: The Honorable Patricia Varco), Independent Regulatory Review Commission (Attorney General), and Legislative Reference Bureau.