

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2013 SEP 20 AM 11:09

IRRC

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(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- 536

IRRC Number: 3024.

(3) PA Code Cite:

55 Pa.Code Chapter 1187  
55 Pa.Code Chapter 1189

(4) Short Title:

Rate Setting for County Nursing Facilities that Change Ownership

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

Primary Contact: Judith Patrick  
Email: [judpatrick@pa.gov](mailto:judpatrick@pa.gov)  
Phone: (717) 783-8412

Secondary Contact: Marilyn Yocum  
Email: [myocum@pa.gov](mailto: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)

This proposed regulation amends the methods and standards for payment under § 1187.97 (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities) to address the rate setting methodology used when a county nursing facility has a change of ownership from a county ownership to a nonpublic nursing facility provider. The Department is also proposing to amend the terminology in certain definitions in §§ 1187.2 and 1189.2 (relating to definitions).

(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.

This proposed regulation is needed to codify the rate setting methodology for county nursing facilities that change ownership from a county ownership to a nonpublic nursing facility provider and remain in the Medical Assistance (MA) Program. County nursing facilities have been phased-out of the rate setting process under Chapter 1187 (relating to nursing facility services), thus, updated cost data audited to verify compliance with Chapter 1187 is no longer available to establish a per diem rate for a former county nursing facility.

From July 1, 2006 through June 30, 2012, when a county nursing facility changed ownership the per diem rate for the nursing facility was computed in accordance with § 1187.96 (relating to price- and rate-setting computations), using the cost data contained in the Nursing Information System (NIS) database. Since county nursing facilities have been fully phased-out of the rate-setting process for nonpublic nursing facilities under § 1187.98 (relating to phase-out median determination), their cost data is no longer audited to verify compliance under Chapter 1187; hence, county nursing facility cost data will not be updated in the NIS database. In addition, per diem rates for county nursing facilities calculated in accordance with § 1189.91 (relating to per diem rates for county nursing facilities) do not contain identifiable net operating or capital rates which would otherwise be assigned to a new provider when a nursing facility changes ownership as referenced in § 1187.97(2)(i).

This proposed regulation will codify the rate setting methodology for county nursing facilities that have a change in ownership from a county ownership to a nonpublic nursing facility provider and remain in the MA Program. There are approximately 31 county nursing facilities in Pennsylvania enrolled in the MA Program. Since the previous rate setting methodology for county nursing facilities that change ownership and remain in the MA Program sunset on June 30, 2012 and their per diem rates do not contain identifiable net operating or capital rates, the proposed regulation will benefit those facilities by codifying the rate setting methodology until audited cost report data from the new provider is available for use in the rebasing process.

(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 regulation codifies the rate setting methodology for county nursing facilities that change ownership to a nonpublic nursing facility provider and remain in Pennsylvania's MA Program.

(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 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.)

On August 6, 2012, the Department e-mailed the nursing facility trade associations the proposed change to the methods and standards for payment of MA nursing facility services to county nursing facilities that change ownership to a nonpublic nursing facility provider and remain in the MA Program with a request for comments. No comments were received. Also, the proposed change was included on the August 14, 2012 Agenda of the Long-Term Care Delivery System Subcommittee of the Medical Assistance Advisory Committee.

In addition, the Department published a notice in the *Pennsylvania Bulletin* at 42 Pa.B. 6839 (October 27, 2012) announcing the change in the methods and standards for payment of MA nursing facility services to county nursing facilities that change ownership to a nonpublic nursing facility provider. No comments were received.

(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?

No one will be adversely affected by the regulation. This proposed regulation will codify the rate setting methodology for county nursing facilities that change ownership from a county ownership to a nonpublic nursing facility provider. There are approximately 31 county nursing facilities in Pennsylvania enrolled in the MA Program. Since the previous rate setting methodology for county nursing facilities that change ownership and remain in the MA Program sunset June 30, 2012 and their per diem rates do not contain identifiable net operating or capital rates, the proposed regulation will benefit those facilities by codifying the rate setting methodology used until audited cost report data from the new provider is available for use in the rebasing process. (See #10 for more details). A county nursing facility overall, is not considered a small business by the Small Business Administration since a county nursing facility is controlled by a government entity. See final rule 77 FR 58755 (September 24, 2012).

(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.

A county nursing facility that changes ownership to a nonpublic nursing facility provider and remains in the MA Program is required to comply with the regulation. There are approximately 31 county nursing facilities in Pennsylvania enrolled in the MA Program. A county nursing facility is not considered a small business by the Small Business Administration since a county nursing facility is controlled by a government entity. See final rule 77 FR 58755 (September 24, 2012).

(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 regulation affects a county nursing facility that changes ownership and remains in the MA Program. Since the previous rate setting methodology for county nursing facilities that change ownership and remain in the MA Program sunset on June 30, 2012 and their per diem rates do not contain identifiable net operating or capital rates, the proposed regulation will benefit those facilities by codifying the rate setting methodology used until audited cost report data from the new provider is available for use in the rebasing process. (See #10 for more details).

There are approximately 31 county nursing facilities in Pennsylvania enrolled in the MA Program.

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

This proposed regulation will benefit county nursing facilities that change ownership and remain in the MA Program. Since the previous rate setting methodology for county nursing facilities that change ownership and remain in the MA Program sunset on June 30, 2012 and their per diem rates do not contain identifiable net operating or capital rates, the proposed regulation will benefit those facilities by codifying the rate setting methodology used until audited cost report data from the new provider is available for use in the rebasing process. There are no costs associated with this proposed regulation or any adverse effects.

(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.

This proposed regulation will not have any cost or savings impact on the regulated community.

(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.

This proposed regulation will not have any cost or savings impact on state government.

(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.

*Paul Byrd 2-1-13*

(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						
Total Savings						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(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	540,266	728,907	737,356	765,923

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(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.

(a) There is no adverse impact. A county nursing facility is not considered a small business by the Small Business Administration since a county nursing facility is controlled by a government entity. See final rule 77 FR 58755 (September 24, 2012).

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

(c) There is no adverse impact. This proposed regulation codifies the rate setting methodology for a county nursing facility that changes ownership and remains in the MA Program.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation since no new reports, forms, recordkeeping or paperwork by nursing facilities is required under this proposed regulation.

(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.

This proposed regulation will codify the rate setting methodology for a county nursing facility that changes ownership to a nonpublic nursing facility provider and remains in the MA Program. 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.

The Department drafted these regulations to conform with applicable State and Federal law as well as the Department's obligations to administer the MA Program in the best interests of MA recipients. The provisions codify the rate setting methodology for a county nursing facility that changes ownership and remains in the MA Program. Since the previous rate setting methodology for county nursing facilities that change ownership from a county ownership to a nonpublic nursing facility ownership sunset on June 30, 2012 and their per diem rates do not contain identifiable net operating or capital rates, the proposed regulation will benefit those facilities by codifying the rate setting methodology used until audited cost report data from the new provider is available for use in the rebasing process.

In addition, this change is consistent with the currently approved State Plan. State Plan Amendment 12-031 was submitted by the Department on December 21, 2012. It was approved by the Centers for Medicare and Medicaid Services on February 25, 2013.

(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 proposed regulation has no adverse impact to nursing facilities, county nursing facilities or MA recipients. This proposed regulation codifies the rate setting methodology for a county nursing facility that changes ownership to a nonpublic nursing facility provider and remains in the MA Program. A county nursing facility is not considered a small business by the Small Business Administration since a county nursing facility is controlled by a government entity. See final rule 77 FR 58755 (September 24, 2012).

There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. This proposed rulemaking codifies the methodology to establish a per diem rate for county nursing facilities that change ownership until a cost report from the new nursing facility provider is submitted and audited. Once audited, per diem rates are established under § 1187.96 (relating to price- and rate- setting computations). 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.

Data is not the basis for this regulation.

(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 the proposed notice</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>June 7, 2014</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>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 this regulation 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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WITH THE LEGISLATIVE REFERENCE BUREAU**  
  
**(Pursuant to Commonwealth Documents Law)**

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

*Amy W. Elliott*  
By: \_\_\_\_\_

(Deputy Attorney General)

SEP 13 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 J. Ching*

DOCUMENT/FISCAL NOTE NO. 14-536

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

BY: *Beverly Markert*

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

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

*Shawne Smith*  
BY: \_\_\_\_\_

SHAWNE SMITH

AUG 19 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]  
[55 Pa.Code Chapter 1189 County Nursing Facility Services]

Rate Setting for County Nursing Facilities that Change Ownership

### *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 regulation is to amend § 1187.97 (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities) to codify the rate setting methodology used when a county nursing facility has a change of ownership from a county ownership to a nonpublic nursing facility provider. The Department is also proposing to amend the terminology used in certain definitions in §§ 1187.2 and 1189.2 (relating to definitions).

The proposed regulation is needed to codify the methodology for setting rates for county nursing facilities that change ownership to a nonpublic nursing facility provider. Since county nursing facilities have been phased-out of the rate setting process under Chapter 1187 (relating to nursing facility services), updated cost data audited to verify compliance with Chapter 1187 is no longer available to establish a per diem rate for a former county nursing facility.

## *Background*

Beginning July 1, 2006, the Department established a new payment methodology for county nursing facility providers, as described in Chapter 1189 (relating to county nursing facility services). From July 1, 2006 through June 30, 2012, when a county nursing facility changed ownership, the per diem rate for the nursing facility was computed in accordance with § 1187.96 (relating to price- and rate-setting computations), using the cost data contained in the Nursing Information System (NIS) database. Since county nursing facilities have been fully phased-out of the rate-setting process for nonpublic nursing facilities under § 1187.98 (relating to phase-out median determination), their cost data is no longer audited to verify compliance under Chapter 1187; hence, county nursing facility cost data is not updated in the NIS database. In addition, per diem rates for county nursing facilities calculated in accordance with § 1189.91 (relating to per diem rates for county nursing facilities) do not contain identifiable net operating or capital rates which would otherwise be assigned to a new provider when a nursing facility changes ownership as referenced in § 1187.97(2)(i). Therefore, the Department proposes to codify the use of peer group prices to determine the net operating portion of the per diem rate until audited cost report data from the new provider is available for use in the rebasing process. In addition, the Department proposes to codify the use of the fixed property component, when applicable, to determine the capital portion of the per diem rate until audited cost report data from the new provider is available for use in the rebasing process.

A public notice was published at 42 Pa.B. 6839 (October 27, 2012) in which the Department announced it was amending its methods and standards for payment of Medical Assistance (MA) nursing facility services to a county nursing facility that changes ownership to a nonpublic nursing facility provider. Also, State Plan Amendment 12-031 was submitted by the Department on December 21, 2012. It was approved by the Centers for Medicare and Medicaid Services on February 25, 2013.

### *Requirements*

The proposed regulation amends the regulations at § 1187.97 to codify the rate setting methodology for changes of ownership when a county nursing facility has a change in ownership to a nonpublic nursing facility provider.

For county nursing facilities that change ownership, the Department is proposing to determine the per diem rate using the peer group price for resident care, other resident related and administrative costs from the appropriate peer group until the nursing facility's cost report submitted by the new provider is audited for use in the rebasing process. The resident assessment data from the former county nursing facility will be used to establish the MA Case-Mix Index (CMI) to calculate the resident care rate. The fixed property component will be the only component of the capital portion of the case-mix rate, if the nursing facility's beds are eligible, until the nursing facility's cost report submitted by the new provider is audited for use in the rebasing process. Under § 1187.97(2), the

Department is also proposing to add “or county nursing facility” after each reference of “old nursing facility provider” in subparagraphs (ii) and (iii).

In addition, under § 1187.97(1)(i), all references to a former county nursing facility were deleted because the proposed provisions under § 1187.97(2) specifically address county nursing facilities that change ownership. Clause (B) was deleted and clauses were relabeled accordingly.

The Department also added clarifying language to the definitions of “county nursing facility” in § 1187.2 and “new county nursing facility” in § 1189.2 to define the word “controlled” for purposes of these definitions. Lastly, the Department proposes to replace the outdated language “mentally retarded” with the language “intellectual disability”.

#### *Affected Individuals and Organizations*

This proposed regulation will affect a county nursing facility that changes ownership from a county ownership to a nonpublic nursing facility provider and remains in the MA Program.

#### *Accomplishments and Benefits*

This proposed regulation will codify the rate setting methodology for county nursing facilities that change ownership to a nonpublic nursing facility provider and remain in the MA Program.

*Fiscal Impact*

No cost to the Commonwealth, local government, nursing facility providers or MA recipients is anticipated as a result of this proposed regulation.

*Paperwork Requirements*

There are no new or additional paperwork requirements.

*Effective Date*

This regulation is effective upon final publication in the ***Pennsylvania Bulletin***.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to PA Department of Public Welfare, Office of Long-Term Living, Bureau of Policy and Regulatory Management, Attention: Marilyn Yocum, 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. 14-536 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 SEP 20 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 A. GENERAL PROVISIONS

\* \* \* \* \*

§ 1187.2. Definitions.

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

\* \* \* \* \*

*County nursing facility—*

(i) A long-term care nursing facility that is:

(A) Licensed by the Department of Health.

(B) Enrolled in the MA program as a provider of nursing facility services.

(C) Controlled by the county institution district or by county government if no county institution district exists.

(ii) For purposes of this definition, "controlled" under clause (C), means the power to direct or cause to direct the management and policies of the nursing facility, whether through equitable ownership of voting securities or otherwise.

[(ii)] (iii) The term does not include intermediate care facilities for [the mentally retarded] persons with an intellectual disability controlled or totally funded by a county institution district or county government.

\* \* \* \* \*

*Nursing facility—*

- (i) A long-term care nursing facility, that is:
  - (A) Licensed by the Department of Health.
  - (B) Enrolled in the MA Program as a provider of nursing facility services.
  - (C) Owned by an individual, partnership, association or corporation and operated on a profit or nonprofit basis.

(ii) The term does not include intermediate care facilities for [the mentally retarded] persons with an intellectual disability, Federal or State-owned long-term care nursing facilities, Veteran's homes or county nursing facilities.

\* \* \* \* \*

*Target applicant or resident—*An individual with a serious mental illness, [mental retardation] intellectual disability or other related condition seeking admission to or residing in a nursing facility.

\* \* \* \* \*

## Subchapter G. RATE SETTING

\* \* \* \* \*

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

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

(1) *New nursing facilities.*

(i) The net operating portion of the case-mix rate is determined as follows:

(A) A new nursing facility[, unless a former county nursing facility,] will be assigned the Statewide average MA CMI until assessment data submitted by the nursing facility under § 1187.33 (relating to resident data and picture date reporting requirements) is used in a rate determination under § 1187.96(a)(5) (relating to price- and rate-setting computations). Beginning, July 1, 2010, the Statewide average MA CMI assigned to a new nursing facility will be calculated using the RUG-III version 5.12 44 group values in Appendix A and the most recent classifiable assessments of any type. When a new nursing facility has submitted assessment data under § 1187.33, the CMI values used to determine the new nursing facility's total facility CMIs and MA CMI will

be the RUG-III version 5.12 44 group values and the resident assessment that will be used for each resident will be the most recent classifiable assessment of any type.

(B) [For a former county nursing facility, the county nursing facility's assessment data and MA CMI will be transferred to the new nursing facility.

(C)] The nursing facility will be assigned to the appropriate peer group. The peer group price for resident care, other resident related and administrative costs will be assigned to the nursing facility until there is at least one audited nursing facility cost report used in the rebasing process. Beginning July 1, 2010, a new nursing facility will be assigned the peer group price for resident care that will be calculated using the RUG-III version 5.12 44 group values in Appendix A and the most recent classifiable assessments of any type.

\* \* \* \* \*

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

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

(ii) If a county nursing facility has a change of ownership from a county ownership to a nonpublic nursing facility provider, the nursing facility will be assigned to the

appropriate peer group in accordance with § 1187.94 (relating to peer grouping for price setting) and the per diem rate for the nursing facility will be calculated as follows:

(A) The net operating portion of the case-mix rate is determined in accordance with § 1187.96 using the peer group price for resident care, other resident related and administrative costs until a nursing facility's cost report submitted by the new nursing facility provider is audited for use in the rebasing process.

(B) The capital portion is determined using only the fixed property component to the extent the facility is eligible for the capital portion of the case mix rate, in accordance with § 1187.96(d)(1) until a nursing facility's cost report submitted by the new nursing facility provider is audited for use in the rebasing process.

[(ii)] (iii) *Transfer of data.* Resident assessment data will be transferred from the old nursing facility or the county nursing facility provider number to the new nursing facility provider number. The old nursing facility's or county nursing facility's MA CMI will be transferred to the new nursing facility provider.

[(iii)] (iv) *Movable property cost policies.*

(A) The acquisition costs of items acquired by the old nursing facility provider or county nursing facility on or before the date of sale are costs of the old nursing facility provider or county nursing facility, and not the new nursing facility provider.

(B) Regardless of the provisions of any contract of sale, the amount paid by the new nursing facility provider to acquire or obtain any rights to items in the possession of the old nursing facility provider or county nursing facility is not an allowable cost.

(C) If the new nursing facility provider purchases an item from the old nursing facility provider or county nursing facility, the cost of that item is not an allowable cost for cost reporting or rate setting purposes.

(D) If the new nursing facility provider rents or leases an item from the old nursing facility provider or county nursing facility, the cost of renting or leasing that item is not an allowable cost for cost reporting or rate setting purposes.

\* \* \* \* \*

**CHAPTER 1189. COUNTY NURSING  
FACILITY SERVICES**

**Subchapter A. GENERAL PROVISIONS**

\* \* \* \* \*

**§ 1189.2. Definitions.**

(a) Except for those terms defined in subsection (b), the defined words and terms set forth in § 1187.2 (relating to definitions), have the same meanings when used in this chapter, unless the context clearly indicates otherwise.

\* \* \* \* \*

*New county nursing facility*—One of the following:

(i) A newly constructed, licensed and certified county nursing facility.

(ii) An existing nursing facility that through a change of ownership, is controlled by the county institution district or by county government if no county institution district exists.

(iii) For purposes of this definition, "controlled" under subparagraph (ii), means the power to direct or cause to direct the management and policies of the nursing facility, whether through equitable ownership of voting securities or otherwise.

\* \* \* \* \*

IRRC

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-536
SUBJECT: RATE SETTING FOR COUNTY NURSING FACILITIES THAT CHANGE OWNERSHIP
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

2013 SEP 20 AM 11:09

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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 Gene DiGirakmo, Minority Chair Angel Cruz), Senate Committee on Public Health & Welfare (Majority Chair Patricia Vance, Minority Chair Shirley Kitchen), Independent Regulatory Review Commission, Attorney General, and Legislative Reference Bureau.