

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1181]

Nursing Facility Intergovernmental Transfer

The Department of Public Welfare (Department), by this order, adopts amendments to Chapter 1181 (relating to nursing facility care). The amendments are set forth in Annex A and are adopted under the authority of sections 201, 403 and 443.1(2) and (3) of the Public Welfare Code (act) (62 P. S. §§ 201, 403, 443.1(2) and (3)) and section 1902(a)(13)(A) and (30) of the Social Security Act (42 U.S.C.A. § 1396(a)(13)(A) and (30)).

Notice of proposed rulemaking is omitted under section 204(1)(iv) and (3) of the act of July 31, 1968 (CDL) (P. L. 769, No. 240)(45 P. S. § 1204(1)(iv) and (3)) and 1 Pa. Code § 7.4(1)(iv) and (3). Section 204(1)(iv) and (3) of the CDL provides that an agency may omit notice of proposed rulemaking when the amendment relates to Commonwealth grants or benefits or when circumstances render it impractical, unnecessary or contrary to public interest.

The Department finds that these amendments relate to the system of payment under the Medical Assistance (MA) Program, a grant and benefit system established by the Commonwealth. The amendments authorize additional payments and increase cash flow to MA nursing facility providers for Fiscal Year 1995-1996. Given the involvement of the County Commissioners Association in the development of these beneficial changes in payment, the Department finds that an additional period for comment and discussion is unnecessary, impractical and contrary to the public interest.

In addition, the changes authorized by these amendments apply only to payments for Fiscal Year 1995-1996.

Purpose of the Amendments

The purpose of these amendments is to make revisions to §§ 1181.67, 1181.101 and 1181.211 (relating to setting interim per diem rates; facility's right to a hearing; and cost reimbursement principles and method). The revisions authorize additional payments and increase cash flow to nursing facilities for Fiscal Year 1995-1996 by implementing an intergovernmental transfer of funds to the Commonwealth by county governments.

Need for the Amendments

MA is a form of public assistance funded jointly by the Federal and State government, that is designed to purchase health care for low income individuals who have exhausted all other means of payment for medically necessary compensable health care services. The MA Program (Medicaid) pays for a broad range of medical services, one of which is nursing facility services.

In accordance with Federal law, states are permitted under certain circumstances to use funds transferred from public sources to qualify as the State's share for Medicaid payments for nursing facility services and other medical services. See 42 U.S.C.A. § 1396(w)(6)(A) and 42 CFR 433.51(b) (relating to public funds as the State share of financial participation).

Requirements

After discussion and negotiation with representatives of the County Commissioners Association, the Department

executed an agreement to implement an intergovernmental transfer system to benefit the Commonwealth's long term care program. This intergovernmental transfer system is being implemented through a transfer of funds to the Commonwealth by county governments. To implement the provisions of the Intergovernmental Transfer Agreement, the Department is adopting the amendments to Chapter 1181 to read as set forth in Annex A. These amendments make the following changes:

Section 1181.67 is being changed to allow for an inflation adjustment to the interim rate for a nursing facility which is operating under the ceiling. For the period July 1 1995, through December 31, 1995, the interim rate will be increased by a 2% inflation factor for a nursing facility whose interim rate (excluding depreciation and interest) is less than the ceiling on net operating costs applied during this period. This 2% adjustment will affect a nursing facility's interim rate subject to the ceiling on allowable net operating costs and the upper limit on payment as stated in § 1181.68 (relating to setting interim per diem rates).

Section 1181.101 is being changed to specifically allow nursing facilities to appeal the accuracy of the payment calculation which consists of the 2% inflation adjustment of the interim rates made by the Department for the period July 1, 1995, through December 31, 1995.

Section 1181.211(e) is being added so that county nursing facilities in which Medicaid funded resident days account for at least 80% of the total resident days and the number of certified MA beds is greater than 270 beds, can receive disproportionate share payments for Fiscal Year 1995-1996. Disproportionate share payments will not be limited to or affected by any ceilings on net operating costs, charges to private pay residents, peer group or facility specific payment limits under the MA Program.

Section 1181.211(f) is being added to allow general and county nursing facilities to receive program enhancement payments consisting of a 2% inflation adjustment of the facility's interim rate up to the ceiling for the period July 1, 1995, through December 31, 1995.

The program enhancement payments and disproportionate share payments will provide an overall adjustment to nursing facility payment rates for July 1, 1995, through December 31, 1995. This adjustment should be sufficient to account for any unanticipated additional costs which nursing facilities may incur to provide services in compliance with State and Federal law, including those services required to attain or maintain the highest practicable physical, mental and psychosocial well-being of each MA eligible resident.

Payments of the disproportionate share and the program enhancement are contingent upon the determination by the Department that there are sufficient State, local and Federal funds appropriated to make these payments for Fiscal Year 1995-1996.

Fiscal Impact

Public Sector

Commonwealth

The amendments in Annex A will increase Departmental expenditures; however, the funds transferred from

local county governments qualify as the State's share for Medicaid payments.

Political Subdivisions

These amendments will provide additional moneys to county governments by granting disproportionate share payments to certain county facilities and program enhancement payments to all county nursing facilities certified for the MA Program. For those county nursing facilities operating below the applicable ceilings for Fiscal Year 1995-1996, the interim rates will be increased by 2% to reflect inflation up to the ceilings on allowable net operating costs and subject to the upper limits on payment. The Department cannot accurately determine the fiscal impact of these amendments on the political subdivisions.

Private Sector

These amendments will provide additional moneys to general nursing facilities by granting program enhancement payments to those nursing facilities operating below the applicable ceilings for the period July 1, 1995, through December 31, 1995. The interim rates will be increased by 2% to reflect inflation up to the ceiling on allowable net operating costs and subject to the upper limits on payment. The Department cannot accurately determine the fiscal impact of these amendments on the nursing facility industry.

General Public

MA residents receiving nursing facility services may experience increased services and MA recipients may receive better access to care as a result of these amendments.

Paperwork Requirements

These amendments will increase the paperwork requirements of the Department in that the Department must develop new interim per diem rates for each nursing facility. Each enrolled nursing facility will be notified of its new interim per diem rate.

The Department must also calculate the disproportionate share payments to be paid to eligible county nursing facilities and program enhancement payments to be made to general and county nursing facilities operating below the applicable ceilings.

These amendments will not affect the paperwork requirements for the political subdivisions, private sector or general public.

Effective Date

These amendments will take effect immediately and apply to the time period from July 1, 1995, to December 31, 1995.

Public Comment Period

Although these amendments are being adopted without prior notice, interested persons are invited to submit their written comments within 30 days of the date of this publication for consideration by the Department as to whether the regulations should be revised. The comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users) or may use a Department TDD by calling (717) 787-3616. Persons requiring another alternative should contact India Wood at (717) 783-2212.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P.S. § 745.5(f)), the Department submitted a copy of these amendments with proposed rulemaking omitted on July 22, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Welfare and the Senate Committee on Public Health and Welfare. On the same date, the amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, these amendments were deemed approved by the Committees on August 12, 1996, and were approved by IRRC on August 8, 1996.

Findings

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order is unnecessary and contrary to public interest under section 204(1)(iv) and (3) of the CDL and the regulation thereunder, 1 Pa. Code § 7.4(1)(iv) and (3).

(2) The adoption of the amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the act.

Order

The Department acting, under the authority of the act, orders that:

(a) The regulations for the Department, 55 Pa. Code Chapter 1181, are amended by amending §§ 1181.67, 1181.101 and 1181.211 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately and apply to the time period from July 1, 1995, to December 31, 1995.

FEATHER O. HOUSTOUN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 4145 (August 24, 1996).)

Fiscal Note: 14-435 (1) General Fund; (2) Implementing Year 1995-96 is \$ See Below; (3) 1st Succeeding Year is \$; 2nd Succeeding Year is \$; 3rd Succeeding Year is \$; 4th Succeeding Year is \$; 5th Succeeding Year is \$; (4) Fiscal Year 1994-95 \$593,822,000; Fiscal Year 1993-94 \$493,275,000; Fiscal Year 1992-93 \$463,007,000; (7) MA—Long Term Care Augmentations; (8) recommends adoption. This regulatory action formalizes an agreement between the Commonwealth and counties for the utilization of an intergovernmental transfer of county funds to provide the State's share of Medicaid payments to enable the Commonwealth to receive additional Federal funding for nursing homes.

Annex A**TITLE 55. PUBLIC WELFARE****PART III. MEDICAL ASSISTANCE****CHAPTER 1181. NURSING FACILITY CARE****Subchapter A. NURSING FACILITY CARE****PAYMENT FOR NURSING FACILITY CARE****§ 1181.67. Setting interim per diem rates.**

The Department establishes interim per diem rates on the basis of the following methods and in accordance with § 1181.68 (relating to upper limits of payment):

(1) For general and county nursing facilities, interim per diem rates within the ceilings on net operating costs will be established by the Department based on the latest adjusted reported net operating cost of the facility plus an allowance for depreciation and interest. For the period July 1, 1995, through December 31, 1995, the interim rate will be calculated in this manner, except that if the interim rate for a nursing facility (excluding depreciation and interest) is less than the ceiling on net operating costs to be applied during this period, the interim rate for the nursing facility will be increased by 2% to reflect inflation up to the upper limits on payment as stated in § 1181.68.

(2) For State-operated intermediate care facilities for the mentally retarded, interim per diem rates will be established by the Department based on the latest adjusted reported costs and approved budgets. For non-State intermediate care facilities for the mentally retarded, interim per diem rates will be established by the Department based on the latest adjusted cost report plus an inflationary factor, or a submitted budget if a waiver is granted in accordance with Subchapter C (Reserved).

(3) For psychiatric transitional facilities, interim per diem rates will be established by the Department based on latest adjusted reported costs and approved budgets.

(4) For facilities entering the program and for facilities in the programs with changes of ownership, except for intermediate care facilities for the mentally retarded, the facility's projected MA-11 cost report will be used to set the interim rate for MA during the initial period of operation pending the filing of the first year-end cost report.

FACILITY RIGHT OF APPEAL**§ 1181.101. Facility's right to a hearing.**

(a) A nursing facility has a right to appeal and have a hearing if dissatisfied with the Department's decision regarding:

(1) The interim per diem rate established by the Department, unless a change in the interim per diem rate is made by the Department based on a revision to the net operating portion of the rate as a result of a revision to the applicable net operating cost reimbursement ceiling, in which case the facility may appeal only as to the issue of whether or not the ceiling used to revise the interim per diem rate is in fact the established ceiling for the facility's geographical grouping and level of care.

(2) The findings of the auditors in the annual audit report.

(3) The determination by the comptroller of the difference between the allowable costs certified by the auditors

in the annual audit report, and the total allowance amount as shown on the interim billing.

(4) The denial or nonrenewal of a provider agreement.

(i) A skilled nursing facility that has been either denied an MA Provider Agreement or renewal of the agreement or whose agreement has been terminated in whole or in part by the Department prior to its expiration date, has the right to a full evidentiary hearing before a hearing officer to contest the action.

(ii) Facilities participating in Medicare and the MA Program that are denied renewal of an MA Provider Agreement or have the agreement terminated by the Department because of termination or nonrenewal by Medicare are entitled to the review procedures specified for Medicare facilities in 42 CFR Part 498 (relating to appeals procedures for determinations that affect participation in the Medicare Program). The final decision entered as a result of the Medicare review procedures is binding for the purposes of participation in the MA Program.

(5) The MA Program enhancement payment consisting of the 2% inflation adjustment of the interim rate or interim cost settlement made by the Department for Fiscal Years 1992-1993, 1993-1994 and 1994-1995.

(i) The facility's right to appeal shall be limited to the issue of whether:

(A) Its MA Program enhancement payment consisting of 2% inflation adjustment of the facility's interim rate was calculated in accordance with §§ 1181.67(1) and 1181.211 (relating to setting interim per diem rates; and cost reimbursement principles and method).

(B) Its interim cost settlement was calculated in accordance with § 1181.69(c) (relating to annual adjustment).

(ii) This paragraph does not otherwise limit a facility's right to file an appeal under § 1101.84 (relating to provider right of appeal) or this section from interim rates established under § 1181.221 (relating to determining the interim per diem rate) or established as a result of a revision to the ceilings on net operating costs, or from audit findings or final cost settlement issued with respect to which an interim cost settlement is paid.

(6) The MA Program enhancement payment consisting of the 2% inflation adjustment of the interim rate made by the Department for the period July 1, 1995, through December 31, 1995. The nursing facility's right to appeal shall be limited to the issue of whether its MA Program enhancement payment consisting of the 2% inflation adjustment of the nursing facility's interim rate was calculated in accordance with §§ 1181.67(1) and 1181.211.

(b) A nursing facility appeal is subject to § 1101.84.

(c) An appeal shall be taken within 30 days of the date that the facility is notified of the decisions in subsection (a). Findings contained in a facility's audit report which are not appealed by the facility within the 30-day limit will not be considered as part of subsequent appeal proceedings.

(d) An appeal shall be mailed to the Executive Director, Office of Hearings and Appeals, Department of Public Welfare, Post Office Box 2675, DPW Complex, 6th Floor, Harrisburg, Pennsylvania 17105, with a copy to the Office of Legal Counsel. The appeal request shall specify the issues presented for review.

(e) The Audit Division of the Bureau of Long Term Care Programs may reopen a prior year's audit if an appeal is filed.

(f) For cost reporting periods ending prior to October 1, 1985, if an analysis of the facility's audit report by the Office of the Comptroller discloses that an overpayment has been made to the facility, the facility will be bound by § 1101.84(b)(4) and (5).

Subchapter B. MANUAL FOR ALLOWABLE COST REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

REIMBURSEMENT PRINCIPLES

§ 1181.211. Cost reimbursement principles and method.

(a) Subject to the limitations and sanctions specified in Subchapter A (relating to nursing facility care), a facility will be reimbursed its allowable net operating costs, plus allowable depreciation and interest on capital indebtedness.

(b) The amount of MA reimbursement for allowable operating costs, excluding depreciation and interest, will not exceed the level of net operating costs the Department determines to be reasonable and adequate to meet the costs that an efficiently and economically operated facility incurs in meeting applicable State and Federal laws and quality and safety standards.

(c) Costs that are not recognized as allowable costs in a fiscal year may not be carried forward or backward to other fiscal years for inclusion in allowable costs.

(d) Long-term care disproportionate share allowance payments are made according to a formula established by the Department to general nongovernmental long-term care facilities in which skilled and intermediate Medicaid funded patient days account for at least 90% of total patient days. Payment of the long-term care disproportionate share allowance is contingent upon the express appropriation by the General Assembly, of funds designated to make payments of this allowance.

(e) County nursing facility disproportionate share payments are made according to a formula established by the Department to county nursing facilities, in which Medicaid funded resident days account for at least 80% of the facility's total resident days and the number of certified MA beds is greater than 270 beds. Payment of the county nursing facility disproportionate share payment for the period July 1, 1995, through December 31, 1995, is contingent upon the determination by the Department that there are sufficient State and Federal funds appropriated to make these allowance payments. County nursing facility disproportionate share payments will not be limited to or affected by any ceilings or net operating costs, charges to private pay residents, peer group or facility-specific payment limits under the MA Program.

(f) For the period July 1, 1995, through December 31, 1995, the Department will make program enhancement payments to general and county nursing facilities participating in the MA Program as follows. The Department will increase the interim per diem rate for the nursing facility to reflect inflation by 2% up to the ceilings on allowable net operating costs and subject to the upper limits on payments in accordance with § 1181.68 (relating to upper limits of payment).

[Pa.B. Doc. No. 96-1367. Filed for public inspection August 23, 1996, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

TREASURY DEPARTMENT

[61 PA. CODE CH. 5]

Payments by Electronic Funds Transfer

The Department of Revenue and the Treasury Department, under the authority contained in section 9 of The Fiscal Code (act) (72 P. S. § 9), adopt an amendment to § 5.3 (relating to payments required to be paid by electronic funds transfer) to read as set forth in Annex A.

The Secretary of Revenue and the State Treasurer jointly adopted a regulation relating to payments by electronic funds transfer (EFT) at 22 Pa.B. 1561 (April 4, 1992). In accordance with § 5.3(e), a taxpayer may satisfy its obligation to remit a payment by EFT by delivering a certified or cashier's check, in person or by courier with the appropriate return or deposit statement to the Department of Revenue, Bureau of Receipts and Control. The subsection goes on to set forth the specific address of "Strawberry Square, 4th Floor, Fourth and Walnut Streets, Harrisburg, Pennsylvania 17128" where the payment will be received.

As of the close of 1994, the Department relocated the Bureau of Receipts and Control. The new address for making EFT payments is Department of Revenue, Bureau of Business Trust Fund Taxes, EFT Unit, Ninth Floor, Strawberry Square, Fourth and Walnut Streets, Harrisburg, Pennsylvania 17128. Section 5.3(e) is being amended to reflect this change.

To assist taxpayers with this transition, an announcement setting forth the address change was mailed in March 1995, to taxpayers who have preregistered to submit payments by certified or cashier's check.

Accordingly, the Department of Revenue and the Treasury Department, under section 204 of the act of July 31, 1968 (CDL) (P. L. 769, No. 240) (45 P. S. § 1204) and the regulation thereunder at 1 Pa. Code § 7.4, find that notice of proposed rulemaking is unnecessary because public input is not necessary for an amendment which only relates to an address change. Utilizing the shorter regulatory process will enable the Department of Revenue and the Treasury Department to quickly amend the § 5.3 and provide the public with the correct address for remitting payments in person or by courier.

Fiscal Impact

The Department of Revenue and the Treasury Department have determined that the amendment will have no fiscal impact on the Commonwealth.

Paperwork

The amendment will not generate significant additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The amendment will become effective upon publication in the *Pennsylvania Bulletin*. The amendment will be monitored annually. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the amendment is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Authority

The amendment is adopted under section 9 of the act. Section 9(a) of the act provides that the State Treasurer and the Secretary of Revenue shall jointly prescribe by regulation the method of payment of obligations due the Commonwealth. "Such regulations shall include: . . . (5) An option permitting payment by certified or cashier's check delivered in person or by courier to the Department of Revenue on or before the due date of the obligation, in lieu of payment by electronic funds transfer." Section 9(b) of the act sets forth specific provisions that the regulations may not require.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), the Department of Revenue and the Treasury Department submitted a copy of this amendment with proposed rulemaking omitted on July 9, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. On the same date, the amendment was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, this amendment was deemed approved by the Committees on July 29, 1996, and was approved by IRRC on August 8, 1996.

Findings

The Department of Revenue and the Treasury Department find that the amendment is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department of Revenue and the Treasury Department also find that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because public input is not necessary for an amendment which only relates to an address change.

Order

Acting under the authorizing statute, the Department of Revenue and the Treasury Department order that:

(a) The regulations of the Department of Revenue and the Treasury Department, 61 Pa. Code Chapter 5, are amended by amending § 5.3 to read as set forth in Annex A.

(b) The Secretary of the Department of Revenue and the State Treasurer shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department of Revenue and the State Treasurer shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT A. JUDGE, Sr.,
Secretary of Revenue
CATHERINE BAKER KNOLL,
State Treasurer

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 4145 (August 24, 1996).)

Fiscal Note: 15-369. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 61. REVENUE****PART I. DEPARTMENT OF REVENUE****Subpart A. GENERAL PROVISIONS****CHAPTER 5. PAYMENTS BY ELECTRONIC FUNDS TRANSFER****§ 5.3. Payments required to be paid by EFT.**

(a) Beginning July 1, 1992, a payment in the amount of \$40,000 or more shall be remitted using a method of EFT selected by the taxpayer. A taxpayer may choose the ACH debit method or the ACH credit method.

(b) Beginning January 1, 1993, a payment in the amount of \$30,000 or more shall be remitted using a method of EFT selected by the taxpayer. A taxpayer may choose the ACH debit method or the ACH credit method.

(c) Beginning January 1, 1994, a payment in the amount of \$20,000 or more shall be remitted using a method of EFT selected by the taxpayer. The taxpayer may choose the ACH debit method or the ACH credit method.

(d) This requirement applies to payment of only the following taxes:

Sales and Use	Corporate Net Income
Employer Withholding	Capital Stock-Franchise
Liquid Fuels	Bank Shares
Fuel Use	Title Insurance and Trust Company Shares
Mutual Thrift Institutions	Insurance Premiums
Oil Company Franchise	Public Utility Realty
Malt Beverage	Gross Receipts
Motor Carrier Road Tax	

(e) A taxpayer may satisfy the obligation to remit a payment by EFT by delivering a certified or cashier's check, in person or by courier with the appropriate return or deposit statement, to the Pennsylvania Department of Revenue, Bureau of Business Trust Fund Taxes, EFT Unit, Ninth Floor, Strawberry Square, Fourth and Walnut Streets, Harrisburg, Pennsylvania 17128 on or before the due date of the obligation. Payments will not be accepted at other Department locations.

(f) Separate transfers shall be made for each payment.

[Pa.B. Doc. No. 96-1368. Filed for public inspection August 23, 1996, 9:00 a.m.]