

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Nursing Facility Intergovernmental Transfer

The Department of Public Welfare (Department) adopts amendments to Chapter 1187 (relating to nursing facility services). 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 and 443.1(2) and (3)) and sections 1902(a)(13)(A) and (30) of the Social Security Act (42 U.S.C.A. § 1396a(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 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv) and (3)) (CDL) and 1 Pa. Code § 7.41(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 the public interest.

The Department finds that these amendments relate to the system of payment of benefits under the Medical Assistance (MA) Program, as established by the Commonwealth. The amendments authorize the application of county nursing facility transition payments and general nursing facility transition payments to assure a smooth transition to the new payment system contained in Chapter 1187 and the payment of county nursing facility supplementation payments to qualified county nursing facilities. Given the involvement of the County Commissioners Association and the nursing facility industry in the development of these beneficial changes in payment which allow providers to enhance services for their residents, the Department finds that an additional period for comment and discussion is unnecessary and contrary to the public interest.

Purpose of the Amendments

The purpose of these amendments is to make revisions to § 1187.95 (relating to general principles for rate and price setting) and to add § 1187.116 (relating to county nursing facility supplementation payments). The revisions authorize the application of county supplementation payments to qualified county nursing facilities; an enhanced transition rate for county nursing facilities and a transition rate for general nursing facilities other than special rehabilitation facilities and hospital-based nursing facilities, through the implementation of 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. § 1396b(w)(6)(A); 42 CFR 433.51(b).

Requirements

After discussion and negotiations with representatives of the County Commissioners Association, the Department executed an agreement to implement an intergovernmental transfer to benefit the Commonwealth's long term care program. This intergovernmental transfer is being implemented through a transfer of funds to the Commonwealth by county governments. In order to implement some of the provisions of the Intergovernmental Transfer Agreement, the Department is adopting the amendments to Chapter 1187 in Annex A. These amendments make the following changes:

Section 1187.95 is being changed to provide for a transition rate for general nursing facilities other than hospital-based nursing facilities and special rehabilitation nursing facilities for the period January 1, 1996, through June 30, 1996, and an enhanced transition rate for county nursing facilities for the period January 1, 1996, through December 31, 1998. Payment of the transition rates is contingent upon the determination by the Department that there are sufficient local, State and Federal funds appropriated to make these payments.

Section 1187.116 is being added to allow for county nursing facility supplementation payments. For State fiscal periods commencing on or after July 1, 1996, and subject to the availability of sufficient county, State and Federal funds, the Department will pay supplementation payments to county nursing facilities in which MA-funded resident days account for at least 80% of the nursing facility's total resident days and the number of certified MA beds is greater than 270 beds.

Fiscal Impact

Public Sector

Commonwealth

The amendments 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 enhanced transition payments to all county nursing facilities certified for participation in the MA Program. 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 transition rate payments to those nursing facilities for the last two quarters of Fiscal Year 1995-1996. 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 not affect the paperwork requirements for the Commonwealth, political subdivisions, private sector or general public.

Effective Date

These amendments took effect January 1, 1996.

Sunset Date

These amendments will sunset as follows:

- (1) Section 1187.95(b)(2), (3), (4) and (5) will sunset on December 31, 1998.
- (2) Section 1187.95(b)(6) will sunset on June 30, 1996.
- (3) Section 1187.116 will not sunset.

Public Comment Period

Although these amendments are being adopted without prior notice, interested persons are invited to submit their written comments within 30 days from the date of this publication for consideration by the Department as to whether the amendments 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. If you require another alternative, please contact Thomas Vracarich at (717) 783-2212.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on March 13, 1997, the Department submitted a copy of this rulemaking with proposed rulemaking omitted 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 rulemaking 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 rulemaking was deemed approved by the Committees on April 2, 1997, and was approved by IRRC on April 3, 1997.

Findings

The Department finds that:

- (1) Public notice of intention to amend the administrative regulations adopted 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) because these amendments relate to benefits for nursing facility providers which were negotiated and agreed to by representatives of the nursing facility industry.
- (2) The adoption of the amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of section 443.1(2) and (3) of the act.

Order

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

(a) The regulations of the Department, 55 Pa. Code Chapter 1187, are amended by amending § 1187.95 and by adding § 1187.116 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 the 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 in the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication and apply retroactively to January 1, 1996.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-437. (1) General Fund; (2) Implementing Year 1995-96 is \$1,841,000; (3) 1st Succeeding Year 1996-97 is \$2,162,000; 2nd Succeeding Year 1997-98 is \$1,149,000; 3rd Succeeding Year 1998-99 is \$-0-; 4th Succeeding Year 1999-00 is \$-0-; 5th Succeeding Year 2000-01 is \$-0-; (4) Fiscal Year 1995-96 \$648,550,000; Fiscal Year 1994-95 \$593,622,000; Fiscal Year 1993-94 \$493,275,000; (7) Medical Assistance—Long Term Care; (8) recommends adoption. This regulatory action provides for enhanced transition rates for the payment of nursing facilities and supplemental payments to certain county facilities. Funds to cover the costs referenced above are from the 1995-96 Intergovernmental Transfer and have been placed into a reserve account for future payments.

Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 1987 (April 19, 1997).

Annex A

TITLE 55. PUBLIC WELFARE
PART III. MEDICAL ASSISTANCE
CHAPTER 1187. NURSING FACILITY SERVICES
Subchapter G. RATE SETTING

§ 1187.95. General principles for rate and price setting.

(a) Prices will be set prospectively on an annual basis during the second quarter of each calendar year and be in effect for the subsequent July 1 through June 30 period.

(1) Peer group prices will be established for resident care costs, other resident related costs and administrative costs.

(2) If a peer group has an even number of nursing facilities, the median peer group price determined will be the arithmetic mean of the costs of the two nursing facilities holding the middle position in the peer group array.

(3) If a nursing facility changes bed size or MSA group, the nursing facility will be reassigned from the peer group used for price setting to peer group based on bed certification and MSA group as of April 1, for rate setting.

(4) The Department will announce, by notice submitted for recommended publication in the *Pennsylvania Bulletin* and suggested codification in the *Pennsylvania Code* as Appendix B, the peer group prices for each peer group.

(b) Rates will be set prospectively each quarter of the calendar year and will be in effect for one full quarter. Net operating rates will be based on peer group prices as limited by § 1187.107 (relating to limitations on resident care and other resident related cost centers). The nursing

facility per diem rate will be computed as defined in § 1187.96(e) (relating to price and rate setting computations).

(1) Resident care peer group prices will be adjusted for the MA CMI of the nursing facility each quarter and be effective on the first day of the following calendar quarter.

(2) For the period of January 1, 1996, through June 30, 1996, each county owned and operated nursing facility, as defined in § 1187.2 (relating to definitions), receiving a county nursing facility rate as of June 30, 1995, will be provided a transition rate. The transition rate for each county nursing facility for January 1, 1996, through June 30, 1996, will be the higher of the facility case-mix rate for that quarter or a December 31, 1995, facility blended rate.

(i) The blended rate is calculated by multiplying the skilled/heavy care rate on file as of December 31, 1995, by the number of skilled/heavy care days as reported in the county nursing facility's most recently accepted cost report; multiplying the intermediate care rate on file as of December 31, 1995, by the number of intermediate care days reported in the county nursing facility's most recently accepted cost report; summing these products and dividing that sum by the number of skilled care, heavy care and intermediate care days as reported in the county nursing facility's most recently accepted cost report.

(ii) The rate established in subparagraph (i), will be trended forward 3 months from January 1, 1996, to March 31, 1996, by a factor equal to the HCFA Nursing Home Without Capital Market Basket Index as published in the second quarter 1995 issue of the DRI McGraw-Hill publication "Health Care Costs."

(3) For the period July 1, 1996, through June 30, 1997, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or a facility blended rate calculated in accordance with paragraph (2)(i) and (ii), trended forward 9 months from April 1, 1996, to December 31, 1996, by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1995 issue of the DRI McGraw-Hill publication "Health Care Costs."

(4) For the period July 1, 1997, through June 30, 1998, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or

the facility transition rate identified in paragraph (3), trended forward 12 months from January 1, 1997, to December 31, 1997, by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1996 issue of the DRI McGraw-Hill publication "Health Care Costs."

(5) For the period July 1, 1998, through December 31, 1998, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or the facility transition rate identified in paragraph (4), trended forward 9 months from January 1, 1998, to September 30, 1998, by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1997 issue of the DRI McGraw-Hill publication "Health Care Costs."

(6) For the period January 1, 1996, through June 30, 1996, general nursing facilities other than hospital-based, special rehabilitation and county nursing facilities, will be provided a transition rate. The transition rate for each general nursing facility for each calendar quarter, during the time period January 1, 1996, through June 30, 1996, will be the higher of the facility case-mix rate for that quarter or a July 1, 1994, facility blended rate. The facility blended rate is a composite of the skilled care and intermediate care interim per diem rates in effect on July 1, 1994, weighted by the reported MA days associated with the respective acuity levels.

Subchapter H. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS

§ 1187.116. County nursing facility supplementation payments.

County nursing facility supplementation 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 supplementation payments is contingent upon the determination by the Department that there are sufficient State and Federal funds appropriated to make these supplementation payments.

[Pa.B. Doc. No. 97-875. Filed for public inspection May 30, 1997, 9:00 a.m.]