

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Environmental Protection

The Executive Board approved a reorganization of the Department of Environmental Protection effective July 21, 1997.

The organization chart at 27 Pa. B. 4003 (August 9, 1997) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to content of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 97-1249. Filed for public inspection August 8, 1997, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of General Services

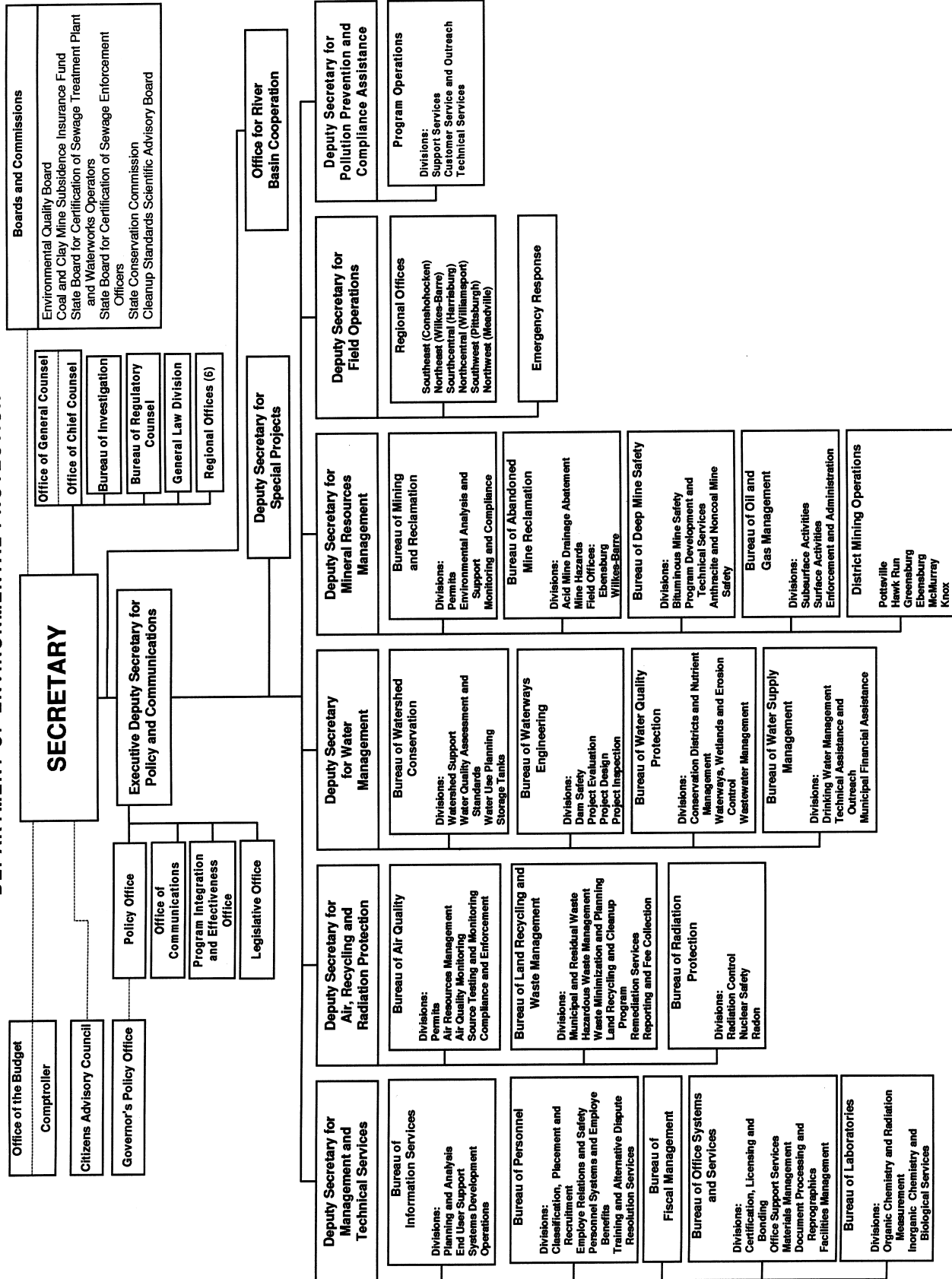
The Executive Board approved a reorganization of the Department of General Services effective July 21, 1997.

The organization chart at 27 Pa. B. 4004 (August 9, 1997) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to content of *Code*).

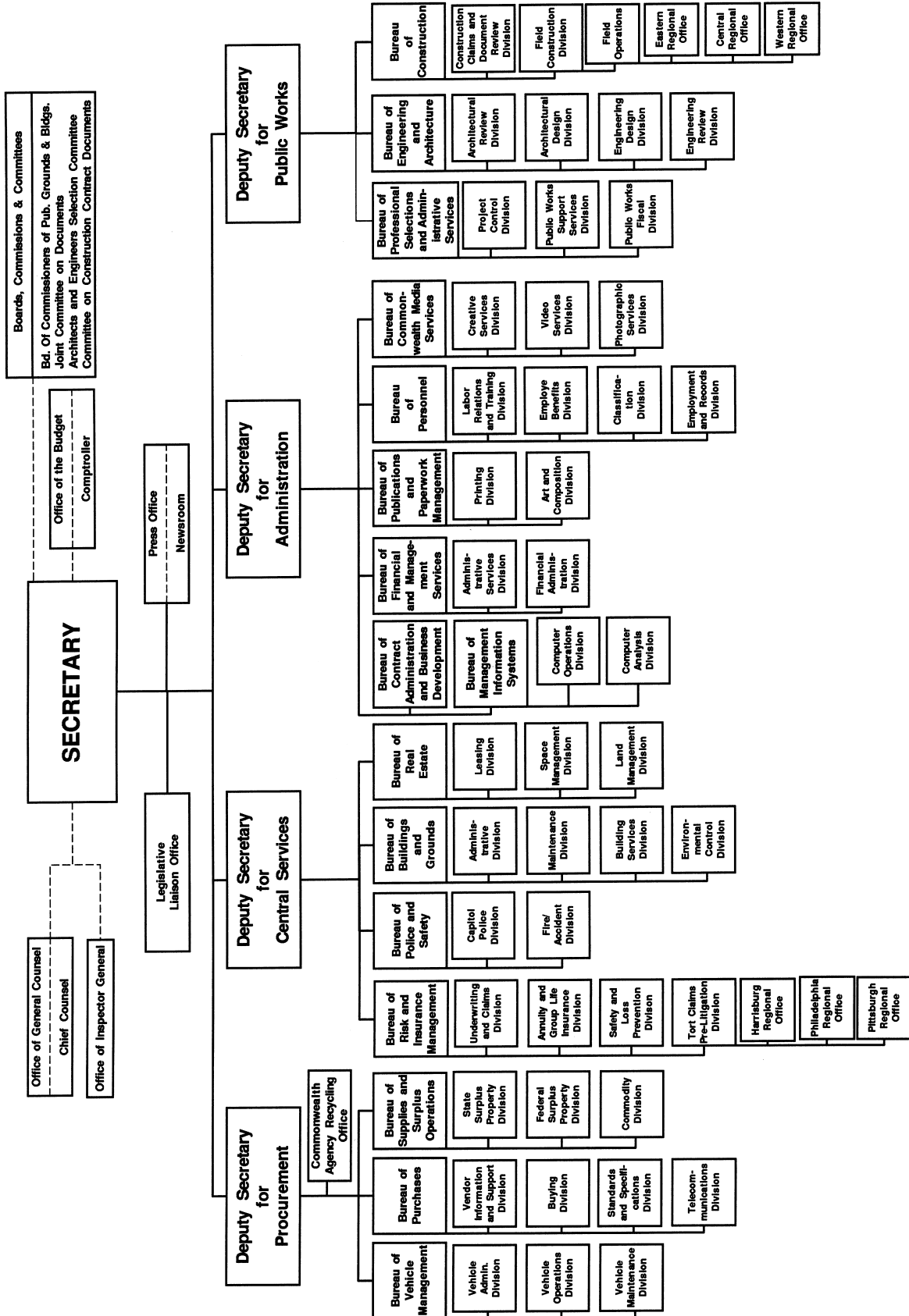
(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 97-1250. Filed for public inspection August 8, 1997, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION



DEPARTMENT OF GENERAL SERVICES



Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1101]

Medical Assistance Manual; General Provisions

This statement of policy revises the interim policy set forth in § 1101.77a (26 Pa.B. 5996) (December 14, 1996) to provide that, effective August 11, 1997, the Department of Public Welfare (Department) will terminate the enrollment and suspend payments to a nursing facility provider that expands its existing licensed bed capacity. The former interim policy published on December 14, 1996, allowed a nursing facility provider to expand its existing licensed bed capacity by ten beds or 10%, whichever was less, over a 2-year period (the 10/10 Rule) in accordance with the former certificate of need (CON) process. Nursing facility providers that can demonstrate to the Department that they substantially implemented the expansion project within the "10/10" Rule between December 19, 1996, and August 10, 1997, in reliance on the Department's former interim policy, are not subject to termination pursuant to this revised interim policy.

To demonstrate that an expansion project was substantially implemented within the "10/10" Rule prior to August 10, 1997, nursing facility providers must submit to the Department documentation demonstrating that they have expended funds, assumed debt, or incurred liabilities in reliance on the Department's interim policy. The documentation shall include, but is not limited to, invoices, bank statements, loan documents, construction contracts, or other auditable evidence demonstrating that the provider has expended funds, assumed debt, or incurred liabilities prior to August 10, 1997. The Department will evaluate each expansion project on a case-by-case basis to determine whether the particular provider has substantially implemented the project. Providers who have received written confirmation from the Department that their expansion project may be implemented pursuant to the "10/10" Rule do not need to submit documentation to the Department pursuant to this policy.

Discussion

Under the former CON process, a certain amount of incremental growth in the number of nursing facility beds was permitted without a review of need. Specifically, an existing nursing facility could, on a biennial basis, increase the number of its beds by 10% or ten beds, whichever was less, without obtaining a CON from the Department of Health (DOH). During the time that the Department relied upon the bed-need determinations of DOH, this practice meant that the number of beds enrolled in the Medical Assistance (MA) Program consistently increased, even when new beds may not have been needed.

The Department has determined that this incremental growth is no longer desirable or appropriate. In most areas, the quantity of beds available to MA residents exceeds the need. If the 10/10 Rule were continued, and providers were permitted to add beds, that overall surplus would only be exacerbated. Furthermore, the 10/10 Rule does not provide any assurance that the needs of the MA Program specifically, or the community generally, will be considered, let alone met, by these incremental expansions. To the contrary, since the demise of CON, the Department has noted that the large majority of 10/10 expansions have occurred not where there is indication of need, but in counties with existing bed surpluses. In

addition, in its recent report to the Governor the Intra-Governmental Council on Long-Term Care recommended that the 10/10 Rule be abandoned. For these reasons, the Department has revised the interim policy set forth in § 1101.77a to remove the ability of nursing facility providers to expand under the 10/10 Rule. Consequently, if a provider currently enrolled in the MA Program increases the number of beds at its nursing facility without having been first granted an exception, the Department's policy will be to terminate that facility's provider agreement regardless of whether the increase meets or exceeds the former 10/10 Rule.

In addition to the Department's revision to its interim policy codified at § 1101.77a, the Department will publish a nursing facility exceptions request statement of policy setting forth the guidelines the Department will use to review requests of applicants or participating providers to increase the number of MA certified nursing facility beds. It is the Department's intent to publish this statement of policy by November, and the Department will use its best efforts to issue decisions on exceptions requests received prior to June 30, 1997, by the end of 1997. The statement of policy will also clarify instances in which the Department will make capital component payments for replacement beds pending the promulgation of regulations. Under the statement of policy, a nursing facility provider will be afforded an opportunity to submit whatever information it deems relevant to the question of whether an exception should be granted in its particular circumstances. The Department may grant an exception in appropriate circumstances if it determines that increasing the number of MA certified nursing facility beds is in the best interests of the MA Program.

Comments

Although this statement of policy will become effective on August 11, 1997, the Department will consider comments regarding the revised interim policy. To be considered, comments must be received within 45 days of the date of publication.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users). If a person requires another alternative, contact Thomas Vracarich in the Office of Legal Counsel at (717) 783-2209.

Contact Person

Comments and questions regarding this statement of policy should be directed to Regulations Coordinator, Office of Medical Assistance, Room 515 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1870.

Effective Date

This statement of policy shall take effect on August 11, 1997.

FEATHER O. HOUSTON,
Secretary

(Editor's Note: The regulations of the Department, 55 Pa. Code Chapter 1101, are amended by amending a statement of policy at § 1101.77a to read as set forth in Annex A.)

Fiscal Note: 14-BUL-053. No fiscal impact; (8) recommends adoption. This statement of policy discontinues the practice of permitting nursing homes to automatically increase their MA bed capacity on an annual basis by 10 new beds or 10% of their total bed capacity, the "10/10 Rule." The Department may grant an exception in appropriate circumstances if it determines that increasing the

number of MA certified nursing facility beds is in the best interest of the MA Program. It is anticipated these changes will result in a savings to the Commonwealth in MA payments in future years to the extent there is a reduction in MA beds below the (10/10) rate currently authorized.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1101. GENERAL PROVISIONS

FEES AND PAYMENTS

§ 1101.77a Termination for convenience and best interests of the Department—statement of policy.

(a) Effective December 19, 1996, under § 1101.77(b)(1) (relating to enforcement actions by the Department), the Department will terminate the enrollment and direct and indirect participation of, and suspend payments to, an ICF/MR, inpatient psychiatric hospital or rehabilitation hospital provider that expands its existing licensed bed

capacity by more than ten beds or 10%, whichever is less, over a 2-year period, unless the provider obtained a Certificate of Need or letter of nonreviewability from the Department of Health dated on or prior to December 18, 1996, approving the expansion. Effective August 11, 1997, under § 1101.77(b)(1), the Department will terminate the enrollment and direct and indirect participation of, and suspend payments to, a nursing facility provider that expands its existing licensed bed capacity. A nursing facility provider that prior to August 11, 1997, relied on the interim policy effective December 19, 1996, and substantially implemented a project to expand its facility by ten beds or 10%, whichever is less, within a 2-year period, will not be terminated from enrollment under this policy.

(b) The Department will consider exceptions to subsection (a) on a case-by-case basis.

[Pa.B. Doc. No. 97-1251. Filed for public inspection August 8, 1997, 9:00 a.m.]