

# 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 November 12, 1997.

The following organization chart at 27 Pa.B. 6235 (November 29, 1997) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents 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. 97-1911. Filed for public inspection November 28, 1997, 9:00 a.m.]

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### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Transportation

The Executive Board approved a reorganization of the Department of Transportation effective November 17, 1997.

The following organization chart at 27 Pa.B. 6236 (November 29, 1997) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents 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. 97-1912. Filed for public inspection November 28, 1997, 9:00 a.m.]

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### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the State Police

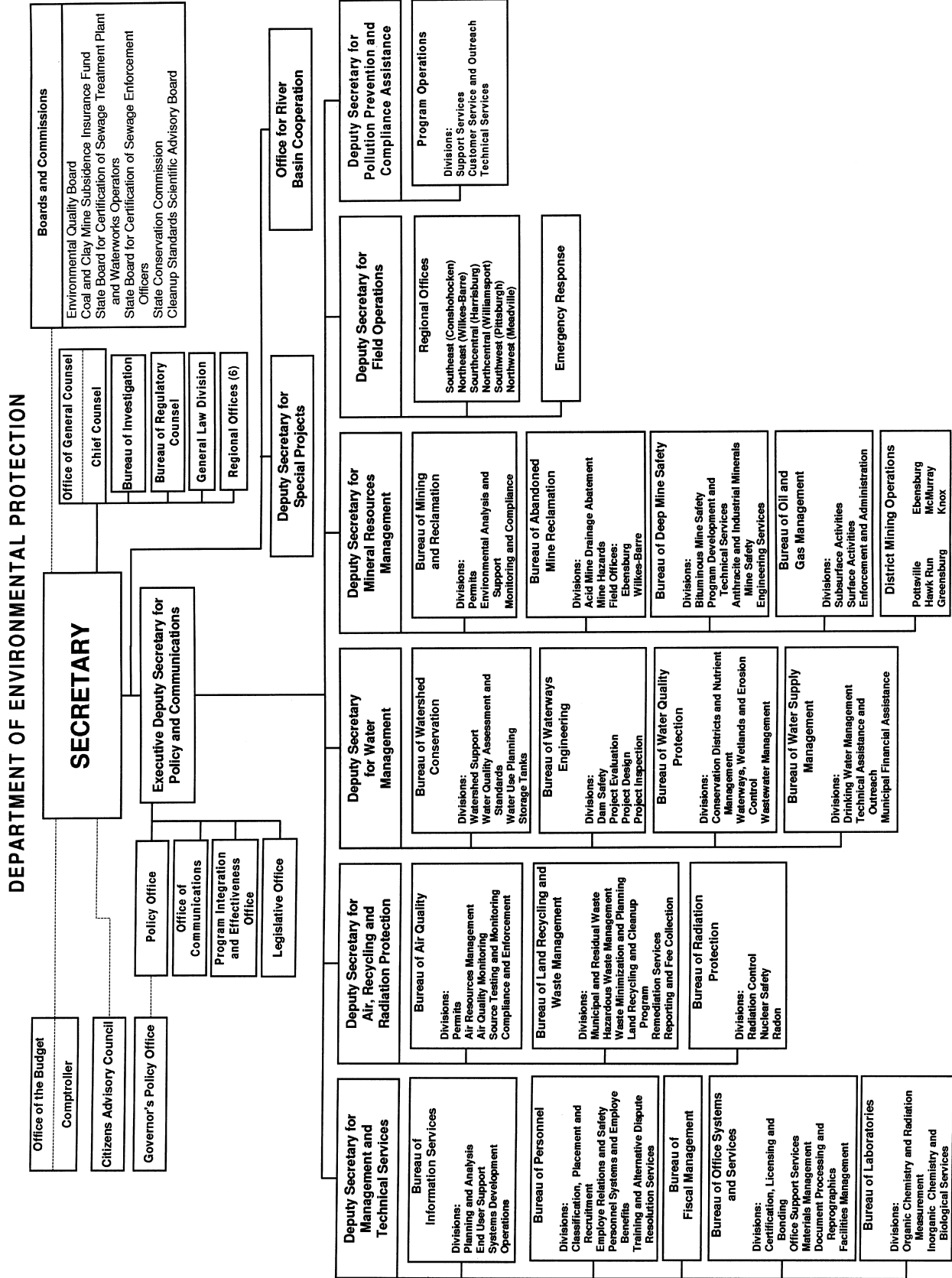
The Executive Board approved a reorganization of the State Police effective November 17, 1997.

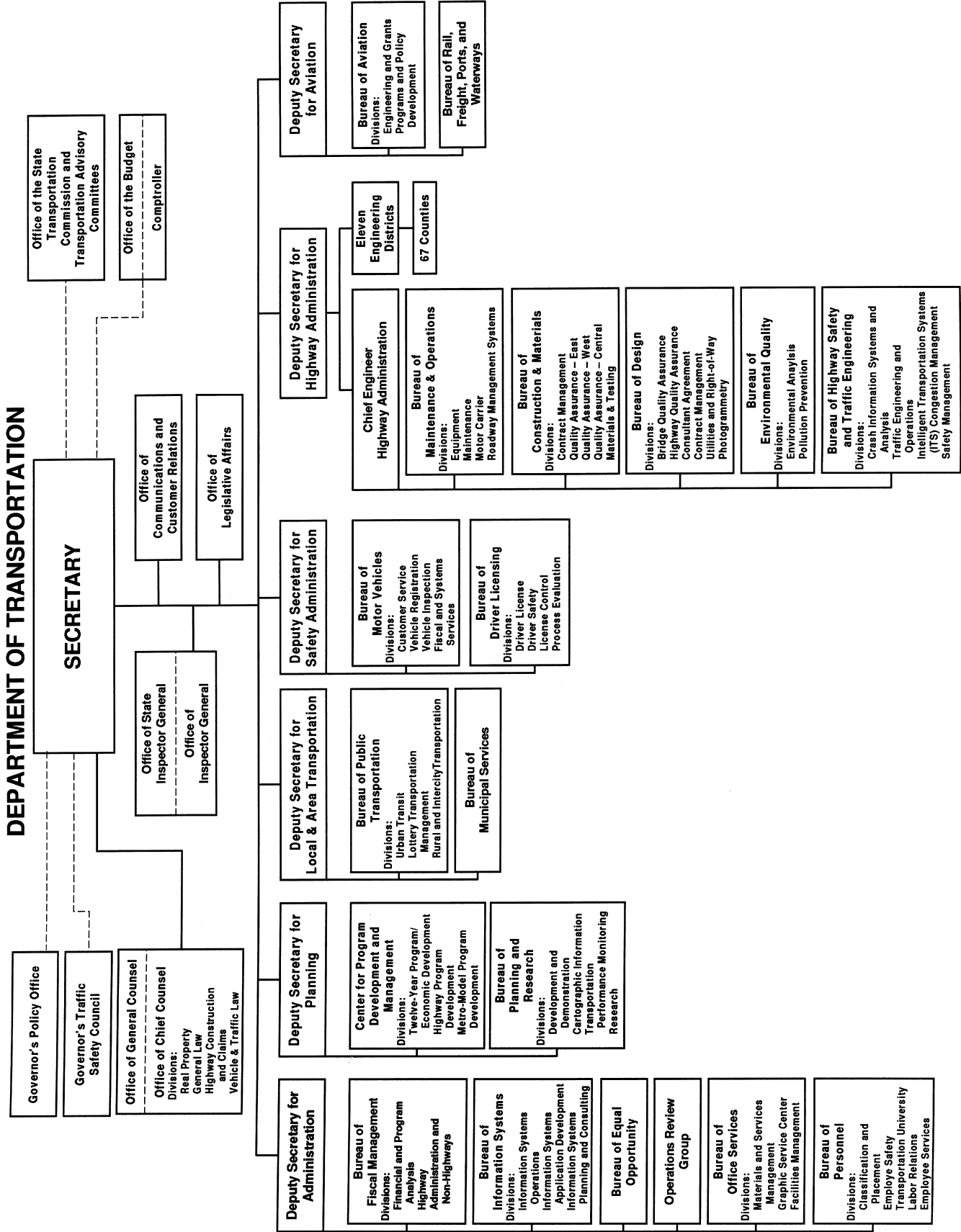
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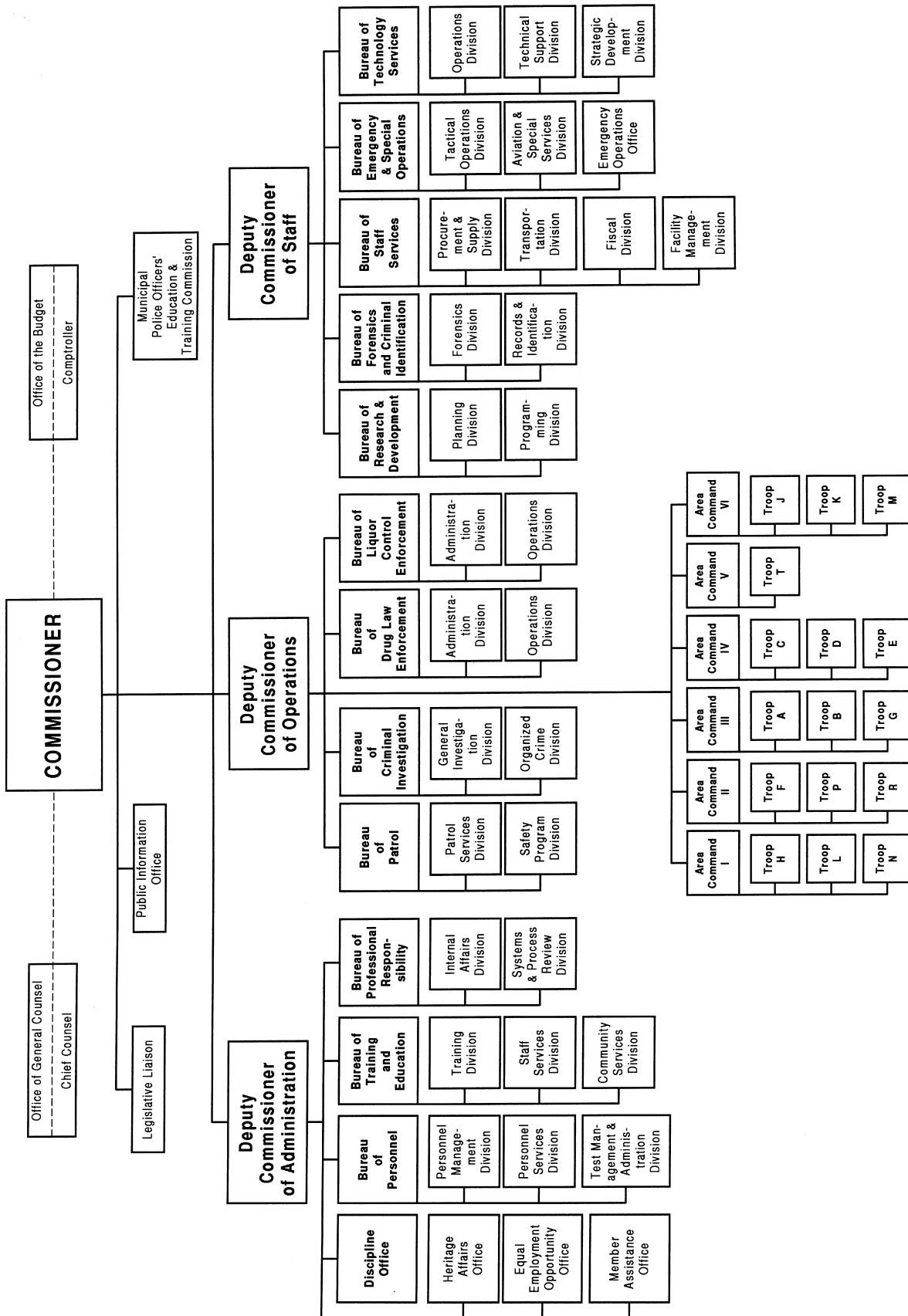
[Pa.B. Doc. No. 97-1913. Filed for public inspection November 28, 1997, 9:00 a.m.]

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PENNSYLVANIA STATE POLICE



## Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE  
[55 PA. CODE CH. 1187]

### Medical Assistance Manual; General Provisions

This statement of policy explains the circumstances under which the Department of Public Welfare (Department) will make capital component payments for replacement beds. Current Department regulations relating to reimbursement for nursing facilities enrolled and participating in the Commonwealth's Medical Assistance (MA) Program authorize capital component payments for replacement beds only if the nursing facility was "issued a Certificate of Need or a letter of nonreviewability for the project by the Department of Health." 55 Pa. Code § 1187.113(a)(3). Because Chapter 7 and all other portions of the Health Care Facilities Act (35 P. S. §§ 448.701—448.712) pertaining to Certificate of Need (CON) sunsetted on December 18, 1996, the Department will amend its regulations to authorize capital component payments for replacement beds constructed subsequent to the sunset of the CON program. Pending the promulgation of these regulations, the Department is issuing the following statement of policy to authorize, in certain circumstances, the payment of capital costs for replacement beds. Absent the issuance of this statement of policy, capital component payments for replacement beds without a CON or letter of nonreviewability could not be authorized.

#### Discussion

The Department will authorize capital component payments for replacement beds (up to applicable regulatory limits) only when it has determined that there is a need for the beds. To qualify for capital component payments, a replacement bed must replace a premortatorium bed, that is, a bed built under a CON dated on or before August 31, 1982, and for which the Department is making a capital payment under the Department's case mix regulations (55 Pa. Code §§ 1187.1—1187.141). This policy specifies the factors that the Department will consider in determining whether to grant approval of replacement beds. The Department will consider, among other things, the basis for the construction of the replacement beds, whether the overall total occupancy and MA occupancy levels of the facility indicate there is a need for the beds, and whether the provider has demonstrated that it would be more costly to renovate, rather than replace, the beds.

#### Amendments to Draft Statement of Policy

Prior to the publication of this statement of policy, the Department distributed copies of draft replacement bed guidelines to interested persons and made them available for public review and comment. The Department also discussed and solicited public input at the September meetings of the Medical Assistance Advisory Committee (MAAC), as well as the Consumer, Fee-For-Service, and Long Term Care Subcommittees of MAAC. All comments were reviewed and considered when developing this final statement of policy.

After consideration of the comments, the Department revised its policy to clarify that a participating provider of nursing facility services with a valid CON or letter of nonreviewability for its replacement beds may receive capital component payments for the beds if the provider is in compliance with all applicable statutory and regulatory requirements. In addition, the Department made the following revisions. First, the definition of "replacement

bed" has been revised to include reconstructed or renovated beds within an existing building or structure when the cost of the reconstruction or renovation equals or exceeds 50% of the total facility's appraised value in effect for the rate period in which the request is made. Second, the policy has been revised to state that, absent exceptional circumstances, the Department will not authorize capital component payments for replacement beds which will physically separate, in a different building, the replacement beds from other licensed and certified beds which will remain in operation in the existing facility. Finally, the policy has been clarified to state that the Department may approve a portion, rather than the entire, number of replacement beds.

#### Comments

Although this statement of policy will become effective on November 29, 1997, the Department will consider comments. To be considered, comments must be received within 45 days of the date of publication in the *Pennsylvania Bulletin*.

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 Policy Section, P. O. Box 8025, Harrisburg, PA 17105, (717) 772-2570.

#### Effective Date

This statement of policy shall take effect on November 29, 1997.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-NOT-159. No fiscal impact, (8) recommends adoption.

#### Annex A

### TITLE 55. PUBLIC WELFARE

#### PART III. MEDICAL ASSISTANCE MANUAL

#### CHAPTER 1187. NURSING FACILITY SERVICES

#### Subchapter H. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS

#### § 1187.113a. Nursing facility replacement beds— statement of policy.

(a) *Scope.* This section applies to any participating provider of nursing facility services that intends to seek capital component payments under this chapter for replacement beds constructed, licensed or certified after November 29, 1997.

(b) *Purpose.*

(1) Department regulations relating to capital component payments for nursing facilities enrolled and participating in the Commonwealth's Medical Assistance (MA) Program state that capital component payments for replacement beds are allowed only if the nursing facility was "issued a Certificate of Need or a letter of nonreviewability for the project by the Department of Health." See § 1187.113(a)(3) (relating to capital component payment limitations).

(2) Chapter 7 and all other portions of the Health Care Facilities Act (35 P. S. §§ 448.701—448.712) pertaining to Certificates of Need (CON) sunsetted on December 18, 1996. To allow the Department to continue to make capital component payments for replacement beds for which a nursing facility does not have a CON or letter of nonreviewability, the Department will amend its regulations to specify the conditions under which it will recognize beds as replacement beds for purposes of making capital component payments. Pending the promulgation of these regulations, the Department has issued this section to specify instances in which the Department will make capital component payments for replacement beds.

(c) *Requests for approval of replacement beds.* A nursing facility provider that intends to seek capital component payments under § 1187.113(a)(3) for nursing facility beds constructed, licensed or certified after November 29, 1997, shall submit a written request to the Department for approval of the beds as replacement beds.

(1) The facility shall submit an original and two copies of its request prior to beginning construction of the beds. If a facility began construction of the beds prior to November 29, 1997, the facility shall submit an original and two copies of its request by February 27, 1998, or the date on which the facility requested the Department of Health to issue a license for the beds, whichever date is earlier.

(2) A facility that fails to submit a request under paragraph (1) may not receive capital component payments for the beds.

(d) *Policy regarding approval of replacement beds.*

(1) *Nursing facility beds authorized under a CON dated on or before December 18, 1996.*

(i) The Department will approve replacement beds as qualifying for capital component payments under § 1187.113(a) if the following conditions are met:

(A) The facility has a CON or letter of nonreviewability dated on or before December 18, 1996, authorizing the replacement bed project.

(B) The facility has “substantially implemented” its project, as defined in 28 Pa. Code § 401.2 (relating to definitions).

(C) The beds that are being replaced:

(I) Are currently certified.

(II) Are premonitorium beds.

(III) Will be decertified and closed permanently effective on the same date that the replacement beds are certified.

(ii) If a facility has a CON dated on or before December 18, 1996 authorizing a replacement bed project, but the facility fails to substantially implement its project as defined in 28 Pa. Code § 401.2, the Department will treat the facility as though it does not have a CON, and consider the facility’s request under paragraph (2).

(2) *Nursing facility beds not authorized by a CON dated on or before December 18, 1996.* The Department will approve replacement beds as qualifying for capital component payments under § 1187.113(a) if, after applying the guidelines set forth in subsection (e), the Department determines that the following conditions are met:

(i) Construction of the replacement beds is necessary to assure that MA recipients have access to nursing facility services consistent with applicable law. If the Department determines that some, but not all, of the replacement

beds are necessary to assure that MA recipients have appropriate access to nursing facility services, the Department may limit its approval to the number of beds it determines are necessary. If the Department limits its approval to some of the beds, the remaining unapproved beds will not qualify for capital component payments.

(ii) Unless the Department finds that exceptional circumstances exist that require the replacement beds to be located at a further distance from the existing structure, the replacement beds will be constructed within a 1-mile radius of the existing structure in which the beds that are being replaced are situated.

(iii) Unless the Department finds that exceptional circumstances exist that require the replacement beds to be located at a further distance from the existing structure, the replacement beds will be attached or immediately adjacent to the existing structure in which beds that are being replaced are situated if the replacement beds will replace only a portion of the beds in the existing structure.

(iv) The beds that are being replaced:

(A) Are currently certified.

(B) Are premonitorium beds.

(C) Will be decertified and closed permanently effective on the same date that the replacement beds are certified.

(e) *Guidelines for evaluation of requests to construct replacement beds.* The Department will use the following guidelines, and will consider the following information, as relevant in determining whether to approve replacement beds under subsection (d)(2).

(1) Whether, and to what extent, construction of all the replacement beds is required to ensure the health, safety and welfare of the residents of the facility.

(2) Whether, and to what extent, building code violations or other regulatory violations exist at the facility requiring the construction of all of the replacement beds. If the provider alleges these violations, it shall attach waivers from the relevant regulatory agencies, and explain why the waivers of code violations may not continue indefinitely.

(3) Whether, and to what extent, the facility has considered the development of home and community-based services in lieu of replacing some or all of its beds.

(4) Whether other support services for MA recipients, including home and community-based services, are available in lieu of nursing facility services.

(5) Whether the overall total occupancy and MA occupancy levels of the facility and facilities in the county indicate that there is a need for all or a portion of the replacement beds.

(6) If the provider is proposing to construct a new facility or wing, whether the provider has satisfactorily demonstrated that it would be more costly to renovate the provider’s current facility rather than to construct the new facility or wing.

(7) Whether the facility, or section of the facility, which currently contains the beds to be replaced is able to be utilized for another purpose.

(f) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Premortatorium beds*—Nursing facility beds that were built under an approved CON dated on or before August 31, 1982, and for which the Department is making a capital component payment under these regulations.

*Replacement beds*—Nursing facility beds constructed in a new building or structure that take the place of existing

beds located in a separate or attached building or structure; or reconstructed or renovated beds within an existing building or structure when the cost of the reconstruction or renovation equals or exceeds 50% of the total facility's appraised value in effect for the rate period in which the request is made.

[Pa.B. Doc. No. 97-1914. Filed for public inspection November 28, 1997, 9:00 a.m.]