

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[ 55 PA. CODE CHS. 1187 AND 1189 ]

### Transition to RUG-III Version 5.12 and Latest Assessment

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) proposes to amend Chapters 1187 and 1189 (relating to nursing facility services; and county nursing facility services) to read as set forth in Annex A.

#### *Purpose of Proposed Rulemaking*

The purpose of this proposed rulemaking is to amend the Department's payment methodology to phase-in the use of the Resource Utilization Group III (RUG-III) classification system, version (v.) 5.12 44 Grouper, and the most recent resident assessments in determining the case-mix indices that are used in setting case-mix per diem rates for nonpublic nursing facilities and in making certain incentive payments to county nursing facilities.

#### *Background*

A case-mix index (CMI) is a numerical score that is assigned to a resident of a nursing facility. The score is determined by a classification system that analyzes data about the resident's medical condition and functional status and classifies the resident into a group based on the resident's characteristics and clinical needs. Each group has a CMI or numerical score which is intended to reflect the relative resource use of the average resident assigned to the group. The group's CMI score is assigned to each resident who is classified in the group. Generally, a resident with a higher CMI score has greater needs and, therefore, requires more nursing facility resources than a resident with a lower CMI score.

In this proposed rulemaking, the Department is proposing to change the source of the data and the classification system that is used in determining nursing facility residents' CMIs. Because the Department recognizes that these changes may impact nonpublic nursing facility case-mix payment rates, the Department is also proposing to phase-in these changes over a 3-year period. Before describing these changes, a review of how the Department currently calculates CMIs and uses them to set and adjust per diem rates for nonpublic nursing facilities and to make certain incentive payments to county nursing facilities is being provided.

*CMI calculations.* Currently, the Department calculates a CMI score for each nursing facility resident present in a nursing facility on the first calendar day of the second month of each calendar quarter (that is, February 1, May 1, August 1 and November 1). These 4 days are known as "picture dates." To determine a resident's CMI score for a picture date, the Department extracts data from the most recent comprehensive assessment of the resident, which was transmitted by the nursing facility using the Federally Approved Pennsylvania Specific Minimum Data Set (MDS) v. 2.0. The MDS is a Federally-mandated standardized assessment of a resident's clinical and functional status that nursing facilities participating in the MA Program must complete and submit for each of their

nursing facility residents at prescribed periods during the resident's stay at the facility. See 42 CFR 483.20 (relating to resident assessment). Then, using the RUG-III, v. 5.01 44 Grouper classification system, the Department classifies the resident into 1 of the 44 groups and assigns the resident a CMI score. These CMI scores are used in rate setting and making incentive payments to county nursing facilities.

*Medical Assistance (MA) payments to nonpublic nursing facilities.* Currently, the MA Program pays for nursing facility services provided to MA eligible recipients by participating nonpublic nursing facilities at per diem rates that are computed using the case-mix payment system in Chapter 1187, Subchapter G (relating to rate setting). A new case-mix payment rate is established for each nonpublic nursing facility once each fiscal year, also referred to as the rate year. The rate established for each nursing facility takes effect July 1, the start of the State fiscal year, and remains in effect until the close of the fiscal year on June 30.

Each nonpublic nursing facility's case-mix per diem rate consists of four rate components, one for each of the three net operating cost centers ("resident care" costs, "other resident related" costs and "administrative" costs) and a fourth component for the "capital" cost center. To determine the rate components of each of the three net operating cost centers, the Department groups nursing facilities into peer groups based on bed size and geographic location. See § 1187.94 (relating to peer grouping for price setting). For each peer group, the Department calculates a "peer group price" for the three net operating cost centers and uses the prices to set the amounts of the respective rate components for the individual nursing facilities assigned to the peer groups. As part of setting the peer group prices for the resident care cost center, the Department neutralizes each nursing facility's resident care costs using the facility's total facility CMI, which is the arithmetic mean CMI, or average CMI, of all residents of the facility on the applicable February 1st picture date. See § 1187.96(a)(5) (relating to price- and rate-setting computations). Although the Department established a separate payment methodology for county nursing facilities in 2006, the Department has continued to use county nursing facility audited costs in determining the peer group prices for nonpublic nursing facilities. County nursing facility costs are also neutralized as part of the price-setting process. Consistent with the act of July 4, 2008 (P.L. 557, No. 44), the Department is seeking to amend the State Plan and Chapter 1187 to phase out the use of county costs over a 3-year period ending June 30, 2012. See 39 Pa.B. 4179 (July 18, 2009).

Once the Department calculates the resident care peer group price for the rate year, the Department computes each nursing facility's resident care rate component and then adjusts that component every quarter during the rate year using the facility's MA CMI for the picture date designated for the rate quarter. See § 1187.96(a)(5). The MA CMI is the arithmetic mean CMI or average CMI of all MA residents of the nursing facility on a picture date. The Department pays each nonpublic nursing facility for nursing facility services provided to MA recipients during the quarter using the facility's adjusted quarterly case-mix per diem rate calculated for the respective calendar quarter.

*MA payments to county nursing facilities.* Currently, the Department makes payments to county nursing facilities

for services provided to MA recipients as specified in Chapter 1189 and the Commonwealth's approved State Plan. As specified in the State Plan, the Department makes pay for performance (P4P) payments to county nursing facilities that have an MA CMI for a picture date which is higher than their MA CMI for the prior picture date. The Federal Centers for Medicare and Medicaid Services (CMS) recently approved a State Plan Amendment authorizing the Department to continue to make quarterly P4P payments in Fiscal Years 2009-2010, 2010-2011 and 2011-2012.

#### *Requirements*

The following is a summary of the major provisions in the proposed rulemaking:

#### *§§ 1187.2 and 1187.33 (relating to definitions; and resident data and picture date reporting requirements)—Resident assessment*

As previously noted, the Department determines the RUG category and CMI score for each nursing facility resident using the assessment data from the resident's most recent comprehensive MDS assessment as submitted by the nursing facility. Using the CMI scores calculated for each resident, the Department calculates a total facility CMI score, and a facility MA CMI score for each nursing facility and a Statewide average MA CMI score. Nursing facilities are required to conduct and electronically submit assessments other than "comprehensive assessments" for their residents. These assessments also contain all MDS data elements needed to calculate the resident's RUG category and CMI score. These assessments may be completed after the latest comprehensive assessment and, therefore, provide more current information on the residents' condition and care needs.

Rather than continuing to use older assessment data to determine a resident's RUG category and CMI score, the Department is proposing to amend its regulations to require use of the most recent assessment of any type for each resident, whether or not the assessment is comprehensive, effective July 1, 2010. This change will enable the Department to make acuity adjustments and P4P payments using the most up-to-date resident data available without additional administrative burdens or costs to either nursing facilities or the Department.

To implement this change, the Department is proposing to amend the current definition of "resident assessment" in § 1187.2 by deleting the term "comprehensive" and § 1187.33(a)(6) by deleting the language regarding Medicare assessments.

The Department is proposing to use the most recent assessment of any type in determining the CMIs of residents of both nonpublic and county nursing facilities. The CMI scores affected by this proposed rulemaking will be used to calculate the total facility CMIs and the MA CMIs that will be used in setting nonpublic nursing facility rates effective on and after July 1, 2010. In addition, the CMI scores affected by this proposed amendment will be used in determining which county nursing facilities are eligible to receive P4P payments beginning with the July 1—September 30, 2010, P4P payment period.

#### *§ 1187.93 and Chapter 1187, Appendix A (relating to CMI calculations; and resource utilization group index scores for case-mix adjustment in the nursing facility reimbursement system)—Case-mix classification tool*

As previously noted, nursing facilities participating in the MA Program complete and submit resident assess-

ments using the Federally Approved Pennsylvania Specific MDS 2.0. The Department takes data from the MDS 2.0 resident assessments and, using RUG-III v. 5.01 44 Grouper classification system, assigns a CMI score to each nursing facility resident. The Commonwealth is currently only one of two states that still use the RUG-III v. 5.01 44 Grouper.

CMS has developed a new version of the MDS resident assessment, MDS 3.0, which nursing facilities participating in the Medicare or MA Program, or both, will be required to use effective October 1, 2010. The new version of the MDS has been designed to improve the reliability, accuracy and usefulness of the assessment tool, to include the resident in the assessment process and to incorporate the use of standard protocols used in other health care settings. According to CMS, the enhanced accuracy of the MDS 3.0 will improve clinical assessments and bolster programs that rely on the MDS for assessing the needs of consumers.

The MDS 3.0 assessment does not contain the elements necessary for resident classification with the RUG-III v. 5.01 44 Grouper and CMS has stated it will no longer support this Grouper once MDS 3.0 is implemented. In anticipation of the CMS move to the new MDS 3.0, the Department is proposing to change the Grouper used in determining nursing facility residents' CMI scores effective for rate setting periods commencing on and after July 1, 2010, to the RUG-III v. 5.12 44 Grouper. This RUG-III version, which is compatible with the MDS 3.0, is based on updated time studies conducted in 1995 and 1997 and reflects changes in nursing facility resident conditions and care since the original studies conducted in 1990. The combination of the use of the latest assessment to more accurately measure current resident acuity and a classification system based on more recent time studies will result in better distribution of scarce MA resources.

To implement this proposed amendment, the Department will amend § 1187.93 and update Chapter 1187, Appendix A to reflect both the associated Nursing Only CMI scores established by CMS for the RUG-III v. 5.12 44 Grouper classification system and the CMI scores normalized for nursing facilities in this Commonwealth. Normalization of CMI scores is a common process used by states when implementing a RUG-III based case-mix payment system or when changing to a new RUG version. Scores are normalized so that the average statewide CMI score equals 1.00. The Commonwealth normalized CMI scores the Department will use in the proposed amendments range from 0.48 to 1.75.

The Department is proposing to use the RUG-III v. 5.12 44 Grouper classification system in determining the CMIs of residents of both nonpublic and county nursing facilities. The CMI scores affected by this proposed rulemaking will be used to calculate the total facility CMIs and the MA CMIs that will be used in setting nonpublic nursing facility rates effective on and after July 1, 2010. In addition, the CMI scores affected by this proposed amendment will be used in determining which county nursing facilities are eligible to receive P4P payments beginning with the July 1—September 30, 2010, P4P payment period. The affected CMIs include the February 1, 2010, picture date total facility CMI and MA CMI; the total facility CMI for the February 1 picture dates from all of the cost report periods of the MA cost reports used in the July 1, 2010, rate setting database; the MA CMIs from the May 1, 2010, picture date, the August 1, 2010, picture date, the November 1, 2010, picture date; and the total facility CMIs and MA CMIs for all subsequent picture dates.

§ 1187.96 (relating to price- and rate-setting computations)—Phase-In—RUG-III v. 5.12 44 Grouper and the most recent resident assessment

The Department recognizes that the change in RUG-III Grouper and use of the most recent resident assessment of any type may cause a reduction in per diem rates for some nonpublic nursing facilities. Therefore, to mitigate adverse impact this proposed rulemaking may have on nonpublic nursing facilities, the Department is proposing a 3-year phase-in for the transition to the RUG-III v. 5.12 44 Grouper and the use of the most recent resident assessment, for rate setting periods beginning July 1, 2010, and ending June 30, 2013. Phasing in these proposed amendments will provide nursing facilities the opportunity to gain competency using MDS 3.0 and become familiar with the new RUG-III Grouper and resident assessment selection process. Specifically, the Department is proposing to amend § 1187.96 to specify that for July 1, 2010, through June 30, 2013, unless the nursing facility is a new facility, the resident care rate that the Department will use to establish a nursing facility's case-mix per diem rate will be a blended resident care rate that will consist of a portion of a 5.01 resident care rate and a portion of a 5.12 resident care rate.

The Department does not intend to apply the phase-in provisions to new nonpublic nursing facilities, since the phase-in period is being proposed as a transition from one system to another; rather, the Department will 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 specify that the new facilities will be assigned a Statewide average MA CMI calculated using the RUG-III v. 5.12 44 group values in Chapter 1187, Appendix A and the most recent assessments. When a new nursing facility's assessment data is used in a rate determination the CMI values used to determine the new nursing facility's total facility CMIs and MA CMI will be the RUG-III v. 5.12 44 group values in Chapter 1187, Appendix A and the most recent assessment.

§ 1189.105 (relating to incentive payments)—County nursing facilities—P4P Payments

As previously noted, the Department calculates MA CMI scores for county nursing facilities and uses the scores in determining which county nursing facilities are eligible to receive quarterly P4P payments. To be eligible for a P4P payment, a county nursing facility must meet the definition of a "county nursing facility" at the time the quarterly P4P payment is being made. In addition, the county nursing facility's MA CMI for a picture date must be higher than the facility's MA CMI for the previous picture date. Since county nursing facility MA CMIs are used only for this limited purpose, the Department does not intend to provide for a phase-in of the proposed changes. The Department proposes to amend § 1189.105 to specify, that, in determining whether a county nursing facility qualifies for a quarterly P4P incentive for P4P periods beginning on and after July 1, 2010, the facility's MA CMI for a picture date will equal the arithmetic mean of the individual CMIs for MA residents identified in the facility's CMI report for the picture date, and an MA resident's CMI will be calculated using the RUG-III v. 5.12 44 group values in Chapter 1187, Appendix A and the most recent assessment of any type for the resident.

*Affected Individuals and Organizations*

This proposed rulemaking will affect nonpublic nursing facilities enrolled in the MA Program and county nursing facilities that seek to qualify for P4P payments under § 1189.105(b).

*Accomplishments and Benefits*

This proposed rulemaking will benefit MA nursing facility residents in this Commonwealth by assuring they will continue to have access to medically necessary nursing facility services while providing for reasonable and adequate payments to MA nursing facility providers consistent with the fiscal resources of the Commonwealth.

*Fiscal Impact*

Fiscal impact is not anticipated as a result of this proposed rulemaking.

*Paperwork Requirements*

There are no new or additional paperwork requirements.

*Effective Date*

The proposed effective date for the proposed rulemaking is July 1, 2010.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Yvette Sanchez-Roberts, Department of Public Welfare/Department of Aging, Office of Long-Term Living, 555 Walnut Street, Forum Place, 5th Floor, Harrisburg, PA 17101-1919 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-520 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 section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

HARRIET DICHTER,  
Secretary

**Fiscal Note:** 14-520. No fiscal impact; (8) recommends adoption.

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:

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*Federally Approved Pennsylvania (PA) Specific Minimum Data Set (MDS)*—[ **One of three components of the Federally designed Resident Assessment Instrument (RAI). The RAI includes the MDS, the Resident Assessment Protocols and Utilization Guidelines. The MDS is a** ] A minimum core of assessment items with definitions and coding categories needed to comprehensively assess a nursing facility resident.

\* \* \* \* \*

*Preadmission screening and [ annual ] resident review*—The preadmission screening process that identifies target residents regardless of their payment source; and the [ **annual** ] resident review process that reviews target residents to determine the continued need for nursing facility services and the need for specialized services.

\* \* \* \* \*

*Resident assessment*—A [ **comprehensive,** ] standardized evaluation of each resident's physical, mental, psychosocial and functional status [ **conducted within 14 days of admission to a nursing facility, promptly after a significant change in a resident's status and on an annual basis** ].

\* \* \* \* \*

Subchapter D. DATA REQUIREMENTS FOR NURSING FACILITY APPLICANTS AND RESIDENTS

§ 1187.33. Resident data and picture date reporting requirements.

(a) *Resident data and picture date requirements.* A nursing facility shall meet the following resident data and picture date reporting requirements:

\* \* \* \* \*

(6) The CMI report [ **shall** ] **must** include resident assessment data for every MA and every non-MA resident included in the census of the nursing facility on the picture date. [ **Assessments completed solely for Medicare payment purposes are not included on the CMI report.** ]

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Subchapter G. RATE SETTING

§ 1187.93. CMI calculations.

The Pennsylvania Case-Mix Payment System uses the following [ **three** ] CMI calculations:

\* \* \* \* \*

(4) Picture dates that are used for rate setting beginning July 1, 2010, and thereafter will be calculated based on the RUG versions and CMIs set forth in Appendix A.

§ 1187.96. Price- and rate-setting computations.

(a) Using the NIS database in accordance with this subsection and § 1187.91 (relating to database), the Department will set prices for the resident care cost category.

\* \* \* \* \*

(6) For rate years 2010-2011, 2011-2012 and 2012-2013, unless the nursing facility is a new nursing facility, the resident care rate used to establish the nursing facility's case-mix per diem rate will be a blended resident care rate.

(i) The nursing facility's blended resident care rate for the 2010-2011 rate year will equal 75% of the nursing facility's 5.01 resident care rate calculated in accordance with subparagraph (iv) plus 25% of the nursing facility's 5.12 resident care rate calculated in accordance with subparagraph (iv).

(ii) The nursing facility's blended resident care rate for the 2011-2012 rate year will equal 50% of the nursing facility's 5.01 resident care rate calculated in accordance with subparagraph (v) and 50% of the nursing facility's 5.12 resident care rate calculated in accordance with subparagraph (v).

(iii) The nursing facility's blended resident care rate for the 2012-2013 rate year will equal 25% of the nursing facility's 5.01 resident care rate calculated in accordance with subparagraph (v) and 75% of the nursing facility's 5.12 resident care rate calculated in accordance with subparagraph (v).

(iv) For the rate year 2010-2011, each nursing facility's blended resident care rate will be determined based on the following calculations:

(A) For the first quarter of the rate year (July 1, 2010—September 30, 2010), the Department will calculate each nursing facility's blended resident care rate as follows:

(I) The Department will calculate a 5.12 resident care rate for each nursing facility in accordance with paragraphs (1)—(5). The CMI values the Department will use to determine each nursing facility's total facility CMIs and facility MA CMI, computed in accordance with § 1187.93 (relating to CMI calculations), will be the RUG-III version 5.12 44 group values as set forth in Appendix A. The resident assessment that will be used for each resident will be the most recent resident assessment of any type.

(II) The Department will calculate a 5.01 resident care rate for each nursing facility in accordance with paragraphs (1)—(5). The CMI values the Department will use to determine each nursing facility's total facility CMIs and facility MA CMI, computed in accordance with § 1187.93, will be the RUG-III version 5.01 44-group values as set forth in Appendix A. The resident assessment that will be used for each resident will be the most recent comprehensive resident assessment.

(III) The nursing facility's blended resident care rate for the quarter beginning July 1, 2010, and ending September 30, 2010, will be the sum of the

nursing facility's 5.01 resident care rate multiplied by 0.75 and the nursing facility's 5.12 resident care rate multiplied by 0.25.

(B) For the remaining 3 quarters of the 2010-2011 rate year (October 1 through December 31; January 1 through March 31; April 1 through June 30), the Department will calculate each nursing facility's blended resident care rate as follows:

(I) The Department will calculate a quarterly adjusted 5.12 resident care rate for each nursing facility in accordance with paragraph (5). The CMI values used to determine each nursing facility's MA CMI, computed in accordance with § 1187.93, will be the RUG-III version 5.12 44 group values as set forth in Appendix A. The resident assessment that will be used for each resident will be the most recent resident assessment of any type.

(II) The Department will calculate a quarterly adjusted 5.01 resident care rate for each nursing facility by multiplying the nursing facility's prior quarter 5.01 resident care rate by the percentage change between the nursing facility's current quarter 5.12 resident care rate and the nursing facility's previous quarter 5.12 resident care rate. The percentage change will be determined by dividing the nursing facility's current quarter 5.12 resident care rate by the nursing facility's previous quarter 5.12 resident care rate.

(III) The nursing facility's blended resident care rate for the 3 remaining quarters of the rate year will be the sum of the nursing facility's quarterly adjusted 5.01 resident care rate multiplied by 0.75 and the nursing facility's quarterly adjusted 5.12 resident care rate multiplied by 0.25.

(v) For rate years 2011-2012 and 2012-2013, each nursing facility's blended resident care rate will be determined based on the following calculations:

(A) For the first quarter of each rate year (July 1—September 30), the Department will calculate each nursing facility's blended resident care rate as follows:

(I) The Department will calculate a 5.12 resident care rate for each nursing facility in accordance with paragraphs (1)—(5). The CMI values used to determine each nursing facility's total facility CMIs and facility MA CMI, computed in accordance with § 1187.93, will be the RUG-III version 5.12 44 group values as set forth in Appendix A. The resident assessment that will be used for each resident will be the most recent resident assessment of any type.

(II) The Department will calculate a 5.01 resident care rate for each nursing facility by multiplying the nursing facility's prior April 1st quarter 5.01 resident care rate by the percentage change between the nursing facility's current 5.12 resident care rate and the nursing facility's prior April 1st quarter 5.12 resident care rate. The percentage change will be determined by dividing the nursing facility's current 5.12 resident care rate by the nursing facility's April 1st quarter 5.12 resident care rate.

(III) The nursing facility's blended resident care rate for the quarter beginning July 1, 2011, and ending September 30, 2011, will be the sum of the nursing facility's 5.01 resident care rate multiplied by 0.50 and the nursing facility's 5.12 resident care rate multiplied by 0.50.

(IV) The nursing facility's blended resident care rate for the quarter beginning July 1, 2012, and ending September 30, 2012, will be the sum of the nursing facility's 5.01 resident care rate multiplied by 0.25 and the nursing facility's 5.12 resident care rate multiplied by 0.75.

(B) For the remaining 3 quarters of each rate year (October 1 through December 31; January 1 through March 31; April 1 through June 30), the Department will calculate each nursing facility's blended resident care rate as follows:

(I) The Department will calculate a quarterly adjusted 5.12 resident care rate for each nursing facility in accordance with paragraph (5). The CMI values used to determine each nursing facility's MA CMI, computed in accordance with § 1187.93, will be the RUG-III version 5.12 44 group values as set forth in Appendix A. The resident assessment that will be used for each resident will be the most recent resident assessment of any type.

(II) The Department will calculate a quarterly adjusted 5.01 resident care rate for each nursing facility by multiplying the nursing facility's prior quarter 5.01 resident care rate by the percentage change between the nursing facility's current quarter 5.12 resident care rate and the nursing facility's previous quarter 5.12 resident care rate. The percentage change will be determined by dividing the nursing facility's current quarter 5.12 resident care rate by the nursing facility's previous quarter 5.12 resident care rate.

(III) For the remaining 3 quarters of rate year 2011-2012 (October 1 through December 31; January 1 through March 31; April 1 through June 30), each nursing facility's blended resident care rate will be the sum of the nursing facility's quarterly adjusted 5.01 resident care rate multiplied by 0.50 and the nursing facility's quarterly adjusted 5.12 resident care rate multiplied by 0.50.

(IV) For the remaining 3 quarters of rate year 2012-2013 (October 1 through December 31; January 1 through March 31; April 1 through June 30), each nursing facility's blended resident care rate will be the sum of the nursing facility's quarterly adjusted 5.01 resident care rate multiplied by 0.25 and the facility's quarterly adjusted 5.12 resident care rate multiplied by 0.75.

(7) Beginning with rate year 2013-2014, and thereafter, the Department will calculate each nursing facility's resident care rate in accordance with paragraphs (1)—(5). The CMI values used to determine each nursing facility's total facility CMIs and facility MA CMI, computed in accordance with § 1187.93, will be the RUG-III version 5.12 44 group values as set forth in Appendix A. The resident assessment that will be used for each resident will be the most recent resident assessment of any type.

\* \* \* \* \*

(e) The following applies to the computation of nursing facilities' per diem rates:

\* \* \* \* \*

(3) For rate years 2010-2011, 2011-2012 and 2012-2013, unless the nursing facility is a new nursing facility, the nursing facility per diem rate will be computed by adding the blended resident care rate,

the other resident related rate, the administrative rate and the capital rate for the nursing facility.

**§ 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(s)(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 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 assessment of any type.**

\* \* \* \* \*

(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 assessments of any type.**

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**Appendix A**

**Resource Utilization Group Index Scores for Case-Mix Adjustment in the Nursing Facility Reimbursement System**

[ The Department announces the Resource Utilization Group (RUG-III) index scores for case-mix adjustment in the nursing facility reimbursement system. The index scores shall be effective for nursing facility rates starting January 1, 1996, and these index scores will remain in effect until a subsequent notice is published in the *Pennsylvania Bulletin*.

Section 1187.92(d) (relating to resident classification system) authorizes the Department to announce these index scores by notice submitted for recommended publication in the *Pennsylvania Bulletin* and suggested codification in the *Pennsylvania Code* as Appendix A.

The National RUG-III nursing CMI scores were normalized for the average resident in a nursing facility participating in the MA Program on February 1, 1993. The RUG-III PA normalized index scores are used to make case-mix adjustments in the computation of nursing facility rates. Subchapter G (relating to rate setting) defines the rate setting process. ]

The following chart is a listing by group of the RUG-III index scores that the Department will use to set each nursing facility's 5.01 resident care rate for the quarter beginning July 1, 2010, and ending September 30, 2010, as set forth in § 1187.96 (relating to price- and rate-setting computations). The table has one column that is the RUG-III nursing CMI scores and a second column that is the RUG-III PA normalized index scores.

**RUG-III VERSION 5.01 INDEX SCORES**

<i>RUG-III Group</i>	<i>RUG-III Nursing CMI</i>	<i>RUG-III PA Normalized Index</i>
RLA	1.14	1.13
RLB	1.36	1.35
RMA	1.25	1.24
RMB	1.38	1.37
RMC	2.09	2.07
RHA	1.06	1.05
RHB	1.31	1.30
RHC	1.50	1.49
RHD	1.93	1.91
RVA	0.82	0.81
RVB	1.18	1.17
RVC	1.79	1.77
SE1	1.78	1.76
SE2	2.65	2.62
SE3	3.97	3.93
SSA	1.28	1.27
SSB	1.47	1.46
SSC	1.61	1.59
CA1	0.67	0.66
CA2	0.76	0.75
CB1	0.94	0.93
CB2	1.08	1.07
CC1	1.16	1.15
CC2	1.19	1.18
CD1	1.37	1.36
CD2	1.46	1.45
IA1	0.49	0.49
IA2	0.60	0.59
IB1	0.80	0.79
IB2	0.88	0.87
BA1	0.41	0.41
BA2	0.58	0.57
BB1	0.78	0.77

<i>RUG-III Group</i>	<i>RUG-III Nursing CMI</i>	<i>RUG-III PA Normalized Index</i>	<i>RUG-III 44 Grouper</i>	<i>RUG-III Nursing Only CMIs</i>	<i>RUG-III PA Normalized Index</i>
BB2	0.87	0.86	CB1	0.92	0.86
PA1	0.39	0.39	CB2	1.00	0.94
PA2	0.52	0.51	CC1	1.08	1.01
PB1	0.66	0.65	CC2	1.23	1.15
PB2	0.68	0.67	IA1	0.58	0.54
PC1	0.77	0.76	IA2	0.63	0.59
PC2	0.86	0.85	IB1	0.73	0.69
PD1	1.00	0.99	IB2	0.76	0.71
PD2	1.01	1.00	BA1	0.52	0.49
PE1	1.13	1.12	BA2	0.61	0.57
PE2	1.19	1.18	BB1	0.71	0.67
			BB2	0.75	0.70
			PA1	0.51	0.48
			PA2	0.53	0.50
			PB1	0.55	0.52
			PB2	0.56	0.53
			PC1	0.70	0.66
			PC2	0.72	0.68
			PD1	0.73	0.69
			PD2	0.78	0.73
			PE1	0.84	0.79
			PE2	0.86	0.81

The following chart is a listing by group of the RUG-III index scores that the Department will use to set each nursing facility's 5.12 resident care rate for rate years 2010-2011, 2011-2012 and 2012-2013 and each nursing facility's resident care rate beginning with rate year 2013-2014, and thereafter, as set forth in § 1187.96. The table has one column that is the RUG-III nursing CMI scores and a second column that is the RUG-III PA normalized index scores.

**RUG-III VERSION 5.12 INDEX SCORES**

<i>RUG-III 44 Grouper</i>	<i>RUG-III Nursing Only CMIs</i>	<i>RUG-III PA Normalized Index</i>
RLA	0.87	0.82
RLB	1.22	1.15
RMA	1.06	1.00
RMB	1.20	1.13
RMC	1.48	1.39
RHA	0.96	0.90
RHB	1.16	1.09
RHC	1.30	1.22
RVA	0.89	0.84
RVB	1.14	1.07
RVC	1.24	1.16
RUA	0.85	0.80
RUB	1.05	0.99
RUC	1.43	1.34
SE1	1.28	1.20
SE2	1.52	1.43
SE3	1.86	1.75
SSA	1.11	1.04
SSB	1.15	1.08
SSC	1.24	1.16
CA1	0.82	0.77
CA2	0.91	0.85

**CHAPTER 1189. COUNTY NURSING FACILITY SERVICES**

**Subchapter E. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS**

**§ 1189.105. Incentive payments.**

\* \* \* \* \*

(b) *Pay for performance incentive payment.*

(1) The Department will establish pay for performance measures that will qualify a county nursing facility for additional incentive payments.

(2) The incentive payments will be made in accordance with the formula and qualifying criteria [ set forth ] in the Commonwealth's approved State Plan.

(3) **For pay for performance payment periods beginning on or after July 1, 2010, in determining whether a county nursing facility qualifies for a quarterly pay for performance incentive, the facility's MA CMI for a picture date will equal the arithmetic mean of the individual CMIs for MA residents identified in the facility's CMI report for the picture date. An MA resident's CMI will be calculated using the RUG-III version 5.12 44 group values in Chapter 1187, Appendix A (relating to resource utilization group index scores for case-mix adjustment in the nursing facility reimbursement system) and the most recent assessment of any type for the resident.**

[Pa.B. Doc. No. 10-2140. Filed for public inspection November 12, 2010, 9:00 a.m.]

# GAME COMMISSION

[ 58 PA. CODE CH. 141 ]

## Hunting and Trapping; Artificial Lights

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed, at its October 5, 2010, meeting, to amend § 141.7 (relating to use of artificial lights) to remove conflicting language purporting to continue prohibitions on the usage of gun-mounted lights by hunters and furtakers.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 5, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2011.

### 1. *Purpose and Authority*

On July 3, 2007, House Bill 881 became law as 2007, July 3, P. L. 79, No. 26, § 1. This legislation, inter alia, amended sections 2308 and 2310 of the code (relating to unlawful devices and methods; and unlawful use of lights while hunting) to permit furbearer hunters or trappers to take furbearers with a firearm having a flashlight or spotlight mounted to it as long as the sole source of power for the flashlight or spotlight was contained within the light or possessed on their person. In an effort to enhance consistency of the Commission's regulations with the act, the Commission is proposing to amend § 141.7 to remove conflicting language purporting to continue prohibitions on the usage of gun-mounted lights by hunters and furtakers.

Section 2102(d) of the code (relating to regulations) provides "The commission to promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." The amendments to § 141.7 were proposed under this authority.

### 2. *Regulatory Requirements*

The proposed rulemaking will amend § 141.7 by removing language purporting to continue prohibitions on the usage of gun-mounted lights by hunters and furtakers.

### 3. *Persons Affected*

Persons wishing to use gun-mounted lights while hunting any species where use of lights while hunting is permitted may be affected by the proposed rulemaking.

### 4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

### 5. *Effective Date*

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### 6. *Contact Person*

For further information regarding the proposed rulemaking, contact Richard R. Palmer, Director, Bureau of

Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-313. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 141. HUNTING AND TRAPPING

#### Subchapter A. GENERAL

#### § 141.7. Use of artificial lights.

(a) Coyotes are added to the list of animals in section 2310(b) of the act (relating to unlawful use of lights while hunting) which may be hunted with a light [ **ordinarily carried on the person** ].

\* \* \* \* \*

[Pa.B. Doc. No. 10-2141. Filed for public inspection November 12, 2010, 9:00 a.m.]

[ 58 PA. CODE CH. 141 ]

## Hunting and Trapping; Turkey

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed, at its October 5, 2010, meeting, to amend § 141.45 (relating to turkey) to expand the nontoxic shot authorization to both fall and spring turkey seasons as well.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 5, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2011.

### 1. *Purpose and Authority*

On January 26, 2010, the Commission adopted amendments to § 141.22 (relating to small game) that, inter alia, expanded the types of nontoxic shot that could be used to hunt small game to include a wide variety of commercially available nontoxic shot in addition to steel and Bismuth/tin shot ammunition. The Commission is proposing to amend § 141.45 to expand the nontoxic shot authorization to both fall and spring turkey seasons as well.

Section 2102(d) of the code (relating to regulations) provides "The commission to promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." The amendments to § 141.45 were proposed under this authority.

### 2. *Regulatory Requirements*

The proposed rulemaking will amend § 141.45 by replacing language to expand the nontoxic shot authorization to both fall and spring turkey seasons.



3. *Persons Affected*

Persons wishing to use nontoxic shot ammunition to hunt wild turkey within this Commonwealth may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-314. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter C. BIG GAME**

**§ 141.45. Turkey.**

(a) *Fall turkey season.*

(1) *Permitted devices.* It is lawful to hunt turkey during the fall turkey season with any of the following devices:

\* \* \* \* \*

(ii) A manually operated or semiautomatic, centerfire shotgun or muzzleloading shotgun using shot ammunition no larger than #4 lead, [ #4 Bismuth/tin or ] #2 steel or #4 of any other composition or alloy of nontoxic shot approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot).

\* \* \* \* \*

(b) *Spring turkey season.*

(1) *Permitted devices.* It is lawful to hunt turkey during the spring turkey season with any of the following devices:

(i) A manually operated or semiautomatic, centerfire shotgun or muzzleloading shotgun using shot ammunition no larger than #4 lead, [ #4 Bismuth/tin or ] #2 steel or #4 of any other composition or alloy of nontoxic shot approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot).

\* \* \* \* \*

[Pa.B. Doc. No. 10-2142. Filed for public inspection November 12, 2010, 9:00 a.m.]

[ 58 PA. CODE CH. 135 ]

**Lands and Buildings; State Game Farms**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed, at its October 5, 2010, meeting, to amend § 135.61 (relating to State game farms) to make State game lands (SGLs) regulations equally applicable to State game farms.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 5, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2011.

1. *Purpose and Authority*

“State game farms” are the only lands and waters under Commission ownership that do not enjoy the wide range of enumerated protections from various conduct provided under § 135.41 (relating to State game lands) in addition to the protections currently provided under § 135.2 (relating to unlawful actions). The Commission is proposing to amend § 135.61 to make SGLs regulations equally applicable to State game farms.

Section 721(a) of the code (relating to control of property) provides “The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” Section 741(b) of the code (relating to commission actions for damage to buildings or property) provides “The commission shall promulgate regulations to protect users, improvements, lands and buildings under its control.” The amendments to § 135.61 were proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 135.61 by adding language expanding the application of SGLs regulations to lands and waters designated as State game farms.

3. *Persons Affected*

Persons wishing to utilize lands designated as State game farms may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rule-making, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-312. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 135. LANDS AND BUILDINGS**

**Subchapter D. STATE GAME FARMS**

**§ 135.61. State game farms.**

[ In addition to § 135.2 (relating to unlawful actions), the following pertain to lands and waters owned by the Commission, designated as State game farms ] In addition to the following restrictions, §§ 135.2 and 135.41 (relating to unlawful actions; and State game lands) pertain to lands and waters owned by the Commission and designated as State game farms. It is unlawful to:

\* \* \* \* \*

[Pa.B. Doc. No. 10-2143. Filed for public inspection November 12, 2010, 9:00 a.m.]

**[ 58 PA. CODE CH. 135 ]**

**Lands and Buildings; State Game Lands**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed, at its October 5, 2010, meeting, to amend § 135.41 (relating to State game lands) to limit the overnight placement of portable hunting blinds and stands on State game lands (SGLs).

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 5, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2011.

1. *Purpose and Authority*

The Commission has historically permitted the placement and use of portable hunting blinds and stands on SGLs and continued support for their allowance has not diminished. However, the Commission has identified that this allowance has, in certain instances, resulted in the unintended consequence of some portable hunting blinds and stands on SGLs seemingly becoming permanent fixtures due to long-term placement by hunters. While the Commission continues to support the placement and use of portable hunting blinds and stands on SGLs, it is proposing to amend § 135.41 to limit the overnight placement of portable hunting blinds and stands to 2 weeks before the opening of the first deer season to 2 weeks after the close of the last deer season within each

respective wildlife management unit and also limit the overnight placement of portable hunting blinds to the calendar dates of the spring turkey season.

Section 721(a) of the code (relating to control of property) provides “The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” The amendments to § 135.41 were proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 135.41 by adding language limiting the overnight placement of portable hunting stands to 2 weeks before the opening of the first deer season to 2 weeks after the close of the last deer season within each respective wildlife management unit, and also limit the overnight placement of portable hunting blinds to the calendar dates of the spring turkey season.

3. *Persons Affected*

Persons wishing to place portable hunting blinds or stands on SGLs may be affected by the proposed rule-making.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rule-making, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-311. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 135. LANDS AND BUILDINGS**

**Subchapter C. STATE GAME LANDS**

**§ 135.41. State game lands.**

\* \* \* \* \*

(c) *Additional prohibitions.* In addition to the prohibitions contained in the act pertaining to State game lands and § 135.2, except with the written permission of the Director, it is unlawful to:

\* \* \* \* \*

(11) [ **Occupy, use or construct, place or maintain structures or other tangible property, except that portable hunting blinds or stands may be used, provided no visible damage is caused to trees.** ] **Construct, place, maintain, occupy, use, leave or abandon any structures or other tangible property, except that portable hunting blinds or stands may be used subject to the following restrictions:**

(i) Use may not cause damage to trees.

(ii) Except as provided in subparagraph (iii), overnight placement of portable hunting blinds or stands may not occur sooner than 2 weeks prior to the opening of the first deer season nor later than 2 weeks after the close of the last deer season within each wildlife management unit.

(iii) Overnight placement of portable hunting blinds is additionally permitted during the spring turkey season within each wildlife management unit.

\* \* \* \* \*

[Pa.B. Doc. No. 10-2144. Filed for public inspection November 12, 2010, 9:00 a.m.]

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