

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Corrective Amendment to 55 Pa. Code §§ 1187.96 and 1187.97

The Department of Public Welfare has discovered discrepancies between the agency text of 55 Pa. Code §§ 1187.96 and 1187.97 (relating to price- and rate-setting computations; and rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities) as deposited with the Legislative Reference Bureau and published at 40 Pa.B. 6782, 6787 (November 27, 2010) and the official text as codified in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 435, February 2011) and as currently appearing in the *Pennsylvania Code*. Due to codification errors, subparagraphs (i) and (ii) were not deleted from § 1187.96(d)(2). In addition, clauses (B)(II) and (III) and (C) were inadvertently deleted from § 1187.97(1)(ii).

Therefore, under 45 Pa.C.S. § 901: The Department of Public Welfare has deposited with the Legislative Reference Bureau corrective amendments to 55 Pa. Code §§ 1187.96 and 1187.97. The corrective amendments to 55 Pa. Code §§ 1187.96 and 1187.97 are effective February 5, 2011, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct versions of 55 Pa. Code §§ 1187.96 and 1187.97 appear in Annex A, with ellipses referring to the existing text of the regulations.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter G. RATE SETTING

§ 1187.96. Price- and rate-setting computations.

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(d) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set a rate for the capital cost category for each nursing facility by adding the nursing facility's fixed property component, movable property component and real estate tax component and dividing the sum of the three components by the nursing facility's total actual resident days, adjusted to 90% occupancy, if applicable.

(1) The Department will determine the fixed property component of each nursing facility's capital rate as follows:

(i) The Department will multiply the total number of the nursing facility's allowable beds as of April 1, immediately preceding the rate year, by \$26,000 to determine the nursing facility's allowable fixed property cost.

(ii) The Department will multiply the result by the financial yield rate.

(2) The Department will determine the movable property component of each nursing facility's capital rate based on the audited actual costs of major movable property as set forth in the most recent audited MA-11

cost report available in the NIS database in accordance with § 1187.91. This amount is referred to as the nursing facility's allowable movable property cost.

(3) The Department will determine the real estate tax cost component of each nursing facility's capital rate based on the audited actual real estate tax cost as set forth in the most recent audited MA-11 cost report available in the NIS database.

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§ 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(a)(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 classifiable 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 classifiable assessment of any type.

(B) For a former county nursing facility, the county nursing facility's assessment data and MA CMI will be transferred to the new nursing facility.

(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 classifiable assessments of any type.

(ii) The three components of the capital portion of the case-mix rate are determined as follows:

(A) *Fixed property component.* The fixed property component will be determined in accordance with § 1187.96 (d)(1).

(B) *Movable property component.* The movable property component will be determined as follows:

(I) The nursing facility's acquisition cost, as determined in accordance with § 1187.61(b) (relating to movable property cost policies), for any new items of movable property acquired on or before the date of enrollment in the MA program, will be added to the nursing facility's

remaining book value for any used movable property as of the date of enrollment in the MA program to arrive at the nursing facility's movable property cost.

(II) The nursing facility's movable property cost will then be amortized equally over the first 3 rate years that the nursing facility is enrolled in the MA program to determine the nursing facility's movable property component of the capital rate.

(III) After the first 3 rate years the nursing facility's movable property component will be based on the most recent audited MA-11 cost report available in the NIS database. If no MA-11 is available in the NIS database, the nursing facility will not receive the movable property component of the capital rate.

(C) *Real estate tax component.*

(I) For the first 3 rate years, the new nursing facility real estate tax component will be the nursing facility's annual real estate tax cost as of the date of enrollment in the MA program.

(II) After the first 3 rate years, the real estate tax component will be based on the audited MA-11 cost report available in the NIS database. If no audited MA-11 cost report is available in the NIS database, the nursing facility will not receive the real estate tax component of the capital rate.

(iii) Newly constructed nursing facilities are exempt from the adjustment to 90% occupancy until the nursing facility has participated in the MA Program for one full annual price setting period as described in § 1187.95 (relating to general principles for rate and price setting).

(iv) A new nursing facility is exempt from the occupancy requirements in § 1187.104(1)(ii) (relating to limitations on payment for reserved beds) until a CMI Report for each of the three picture dates used to calculate overall occupancy as set forth in § 1187.104(1)(iii) is available for the rate quarter.

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