

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>OCT 24 2022</p> <p>Independent Regulatory IRRC Review Commission</p>	
(1) Agency: Department of Human Services			
(2) Agency Number: 14			
Identification Number: 14-549			
(3) PA Code Cite: 55 Pa. Code Chapter 1101.51(c)(3)			
(4) Short Title: Interrelationship of providers			
(5) Agency Contacts (List Telephone Number and Email Address):			
<p>Primary Contact: Pamela Machamer-Peechatka Phone: (717) 409-3550 Email: pmachamerp@pa.gov</p> <p>Secondary Contact: Karen Lowery Phone: (717) 409-3551 Email: klowery@pa.gov</p>			
(6) Type of Rulemaking (check applicable box):			
<input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)			
<p>This purpose of this final-form regulation is to amend Title 55 of the Pennsylvania Code (Pa. Code), Chapter 1101, by removing Section 1101.51(c)(3) which prohibits a provider from leasing or renting space, shelves, or equipment in the provider's office to another provider or allowing the placement of paid or unpaid staff of another provider in the provider's office.</p> <p>The Department of Human Services (Department) is rescinding this provision to allow providers to share space ("co-locate").</p>			
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.			
Section 403.1(a)(6) of the Human Services Code (62 P.S. § 403.1(a)(6))			
(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.			
No federal or state statute or regulation, court order or court decision mandates this final-form regulation.			

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This final-form regulation will allow providers that are co-located to enroll or remain enrolled in the Medical Assistance (MA) Program without the need for a Secretarial waiver or the submission of an attestation. See 46 Pa.B 2683 (May 28, 2016). The final-form regulation also enhances the delivery of health care services to MA beneficiaries by enabling them to receive services from more than one provider at the same location if they choose to do so.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No provisions are more stringent than federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This final-form regulation will bring Pennsylvania in line with other states. Of the 12 states the Department contacted, only Pennsylvania has a regulation prohibiting co-location of providers.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This final-form regulation will not affect any other regulations of the promulgating agency or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses, and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The draft Statement of Policy (SOP) on shared space, published at 46 Pa.B. 2683 (May 26, 2016), and the proposed rescission of the regulation at 55 Pa. Code § 1101.51(c)(3) were discussed at the September 2015 Medical Assistance Advisory Committee (MAAC). Based on public comments received, providers and consumers strongly support the rescission of this regulation. The matter was also discussed at the February 2016, April 2016, May 2016, and June 2016 MAAC meetings.

The Department presented information at the October 2015 Consumer Subcommittee of the MAAC about the draft SOP on shared space and the proposed removal of the regulation at 55 Pa. Code § 1101.51(c)(3). The Department also presented this information at the October 2015 Annual Conference of the Pennsylvania Association of Community Health Centers.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Nine co-located providers operating at 82 separate locations have previously requested and received a waiver of the regulation from the Secretary. Any provider who enrolled and was co-located with another provider after May 28, 2016, completed an attestation. Current waivers and attestations will remain in effect until final rulemaking eliminates the co-location provision in 55 Pa. Code § 1101.51(c)(3).

The Department does not have access to the information on the total revenue generated by each provider on IRS tax return forms. Therefore, the Department is unable to determine which co-located providers enrolled in the MA Program are small businesses as defined in 13 CFR, Ch. 1, Part 121 (relating to small business size regulations).

The rescission of this regulation provides the regulatory framework to promote integrated health care services by allowing providers to co-locate. Providers that want to co-locate in the future will be able to do so without obtaining a waiver or submitting an attestation. The change to the regulation will not adversely affect any small business.

(16) List the persons, groups, or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Nine co-located providers operating at 82 separate locations received waivers of the regulation. Any provider who enrolled after May 28, 2016, and was co-located with another provider, completed an attestation. These waivers and attestations will remain in effect until final rulemaking is published in the Pa. Bulletin, at which time these providers will be able to continue to co-locate without waivers or attestations. Additionally, other providers that want to co-locate in the future would be able to do so without obtaining a waiver or completing an attestation.

The Department does not know which, if any, co-located providers enrolled in the MA Program meet the definition of a small business because the Department does not have access to the information of the total revenue generated by each provider on IRS tax return forms. Therefore the Department is unable to determine which providers enrolled in the MA program are small businesses as defined in 13 CFR Part 121 (relating to small businesses size regulation).

(17) Identify the financial, economic, and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Department anticipates no adverse financial, economic, or social impact on small businesses, businesses and labor communities and other public and private organizations.

The Department recognizes and supports integrated health care, which increases access to quality health care services for beneficiaries. The rescission of the regulation will facilitate the ability of providers to co-locate, which supports more coordinated and integrated health care within the MA Program.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The Department foresees no costs or adverse effects associated with the final-form regulation. Providers who have received a waiver of the regulation and providers who have co-location arrangements will benefit from this regulatory change as it facilitates their enrollment in the MA Program. MA beneficiaries will benefit from this final-form regulation because it provides access to services in a more integrated manner, consistent with developments in the health care industry. Therefore, the benefits of removing this regulation outweigh the costs.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation would remove the need for co-located providers to seek a waiver or complete an attestation.

There is no fiscal impact to the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There is no fiscal impact to the local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There is no fiscal impact to the state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork is required to implement this final-form regulation.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Not applicable.

Alonak Gilligan

07/20/2022

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 FY 19-20	FY -2 FY 20-21	FY -1 FY 21-22	Current FY FY 22-23
MA – Capitation	\$2,507,519,000	\$3,060,301,000	\$4,557,295,000	\$4,017,523,000
MA – FFS	\$344,107,000	\$808,305,000	\$644,059,000	\$756,852,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation does not have any adverse impact on small businesses.

- (a) Small businesses who receive payment for services that are funded in part by Federal matching funds to MA FFS beneficiaries are subject to the regulation. The Department does not have access to full annual receipt information for MA enrolled providers and, therefore, is unable to estimate the number of providers that are small businesses.
- (b) There are no projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report of record.
- (c) The regulation does not have an adverse impact on small businesses. MA enrolled providers that qualify as small businesses will benefit from this regulation which supports integrated care by allowing payments to groups made up of different provider types. This promotes more coordination between providers by reducing administrative burdens for different provider types working together.
- (d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Department has not identified any provisions that are necessary to meet the particular needs of affected groups or persons, so no special provisions have been developed.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The current regulation did not allow providers to co-locate. The rescission of § 1101.51(c)(3) is the least burdensome option to allow co-location.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The Department anticipates no adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--------------------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>Not applicable</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Fall 2022</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication in the</u> |
| <u>Pennsylvania Bulletin</u> | |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Not applicable</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>Not applicable</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department reviews all regulations on an ongoing basis to ensure compliance with Federal and State laws and to assess the appropriateness and effectiveness of the regulation. In addition, specific issues related to regulations that are raised by members of the Medical Assistance Advisory Committee (MAAC), a subcommittee of the MAAC, or other stakeholders are researched and addressed as needed.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

OCT 24 2022
Independent Regulatory
Review Commission

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>DEPARTMENT OF HUMAN SERVICES (Agency)</p> <p>LEGAL COUNSEL: <u>Saroni Granty Fitcher</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>14-549</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>M. J. [Signature]</u></p> <p>TITLE: SECRETARY OF HUMAN SERVICES (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>[Signature]</u></p> <p><u>September 26, 2022</u> Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF HUMAN SERVICES

OFFICE OF MEDICAL ASSISTANCE PROGRAMS

[55 Pa. Code Chapter 1101]

General Provisions

Interrelationship of Providers

Statutory Authority

The Department of Human Services (Department), under the authority of section 403.1(a)(6) of the Human Services Code (code) (62 P.S. § 403.1(a)(6)), amends § 1101.51 (relating to ongoing responsibilities of providers) to read as set forth in Annex A. Notice of the proposed rulemaking was published in 51 Pa. B. 3468 (June 26, 2021).

Purpose of the Regulation

The purpose of this regulation is to rescind subsection (c)(3) under 55 Pa. Code § 1101.51, which prohibits providers from leasing or renting space, shelves, or equipment within a provider's office to another provider or from allowing the paid or unpaid staff of a provider to be placed in another provider's office.

Developments in the health care industry have emphasized the need for integrated health care. The Department recognizes the benefits of integrated care and rescinds this regulation to support the enrollment in the Medical Assistance (MA) Program of providers that share space (co-locating providers). By expanding provider qualifications to include co-locating providers, the Department seeks to support more coordinated and integrated care within the MA Program.

Background

Section 1407(a)(2) of the code (62 P.S. § 1407(a)(2)) provides that it is unlawful to solicit or receive or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the MA Program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the MA Program. The Department promulgated the regulation at 55 Pa. Code § 1101.51(c)(3) to provide specific examples of the types of arrangements that section 1407(a)(2) of the code prohibits. Among the examples is that providers may not "lease or rent space, shelves or equipment within a provider's office to another provider or allowing the placement of paid or unpaid staff of another provider in a provider's office."

This regulation prevented co-locating providers from enrolling in the MA Program. Since promulgation of this regulation, the health care industry has moved to a more integrated approach to diagnosis and treatment of conditions or injuries. To support that trend, retail clinics, some of which are placed within the same building as a pharmacy, have emerged, and multidisciplinary providers, including physical and behavioral health providers, have entered into co-location arrangements between distinct providers.

According to an informational bulletin issued by the Centers for Medicare & Medicaid Services on January 16, 2014, titled "Reducing Non-Urgent Use of Emergency Departments and Improving Appropriate Care in Appropriate Settings," increasing access to primary care services, including through urgent care and retail clinics, has been estimated to result in a potential savings of \$4.4 billion Nationwide. Mann, C. (January 16, 2014). Reducing Nonurgent Use of Emergency Departments and Improving Appropriate Care in Appropriate Settings. Retrieved from <https://www.hhs.gov/guidance/document/reducing-nonurgent-use-emergency-departments->

and-improving-appropriate-care-appropriate. These arrangements increase consumer access to services, including behavioral health and substance use disorder services. Co-location can decrease out-of-pocket costs to beneficiaries related to transportation and childcare and encourage follow-up with referred providers. Colocation can encourage contact between providers and foster communication about shared patients. Medicaid and CHIP Payment and Access Commission. (March 2016). Report to Congress on Medicaid and CHIP. Retrieved from <https://www.macpac.gov/publication/march-2016-report-to-congress-on-medicaid-and-chip/>. The Department, by establishing provider qualifications that incorporate co-locating providers, supports these advancements in the health care industry when services are provided in a manner that allows the beneficiary to retain freedom to choose the service provider and is not automatically directed to or referred to a co-located provider.

After reviewing the trend in the health care delivery system toward integrated care, the Department determined that a narrow interpretation of § 1101.51(c)(3) is more restrictive than required to comply with the code and prevents co-locating providers who are otherwise eligible from enrolling in the MA Program. On May 28, 2016, the Department issued Statement of Policy (SOP) 1101-16-03, codified in § 1101.51a (relating to clarification of the term "within a provider's office"—statement of policy), to clarify the meaning of "within a provider's office" and the guidelines for providers that enter into co-location arrangements with other participating providers. See 46 Pa.B. 2683 (May 28, 2016); 55 Pa. Code § 1101.51a. The Department also developed an attestation form to be utilized by providers seeking to co-locate, in which each provider attests to its compliance with Federal and State anti-kickback laws, the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191) (HIPAA), and MA beneficiary freedom of choice. The Department will rescind the SOP upon the effective date of the final-form regulation.

In an effort to establish provider qualifications that allow co-locating providers to enroll in the MA Program, the Department rescinds the regulation in § 1101.51(c)(3), which prohibits providers from leasing space within a provider's office to another provider. Allowing different types of providers to be located in the same space benefits MA beneficiaries by providing the opportunity for a more integrated approach to healthcare. Providers must continue to comply with any other applicable law, including HIPAA, Federal and State anti-kickback and self-referral laws, and the requirement to provide MA beneficiaries with freedom of choice.

The rescission of the regulation in § 1101.51(c)(3) does not invalidate other laws or requirements affecting co-locating providers if, for example, they are prohibited by law, including licensing laws, or certification requirements, from leasing or renting space, shelves or equipment or otherwise sharing space.

Requirements

The following is a summary of the specific provision in this final-form rulemaking:

§ 1101.51(c)(3) (relating to the interrelationship or providers)

The Department rescinds subsection (c)(3) to allow co-locating providers to enroll in the MA Program and to support integrated health care in the MA Program. Recission of subsection (c)(3) allows MA beneficiaries to receive services in a more integrated manner, consistent with developments in the health care industry.

Affected Individuals and Organizations

Nine co-located providers operating at 82 separate locations have requested and received a waiver of the regulation in § 1101.51(c)(3) from the Department Secretary. Under § 1101.51a, beginning May 28, 2016, any provider who enrolled and was co-located with another provider had to complete an attestation. Current waivers and attestations will remain in effect until publication of this final-form rulemaking which eliminates the co-location provision in § 1101.51(c)(3).

The rescission of this regulation provides the regulatory framework to promote integrated health care services by establishing provider qualifications that allow providers that co-locate to enroll in the MA Program. Providers that want to co-locate in the future will be able to do so without obtaining a waiver or submitting an attestation.

Accomplishments and Benefits

This final-form rulemaking rescinds the regulatory provision that has prevented or delayed enrollment of providers who are co-located. Allowing different types of providers to be located in the same space will benefit MA beneficiaries by providing the opportunity for a more integrated approach to health care.

Fiscal Impact

There is no fiscal impact.

Contact Persons

via U.S. Mail:

Lacey Gates
Department of Human Services
Office of Medical Assistance Programs
Bureau of Policy, Analysis and Planning
P.O. Box 2675
Harrisburg, PA 17120

via email to:

RA-PWMAProgComments@pa.gov
Please reference regulation #14-549 in subject line.

Persons with a disability who require an auxiliary aid or service may use the
AT&T Relay Service at:
1-800-654-5984 (TDD users) or

1-800-654-5988 (voice users)

Paperwork Requirements

The final-form rulemaking does not require additional reports or paperwork or any new forms. Less paperwork is required because an attestation form is not required for enrollment of providers that are co-located.

Effective Date

This final-form regulation will take effect upon publication in the *Pennsylvania Bulletin*.

Public Comment

Written comments, suggestions and objections regarding the proposed rulemaking were requested within a 30-day period following its publication in the *Pennsylvania Bulletin*. The Department received written responses from five commentators. The comments represented feedback from a provider and from associations, including provider associations and advocates. The Independent Regulatory Review Commission (IRRC) advised the Department that it had no objections, comments, or recommendations.

The following is a summary of the comments received within the public comment period and the Department's responses to those comments.

Comment: Four commentators offered support of the proposed rulemaking.

Response: The Department acknowledges these comments and thanks the commentators for the support.

Comment: One commentator requested clarification from the Department that none of the proposed changes shall be construed to override the consumer protections contained in Act 122 of 2013, which include prohibiting the placement of laboratory personnel in a provider's office.

Response: The Department acknowledges the concerns with respect to § 3 of the Act of December 18, 2013) P.L. 1232, No. 122), amending the Clinical Laboratory Act (35 P.S. § 2163.1). None of the proposed changes invalidate other laws or requirements affecting providers. If providers are prohibited from co-locating or from leasing or renting space, shelves or equipment by a law, licensing, certification or other requirement, those requirements remain in effect.

Regulatory Review Act

Pursuant to section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), (insert date), the Department submitted a copy of this regulation to the IRRC and to the Chairpersons of the House Health Committee and the Senate Health and Human Services Committee. In compliance

with the Regulatory Review Act, the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered comments received the public. No comments were received from IRRC or the Committees.

In accordance with section 5.1(j.1) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.1), (j.2)), this regulation was [deemed] approved by the Committees on (insert date). The IRRC met on (insert date) and approved the regulation.

In addition to submitting the final-form rulemaking, the Department has provided the IRRC and the Committees with a copy of the Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendment to the regulation in the manner provided by this Order is necessary and appropriate for the administration of the Human Services Code.

Order

The Department, acting pursuant to the authority of section 403.1(a)(6) of the Human Services Code (code) (62 P.S. § 403.1(a)(6)), orders that:

(a) The regulation of the Department is amended to read as set forth in Annex A of this Order.

(b) The Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Department shall submit this final-form regulation to IRRC and the Legislative Standing Committees as required by law.

(d) The Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

(e) The Order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. SNEAD
Acting Secretary

Annex A

TITLE 55. HUMAN SERVICES

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1101. GENERAL PROVISIONS

RESPONSIBILITIES

§ 1101.51. Ongoing responsibilities of providers.

* * * * *

(c) *Interrelationship of providers.* Providers are prohibited from making the following arrangements with other providers:

(1) The referral of MA recipients directly or indirectly to other practitioners or providers for financial consideration or the solicitation of MA recipients from other providers.

(2) The offering of, or paying, or the acceptance of remuneration to or from other providers for the referral of MA recipients for services or supplies under the MA Program.

(3) **[A participating provider may not lease or rent space, shelves or equipment within a provider's office to another provider or allowing the placement of paid or unpaid staff of another provider in a provider's office. This does not preclude a provider from owning or investing in a building in which space is leased for adequate and fair consideration to other providers nor does it prohibit an ophthalmologist or optometrist from providing space to an optician in his office] (Reserved).**

(4) The solicitation or receipt or offer of a kickback, payment, gift, bribe or rebate for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering a good, facility, service or item for which payment is made under MA. This does not preclude discounts or other reductions in charges by a provider to a practitioner for services, that is, laboratory and x-ray, so long as the price is properly disclosed and appropriately reflected in the costs claimed or charges made by a practitioner.

(5) A participating practitioner or professional corporation may not refer a MA recipient to an independent laboratory, pharmacy, radiology or other ancillary medical service in which the practitioner or professional corporation has an ownership interest.

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES

October 24, 2022

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Dear Sir or Madam:

Enclosed is a final-form regulation that amends the Department of Human Services' Department's requirements for Medical Assistance (MA) providers who are in a co-location arrangement with another enrolled provider.

The final-form rulemaking is needed to remove § 1101.51(c)(3) (relating to the interrelationship of providers). The Department is removing § 1101.51(c)(3) which prohibits co-location arrangements between MA providers. Removing this regulation allows providers to offer more accessible, integrated health care services to MA beneficiaries.

This final-form regulation, which amends *Pennsylvania Code* Title 55 Chapter 1101, General Provisions, is submitted for review by the Independent Regulatory Review Commission pursuant to the Regulatory Review Act.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Snead".

M. Snead
Acting Secretary

Enclosure

OFFICE OF THE SECRETARY

Shani Shenk

From: Fricke, Erika L. <EFricke@pahouse.net>
Sent: Monday, October 24, 2022 11:49 AM
To: Dietrich, Dawn
Subject: RE: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)

received

From: Dietrich, Dawn <dadietrich@pa.gov>
Sent: Monday, October 24, 2022 11:12 AM
To: Fricke, Erika L. <EFricke@pahouse.net>
Cc: Baird, Colleen <cobaird@pa.gov>; Patchen, Sherri <shpatchen@pa.gov>; Durkin, Patrick <patdurkin@pa.gov>; Madden, Victoria <vmadden@pa.gov>
Subject: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)
Importance: High

Good morning.

We are submitting Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking) to the Senate Health and Human Services Committee and the House Health Committee.

Please provide written (email) confirmation that this rulemaking was received by the Committee chair's office.

Thank you,

Dawn

Dawn Dietrich | Legal Office Administrator 2
Department of Human Services | Governor's Office of General Counsel
625 Forster Street, 3rd Floor West | Harrisburg, PA 17120
Phone: 717.787.6398 | Fax: 717.772.0717
www.dhs.pa.gov

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Independent Regulatory
Review Commission

Shani Shenk

From: Bradbury, Joan <jbradbury@pasen.gov>
Sent: Monday, October 24, 2022 11:08 AM
To: Dietrich, Dawn
Cc: Baird, Colleen; Patchen, Sherri; Durkin, Patrick; Madden, Victoria
Subject: RE: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)

Follow Up Flag: Follow up
Flag Status: Flagged

Received. Thank you,

Joan Bradbury
Executive Director
Senate Health & Human Services Committee
717-787-1475 (direct)

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From: Dietrich, Dawn <dadietrich@pa.gov>
Sent: Monday, October 24, 2022 11:06 AM
To: Bradbury, Joan <jbradbury@pasen.gov>
Cc: Baird, Colleen <cobaird@pa.gov>; Patchen, Sherri <shpatchen@pa.gov>; Durkin, Patrick <patdurkin@pa.gov>; Madden, Victoria <vmadden@pa.gov>
Subject: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)
Importance: High

Ⓢ CAUTION : External Email Ⓢ

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Phone: 717.787.6398 | Fax: 717.772.0717
www.dhs.pa.gov

Shani Shenk

From: Freeman, Clarissa <Clarissa.Freeman@pasenate.com>
Sent: Monday, October 24, 2022 11:09 AM
To: Dietrich, Dawn
Cc: Baird, Colleen; Patchen, Sherri; Durkin, Patrick; Madden, Victoria
Subject: RE: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)

Follow Up Flag: Follow up
Flag Status: Flagged

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**Independent Regulatory
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Received.

Thank you,

Clarissa L Freeman, Esq. (She/Her)
Health and Human Services Committee
Senate of Pennsylvania
Office of Senator Art Haywood

10 East Wing, Main Capitol Building
Harrisburg, Pennsylvania 17120-3004
717-787-1427 (P)
717-772-0572 (F)

7106 Germantown Avenue
Philadelphia, Pennsylvania 19119-1837
215-242-8171 (P)
215-242-6118 (F)

1168 Easton Road
Abington, PA 19001
215-517-1434 (P)
215-517-1439 (F)



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You can also reach our team online Tuesday – Thursday, from 10:00am – 12:00pm & 2:00pm - 4:00pm via our [Live Chat tool](#) (real time text communications via computer or mobile phone with a District Representative) at www.senatorhaywood.com.



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Review Commission

From: Dietrich, Dawn <dadietrich@pa.gov>
Sent: Monday, October 24, 2022 11:08 AM
To: Freeman, Clarissa <Clarissa.Freeman@pasenate.com>
Cc: Baird, Colleen <cobaird@pa.gov>; Patchen, Sherri <shpatchen@pa.gov>; Durkin, Patrick <patdurkin@pa.gov>; Madden, Victoria <vmadden@pa.gov>
Subject: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)
Importance: High

■ EXTERNAL EMAIL ■

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Department of Human Services | Governor's Office of General Counsel
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Shani Shenk

From: Michael Siget <Msiget@pahousegop.com>
Sent: Monday, October 24, 2022 11:19 AM
To: Dietrich, Dawn
Subject: RE: Reg. No. 14-549, Interrelationship of Providers (Final Rulemaking)

Follow Up Flag: Follow up
Flag Status: Flagged

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Received.

OCT 24 2022

Thank you.

Independent Regulatory
Review Commission

From: Dietrich, Dawn <dadietrich@pa.gov>
Sent: Monday, October 24, 2022 11:10 AM
To: Michael Siget <Msiget@pahousegop.com>
Cc: Baird, Colleen <cobaird@pa.gov>; Patchen, Sherri <shpatchen@pa.gov>; Durkin, Patrick <patdurkin@pa.gov>; Madden, Victoria <vmadden@pa.gov>
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