

Proposed Rule to Update the Programs of All-Inclusive Care for the Elderly (PACE)

OVERVIEW

On August 11th, the Centers for Medicare and Medicaid Services (CMS) released a proposed rule that would update the requirements for the PACE program. PACE is a Medicare-Medicaid program that enables nursing home-eligible beneficiaries to remain in the community through the delivery of comprehensive medical and social services. Under the proposed rule, the PACE program would adopt many of the requirements that currently exist in the Medicare Advantage and Medicare Part D programs. CMS will accept comments on the proposed rule until October 17th. The proposed rule is available [here](#).

Monitoring and Oversight

Under the proposed rule, PACE organizations would be required to adopt elements of the Part D compliance program. Specifically, PACE organizations would be responsible for monitoring and auditing their organization through a series of measures that prevent, detect, and correct non-compliance with CMS requirements. Most PACE organizations already have this compliance program implemented for their Part D benefit, but will be required to extend the program to cover all PACE services. PACE organizations would also be required to establish a governing body that has full legal authority and responsibility to implement compliance oversight.

PACE organizations have historically been monitored through site visits. CMS proposes to reduce the number of site visits by utilizing technology to remotely monitor PACE organization documents. Following a PACE organization's initial three-year trial period, CMS would further reduce the number of site visits by utilizing a risk assessment to determine which PACE organizations will be audited in any given year. The risk assessment would be based on past performance, ongoing compliance, participant complaints, and access to care concerns.

The proposed rule also amends provisions related to enforcement actions for PACE organizations that fail to comply with PACE program requirements. CMS would be provided with the discretion to take alternative enforcement actions, such as sanctions or civil monetary penalties, rather than the more extreme action of terminating the PACE program agreement.

Application Process

The proposed rule provides clarity on the application process for existing PACE organizations that are seeking approval to expand their service area or add a new PACE center site. Under the proposed rule, PACE organizations that are looking to expand or add a new site would be required to electronically submit a complete expansion application to CMS. Expansion applications would only be eligible for approval if the PACE organization has satisfactorily completed its first three-year trial period.

Under the proposed rule, applications for both new and existing PACE organizations would need to be accompanied by an assurance from the State Administering Agency (SAA) that indicates that the state is willing to enter into a PACE program agreement or amend its previous program agreement. The

application would also need to specify the proposed service area for the PACE program. CMS reserves the right to exclude an area that is already covered by another PACE program.

Administrative and Operational Rules

Under current law, a PACE organization that is planning a change in ownership must notify CMS and the SAA at least 14 days before the change takes effect. CMS proposes to extend this advance notification requirement to 60 days before a change in ownership takes place.

Marketing

The proposed rule would require that PACE organizations only market their programs through their own employees. The use of non-employed agents or brokers to market PACE programs would be prohibited.

CMS currently prohibits unsolicited door-to-door marketing. The proposed rule would add that unsolicited calls or e-mails are also prohibited.

CMS would amend the PACE marketing guidelines to specify that gifts to potential enrollees are allowed as long as the gift's retail value does not exceed \$15. Gifts in the form of cash or other monetary rebates would still be prohibited.

Medicaid Payments

Currently, PACE program agreements must specify both the Medicaid capitation rate and the methodology that is used to calculate the Medicaid capitation rate. CMS is proposing that PACE program agreements would be allowed the option to include the state's Medicaid capitation rates and/or the methodology for the new Medicaid payment rate.

CMS is not proposing changes to Medicaid rate setting methodology for capitation payments, but is soliciting comments to inform future rulemaking regarding capitation payments.

Interdisciplinary Team (IDT)

The proposed rule includes several provisions that would ease IDT staffing requirements. Under current law, each team member can only fulfill one of the 11 IDT roles. CMS proposes to amend this requirement by allowing a qualified IDT member to fulfill up to two roles on the IDT.

The proposed rule would allow non-physician primary care providers to render some primary care services to beneficiaries. CMS would also reduce the list of IDT members that must conduct beneficiary assessments to include the primary care provider, registered nurse, Master's level social worker, and any other member that is actively involved in the beneficiary's plan for care. Recreational therapists and activity coordinators would no longer be required to participate in assessments.

CMS is seeking comment on ways to allow for greater flexibility with regard to the settings in which IDT members provide PACE services.

Personnel Qualifications

Currently, PACE personnel that have direct contact with beneficiaries are required to have at least one year of experience with a frail or elderly population. CMS would waive this requirement to allow PACE organizations to hire individuals who meet all other personnel qualification requirements, on the condition that the PACE organization provides appropriate training to the individual upon hiring.

The proposed rule would also provide PACE organizations with the discretion to hire individuals who have been convicted of certain crimes, but whose employment would pose no foreseeable risk to PACE participants. PACE organizations would, however, be prohibited from employing individuals who have been convicted of any of the following crimes: conviction of program-related crimes, conviction relating to patient abuse, felony conviction relating to health care fraud, or felony conviction related to controlled substances.

Contracted Services

CMS is seeking comment on whether PACE services should comply with the Home and Community-Based Settings regulation in instances where non-institutional settings are used to house and/or provide services to PACE participants.