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Exempt Action: Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-50-330; 12VAC30-50-335; 12VAC30-50-340
VAC Chapter title(s)	Program of All-Inclusive Care for the Elderly (PACE)
Action title	2020 Program of All-Inclusive Care for the Elderly (PACE) Changes
Final agency action date	
Date this document prepared	November 9, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

These regulatory changes are being made pursuant to HB/SB902, passed by the 2020 General Assembly, which make the following changes to § 32.1-330.3 of the Code of Virginia: (1) remove the definition of and references to Pre-PACE; (2) update references to the U.S. Health Care Financing Administration with references to the Centers for Medicare and Medicaid Services; and (3) change “preadmission screening” to “long term services and supports screening.”

The purpose of this action is to amend sections 12VAC30-50-330; 12VAC30-50-335; and 12VAC30-50-340 of the PACE regulations in order to align the regulations with the newly-amended Code.

1. PACE Definitions (12VAC30-50-330)

The three items below require amendments in order to align PACE terms and definitions with § 32.1-330 of the Code of Virginia and state regulations.

Current:

- a) The current definition of adult day health care centers (ADHC) includes an outdated requirement for licensure by the Virginia Department of Social Services.
- b) The terms “preadmission screening” and “preadmission screening teams” were amended in § 32.1-330 of the Code.
- c) The Uniform Assessment Instrument (UAI) is the current assessment instrument that is completed by LTSS screening teams in accordance with 12VAC30-60-301 and 12VAC30-60-306 of the LTSS screening regulations.

DMAS recommends:

- a) Amending the definition of “adult day health care center” by deleting “*The ADHC must be licensed by the Virginia Department of Social Services as an adult day care center (ADC) as defined in 22VAC40-60-10.*”
- b)
 1. Deleting “preadmission screening or screening” and replacing with “*Long-Term Services and Supports (LTSS) Screening*” or “*Screening*”
 2. Deleting “preadmission screening team” and replacing with “*Long-Term Services and Supports (LTSS) Screening Team*”
- c) Amending the definition of Virginia UAI by deleting “*questionnaire that assesses an individual's social, physical and mental health, and functional abilities*” and adding “*assessment instrument that is completed by the LTSS screening team that assesses an individual's physical health, mental health, and psycho/social and functional abilities to determine if the individual meets the nursing facility level of care.*”

2. General PACE Plan Requirements (Documentation Requirements)

Current requirements:

12VAC30-50-335 includes documentation requirements for maintaining the most recently updated UAI. This requirement does not align with 12VAC30-60-306.

DMAS recommends:

Deleting “*most recently updated*” and adding the language of “*and all required forms in LTSS screening packet pursuant to 12VAC30-60-306*”

3. Criteria for PACE Enrollment

Current requirements:

The current criteria for PACE enrollment in 12VAC30-50-340 requires amendments to outdated terms and inclusion of the required forms for completion of the LTSS screening packet.

DMAS recommends:

Deleting the terms “*nursing home preadmission*” and replacing with “*long-term services and supports.*” Adding the clarifying language of “*and all required forms in the LTSS screening packet pursuant to 12VAC30-60-306.*”

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

These regulatory changes, in accordance with HB/SB902, remove the definition of and references to Pre-PACE; updates references to the U.S. Health Care Financing Administration with references to the Centers for Medicare and Medicaid Services; and changes "preadmission screening" to "long term services and supports screening."

This action is exempt from the regulatory process in accordance with Va. Code 2.2-4006(A)(3) and (A)(4)(a). However, Va. Code 2.2-4006(B) states: "Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision."

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

I hereby approve the foregoing Agency Background Summary with the attached amended regulations entitled "2020 Program of All-Inclusive Care for the Elderly (PACE)" and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

Date

Karen Kimsey, Director
Dept. of Medical Assistance Services