



## Fast Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC30-50; 12VAC30-120-61 through 66
Regulation title	WAIVERED SERVICES: Program of All-Inclusive Care for the Elderly (PACE)
Action title	PACE Program Update
Document preparation date	

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

DMAS is currently seeking to enhance the integration of acute care and long-term care services for the elderly and persons with disabilities. Through this regulatory action DMAS intends to implement a regional model for the integration of acute and long-term care services by no later than January 2007. This model would be offered to the elderly and persons with disabilities on a voluntary basis through the Program for All-Inclusive Care for the Elderly (PACE). DMAS has had in place a pre-PACE program for several years, and is now seeking to expand that program throughout the Commonwealth of Virginia.

### Statement of agency final action

*Please 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 Document with the attached amended State Plan pages: Amount, Duration and Scope of Medical and Remedial Services (12 VAC 30-50-320), and state regulations: Waivered Services (12 VAC 30-120-61 through 12 VAC 30-120-66) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-40 12.1, of the Administrative Process Act and is full, true, and correctly dated.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board’s requirements. The Medicaid authority as established by §1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this action is to incorporate changes that will update the PACE regulations to reflect the fact that the pre-PACE demonstration waiver program has ended and allow DMAS to develop and implement a regional model for the integration of acute and long-term care services.

**Rationale for using fast track process**

*Please explain why the fast track process is being used to promulgate this regulation.*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in*

*the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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The agency is using the fast-track process to complete the needed regulatory changes to give the provider community the ability to begin services as soon after the start of the fiscal year as possible. This regulatory action will implement policy changes that are in line with Federal and State requirements because the pre-PACE demonstration waiver has ended.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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PACE was created in 1973 in an effort to help the Asian-American community in San Francisco care for its elders in their own homes. The option of placing their elders in nursing facilities was not a culturally acceptable solution. PACE created a way to offer a spectrum of services using home care in an adult day setting. PACE has the longest and most extensive history of any program in managing total care for the frail elderly while containing costs.

PACE is centered on the belief that the elderly with chronic care needs and their families are best served in their homes and communities whenever possible. The goal of PACE is to keep participants healthy, safe, and as independent as possible in their own homes and communities. Care is managed individually with emphasis on specific circumstances of their health, ability to care for themselves, the complexity of family relationships, and the goals and desires of the enrollee and their caregivers.

PACE provides the entire spectrum of acute and long-term care services to their enrollees without limit as to duration or dollars. PACE serves persons 55 and older, who meet nursing facility criteria, in their own communities and, provides all of their health and long-term care needs. The program is centered on an adult day health care model, and combines Medicaid and Medicare funding.

Like many other state legislatures, the Virginia General Assembly recently expressed concern over the growing challenge in Medicaid funding. Medicaid spending now represents the second largest single general fund program in state government. Virginia is seeking to implement reforms through innovation and efficiencies. DMAS, in consultation with the appropriate stakeholders, is creating a long-range blueprint for the development and implementation of an integrated acute and long-term care system.

With legislative funding approved during the 2006 General Assembly, DMAS plans to implement one or more PACE program(s) by July 2007. This implementation would include DMAS grants of up to \$250,000 per PACE site to help cover the start-up costs associated with creating a suitable PACE facility. In addition, DMAS will develop a regional model for the integration of acute and long-term care services by January 2007. This model would be offered on a voluntary basis to elderly and clients with a disability.

The PACE regulations were revised: 1) to provide clarity and guidance to providers and other stakeholders; 2) to conform to the PACE provider application as approved by the federal Centers for Medicare and Medicaid Services (CMS); 3) to ensure that the DMAS regulatory

scheme is in compliance with the Department of Social Services licensing standards; and 4) to support individual choice for PACE participants.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The regulatory action poses no disadvantages to the agency, public or the Commonwealth. The advantages of the PACE program are that elderly participants are able to maintain themselves in the community, which both enhances their quality of life and is a less expensive alternative to institutionalization.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>Governor Kaine proposed and the General Assembly approved \$1.5 GF in 2007 in the budget to provide start-up funding for PACE sites across the Commonwealth.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>The State does not expect this change to have any costs associated with it for the affected parties.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The PACE program provides services to individuals 55 or older, prescreened to meet nursing facility criteria; residing in the service area; who agree to all the conditions in terms of participation. Regulation changes affect these individuals and their families as well as the persons and businesses that provide services to these individuals.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected</b></p>	<p>Enrollment is limited by the attendance capacity of the PACE center (as of July 1, 2006, DMAS has the potential to serve 125 individuals and their families through the PACE services). There are approximately 6 potential PACE providers, each of which would qualify as a small business.</p>

<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	The State does not expect this change to have any costs associated with it for the affected parties.
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**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

No other feasible alternatives are available since this regulatory action will put DMAS in compliance with other State and Federal laws and requirements.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment and is not expected to affect disposable family income.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12VAC30-50-320		Pre-PACE	This section was revised to reflect current federal provider requirements in the PACE provider application. (1) Omit “not”, (2) omit “any”, (3) add “a.”
12VAC30-61		Definitions	<p>The following changes were made throughout these regulations to be consistent with the current federally approved application and for clarity.</p> <p>(1) The word “HCFA” was changed to “CMS” which means the Centers for Medicare and Medicaid Services.</p> <p>(2) The word nursing “home” was changed</p>

			<p>to nursing “facility.”</p> <p>(3) The regulatory reference for the adult day care regulations promulgated by VDSS was added.</p> <p>(4) “CFR” was defined.</p> <p>(5) Regulatory citation for nursing facility preadmission screening team was added.</p> <p>(6) The definition of the State Plan was changed to be consistent with other regulations.</p> <p>(7) The Transitional Advisory Group is deleted as providers and potential providers will have opportunity to review PACE requirements as the program evolves.</p> <p>(8) The purpose of the Virginia Uniform Assessment Instrument was clarified.</p>
12VAC30-120-62		General PACE plan requirements	<p>(1) Additional information regarding the PACE provider agreement was added to conform with those in 42 CFR 460 et seq.</p> <p>(2) Regulatory citations for related issues were added.</p> <p>(3) In Sections I through O, general Medicaid provider requirements are added. These are a part of other provider regulations and not specific to PACE. They include such things as mandated reporting for abuse, neglect, and exploitation, quality management review, criminal records checks, and documentation requirements.</p>
12VAC30-120-64		PACE enrollee rights	<p>** This section was changed to omit hospice and add dental services.</p> <p>** This section was changed to remove “multidisciplinary” and add “interdisciplinary.”</p> <p>** This section was changed to list the excluded services: any service not authorized by the interdisciplinary team unless it is an emergency service, in an inpatient facility; private room and private duty nursing services unless medically necessary and nonmedical items for personal convenience, cosmetic surgery except for certain instances, and experimental medical, surgical or other health procedures.</p>
12VAC30-120-65		PACE enrollee responsibilities	<p>New Section E was added to describe the federally required grievance procedure for enrollee’s.</p>

12VAC30-120-66		PACE plan contract requirement & standards	This section was changed in order remove the word "HCFA" and change to "CMS."
12VAC30-120-68		PACE sanctions	This section was changed to add to list, B. 2. ", or retracting all or part of any reimbursement previously paid;"