

DECISION BRIEF FOR:
The Honorable James S. Gilmore, III
Governor

SUBJECT: EMERGENCY REGULATION for Program of All-Inclusive Care for the Elderly (PACE)

ACTION NEEDED
BY ----JAN 19
RETURN TO DMAS

SUMMARY

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Program of All-Inclusive Care for the Elderly (PACE). in order to establish this optional level of service coordination in the State Plan.
2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action Program of All-Inclusive Care for the Elderly (PACE).. The Department is simultaneously initiating the public notice and comment requirements contained in the Code of Virginia §9-6.14:7.1.

Dennis G. Smith, Director Date

3. **CONCURRENCES:**

Secretary of Health and Human Resources:

Concur _____
 Concur w/Modifications _____
 Disapprove _____

Department of Planning and Budget:

Concur _____
 Concur w/Modifications _____
 Disapprove _____

Claude A. Allen Date

Signature Date

Title

4. **ACTION:** Governor

James S. Gilmore, III Date

Approve _____
 Approve w/ Modifications _____
 Deny _____

5. **FILED:** Deputy Registrar of Regulations

Jane D. Chaffin Date

DISCUSSION

6. **BACKGROUND:** The sections of the State Plan affected by this action are preprinted pages 19c and 20c (12 VAC 30-10-140, 12 VAC 30-10-150) and Services provided to Categorically Needy (Attachment 3.1 A (12 VAC 30-50-10), Services provided to Medically Needy (Attachment 3.1-B (12 VAC 30-50-50), and Program of All-Inclusive Care for the Elderly (Supplement 6 to Attachment 3.1-A (12 VAC 30-50-320). The regulations affected by this action are Program of All-Inclusive Care for the Elderly (12 VAC 30-120-61 through 12 VAC 30-120-68).

The Program of All-Inclusive Care for the Elderly (PACE) is a nationwide replication of the comprehensive service delivery and financing model of long term care for the frail elderly pioneered by On Lok Senior Health services in San Francisco in the 1970s. The various states have been allowed in the past to operate PACE programming through waiver authority from HCFA. The Balanced Budget Act of 1997 (BBA) gave states the option of providing PACE services as an optional state plan service which granted provider status to authorized PACE programs. Prior to BBA '97, DMAS had authority to provide pre-PACE services in a long-term care prepaid health plan which offered Medicaid services under Medicaid capitation while Medicare fee-for-service services were coordinated by the pre-PACE site.

PACE provides a community-based health care plan as an alternative to nursing home care that integrates all aspects of care to include primary, medical and specialty care, nursing, social services, personal care, in-home supportive services, rehabilitative therapies, meals and nutritional care, transportation, hospitalization, and nursing home care.

The mission of the PACE model serves to:

- ◆ Enhance the quality of life and autonomy of frail, older adults;
- ◆ Maximize the dignity and respect of older adults;
- ◆ Enable frail, older adults to live in their homes and in the community as long as medically and socially feasible;
- ◆ Preserve and support the older adult's family unit; and

PACE programs achieve this mission by using a multidisciplinary team approach to managing care while providing a comprehensive range of services and preventive care at a cost that is lower, due to its capitation payment mechanism, than the cost of traditional fee-for-service care.

Cost savings result from the pooling of Medicare (Title XVIII) and Medicaid (Title XIX) funding in a care coordination model that allows the PACE provider to manage the care within the program payment limits while providing a full range of services to include long-term care. Such pooling of funds is permitted by the Health Care Financing Administration (HCFA) in its approval of the Commonwealth's State Plan Amendment.

In order for an individual to qualify for PACE services, he must: be age 55 or older; be certified for nursing home care; be residing in the service, or catchment, area; and agree to all the conditions and terms of participation. The services that such PACE individuals will receive are, but may not be limited to:

- ◆ Medical services, including the services of a PCP and other specialists;
- ◆ Transportation services;
- ◆ Outpatient rehabilitation services, including physical, occupational and speech therapy services;
- ◆ Hospital (acute care) services;
- ◆ Nursing facility (long-term care) services;
- ◆ Prescription drugs;
- ◆ Home health services;
- ◆ Laboratory services;
- ◆ Radiology services;
- ◆ Ambulatory surgery services;
- ◆ Respite care services;
- ◆ Personal care services;
- ◆ Hospice services;
- ◆ Adult day care services, to include social work services;
- ◆ Multi-disciplinary case management services;
- ◆ Outpatient mental health and mental retardation services;
- ◆ Outpatient psychological services;
- ◆ Prosthetics; and
- ◆ Durable medical equipment and other medical supplies.

PACE provides needed care in the most appropriate setting for the enrollee. Services are provided in the PACE center, at home, and if needed, in the hospital or other institutional setting. Specialty and ancillary medical services are provided, as are long-term care services. If nursing home placement is needed, PACE provides the service and maintains the continuity of care by regular monitoring of the enrollee's condition. By providing preventive and rehabilitative services, chronic conditions can be stabilized and complications averted or lessened, thereby enhancing quality of life. An interdisciplinary team, consisting of professional and paraprofessional staff, assesses enrollees' needs, develops care plans, and delivers needed services.

This additional service option will provide to Medicaid recipients another cost effective choice, to operate in conjunction with existing institutional and community based services. PACE providers must provide access to all necessary covered services, on a 24-hour basis, to

enrollees without any limitations or conditions. Prior to BBA '97, DMAS was not permitted by federal law to offer PACE services as provided for in these regulations.

The effect of this State Plan Amendment and regulatory action on families will be supportive in that their elderly members will be able to remain in their homes longer without having to be institutionalized in nursing facilities.

7. AUTHORITY TO ACT: The *Code of Virginia (1950) as amended*, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia (1950) as amended*, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The *Code* also provides, in the Administrative Process Act (APA) §9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Chapter 464 of the *1998 Virginia Acts of the Assembly*, item 335 D stated that: "The State Plan for Medical Assistance shall be amended to include provision of services under a PACE (Program of All-Inclusive Care for the Elderly) program of care to eligible Medicaid recipients. This Pace program of services shall be consistent with all requirements of the Balanced Budget Act of 1997, §§ 4802 and 4803, including, but not limited to requirements for (i) recipient eligibility, (ii) provider requirements and payment methodology, (iii) scope of benefits, and (iv) quality assurance. The amendments to the State Plan for Medical Assistance shall become effective in 280 days or less of enactment of this Act."

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency is initiating the public notice and comment process contained in Article 2 of the APA. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

Without an emergency regulation, these amendments to the State Plan and regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 19, 1999, effective date established by the General Assembly.

Pursuant to the *Code* § 32.1-330.3, DMAS distributed the draft emergency regulations to the PACE Transitional Advisory Group for comments. Comments were received from the State Corporation Commission's Bureau of Insurance and the Department of Social Services and have been incorporated where appropriate.

8. NEED FOR EMERGENCY ACTION: The *Code* §9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the Acts of the Assembly, he must adopt this emergency regulation. This issue qualifies as an emergency regulation as provided for in §9-6.14:4.1(C)(5)(ii), because Virginia statutory law or the appropriation act or federal law requires this regulation to be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. FISCAL/BUDGETARY IMPACT: The 1995 General Assembly directed DMAS to seek a § 1115 (a) waiver from HCFA to implement one or more Programs of All-Inclusive Care for the Elderly (PACE) demonstration projects (pre-PACE), effective July 1, 1995. Pre-PACE and PACE projects target the frail elderly to remain as independent as possible, while meeting their health care needs. The participants remain in the community through the coordination of services of an adult day health center, home care, medical and social care. Typically, these clients have 7.9 medical diagnoses and are age 80 and above. Approximately 60 percent are cognitively impaired, including having Alzheimer's disease.

Virginia's Pre-PACE program began under a partially capitated arrangement in order to reduce the risk to providers while experience was gained, and subsequently will make a transition to a fully capitated program after about 100 clients are enrolled. Currently, Virginia has one Pre-PACE under contract with Sentara Senior Community Care. As a Pre-PACE, the capitation rate is initially limited to selected Medicaid covered services, with other Medicaid and Medicare services available under the traditional fee-for-service payment system.

The PACE program in December, 1998, served 102 individuals. This is an increase from 52 individuals served in January, 1998. The total cost of the program from January, 1998, through December, 1998, was \$1,832,031.99 (or \$17,961 per person). The capitation rate is set at 95% of the cost of institutional care for these individuals. DMAS' average cost of care for an individual in a nursing facility for a year is \$23,360.

Section 4802 of the federal Balanced Budget Act of 1997 established and defined the PACE program by creating the new section 1934 to the Social Security Act. Section 4803 established the beginning date of August 5, 1998, for PACE programs.

There are no localities which are uniquely affected by these regulations as they apply statewide. HCFA has retained the authority to approve PACE providers.

10. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective as soon as possible, in conjunction with federal approval. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations. Without an effective emergency regulation, the Department would lack the authority to comply with the Balanced Budget Act of 1997 and Chapter 464 of the Acts of the Assembly, Item 335 D.
11. APPROVAL SOUGHT FOR 12 VAC 30-10-140, 12 VAC 30-10-150, 12 VAC 30-50-30, 12 VAC 30-50-70, 12 VAC 30-50-320 and 12 VAC 30-120-61 through 12 VAC 30-120-69.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia §9-6.14:4.1(C)(5) to adopt the following regulation:

VAC Citation

Federal Citation

Substance of the Suggested Change

ADD MORE ROWS TO THIS TABLE AS NEEDED TO ACCOMMODATE ALL SIGNIFICANT (NON-EDITORIAL) CHANGES

****** Do Not Go Past This Point --- the coordinators will finalize the supporting documentation that follows ******

Agency Adoption of Emergency Regulation

I, Dennis G. Smith, Director, do hereby adopt in lieu of action by the Board of Medical Assistance Services, according to the Code of Virginia §32.1-324 C and with the approval of the Governor, the emergency regulation entitled "Program of All-Inclusive Care for the Elderly".

This regulation is to become operative once adopted and filed with the Registrar of Regulations (Code of Virginia §9-6.14:9 A) on July 1, 1999. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Date

Dennis G. Smith, Director
Department of Medical Assistance Services

Attachment: "Program of All-Inclusive Care for the Elderly" Emergency Regulation

BUDGETARY APPROVAL for REGULATORY ISSUE

Name: **Program of All-Inclusive Care for the Elderly**

Source: Balanced Budget Act and 1998 Acts of the Assembly

Impact: see attached Decision Brief

Submitted to Budget Office: _____ 12/21 Please reply by: _____ 1/6/99

Received by Budget Office: _____ DMAS Budget Office Review

Date

Name

Please reply by: _____

Department of Planning and Budget Review

Date

Name

POLICY APPROVAL for REGULATORY ISSUE

Name: Program of All-Inclusive Care for the Elderly

Source: Balanced Budget Act and 1998 Acts of the Assembly

Impact: See attached Decision Brief

Submitted to Policy Office: 12/21 Please reply by: 1/6/99

DMAS Policy Office Review

Date

Name

DEPUTY DIRECTOR APPROVAL for REGULATORY ISSUE

Name: Program of All-Inclusive Care for the Elderly

Source: Balanced Budget Act and 1998 Acts of the Assembly

Impact: See attached Decision Brief

Submitted to Policy Office: 12/21 Please reply by: 1/6/99

DMAS Deputy Director Review

Date

Name

December 18, 1998

MEMORANDUM

TO: Siran S. Faulders, Senior Assistant Attorney General
Office of the Attorney General

FROM: Victoria P. Simmons, Regulatory Coordinator

RE: Emergency Regulations concerning Program of All-Inclusive Care for the Elderly

I am forwarding for your review and approval this agency's emergency regulation regarding Program of All-Inclusive Care for the Elderly. Your standard statement of filing authority is required by the Registrar for all regulations.

These regulations establish a new mechanism to package services and resultant reimbursement (from both Medicare and Medicaid) together for the elderly. Please contact Regina Anderson-Cloud if you have any questions about the substance of these regulations.

We need your response as soon as possible in order to forward this package to the Secretary and the Department of Planning and Budget. I always appreciate your careful attention to this agency's regulations. If there are questions, I am available at 1-8850 to discuss these rules.

Attachment

pc: Regina Anderson-Cloud
Pam Reed
Diana Thorpe
Kathryn Kotula

December 18, 1998

MEMORANDUM

TO: John Forbes, Department of Planning and Budget

FROM: Vicki Simmons, Regulatory Coordinator

RE: Emergency Regulations concerning Treatment Foster Care

I am transmitting the agency's emergency regulation regarding Treatment Foster Care for review and approval by DPB, the Secretary and Governor. The approval memo from the Office of the Attorney General will be faxed over shortly.

These regulations provide for the coverage of treatment foster care services.

I always appreciate your careful attention to this agency's regulations. If there are questions, I am happy to be of further assistance.

Attachment

pc: Kristen McBride
Ann Cook
Kathryn Kotula

