



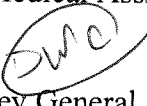
COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

MEMORANDUM

TO: Emily McClellan
Regulatory Supervisor
Department of Medical Assistance Services

FROM: Davis Creef 
Assistant Attorney General
Office of the Attorney General

DATE: October 12, 2022

SUBJECT: Fast-Track Regulation – Program of All-Inclusive Care for the Elderly
Action 5985 / Stage 9669

You have asked the Office of the Attorney General to review and determine if Department of Medical Assistance Services has the statutory authority to promulgate this regulation and if it comports with applicable state law. I have reviewed the attached fast-track regulation posted to the Virginia Regulatory Town Hall that would align DMAS policies regarding rate methodology for DMAS' PACE program with current practices.

Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services under Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. It is my understanding that this amendment also aligns DMAS regulations with State Plan Amendment 22-004, recently approved by the Centers for Medicare and Medicaid Services.

Under Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, DMAS 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 set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about these regulations, please contact me at 786-6522.

cc: Kim F. Piner, Esq.

Attachment

Proposed Text

highlight

Action: Program of All-Inclusive Care for the Elderly

Stage: Fast-Track

10/11/22 6:54 AM [latest]



12VAC30-50-325 Rates and payments

~~A. The Commonwealth assures that the capitated rates will be equal to or less than the cost to the agency of providing these same fee-for-service State Plan approved services on a fee-for-service basis, to an equivalent nonenrolled population group based upon the following methodology rates are set at a percent of fee-for-service costs. Rates are set at a percentage of fee-for-service costs.~~

B. To determine the amount that would otherwise have been paid (AWOP) under the state plan for a comparable population, the Commonwealth uses base period encounter data adjusted for comparable populations and services to those provided by the PACE program, specifically individuals over the age of 55 historically receiving services in an institutional setting or enrolled in a home and community based services (HCBS) § 1915(c) waiver. The historical data is adjusted to reflect modifications of payment arrangements between the data period and the contract period as well as benefit or eligibility changes that occurred prior to the beginning of the contract period. The base period data is also updated to reflect expected increases in utilization and cost for the contract period covered by the rates. An allowance for administrative costs is added to the AWOPs along with a provision for underwriting gain.

C. The final capitation rates are determined as a percentage discount off of the amount that would otherwise have been paid for these populations.

D. The PACE capitation rates vary by region and by eligibility status (dual-eligible and non-dual-eligible).

~~B-E.~~ The State Medicaid Agency assures that the rates were set in a reasonable and predictable manner.

~~C-F.~~ The Commonwealth will submit all capitated rates to the Centers for Medicare and Medicaid Services (CMS) regional office for prior approval.