townhall.virginia.gov

Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-50-335
Regulation title(s)	General PACE Plan Requirements
Action title	PACE and Licensure
Final agency action date	July 1, 2016
Date this document prepared	May 18, 2016

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

On February 25, 2016, the Virginia General Assembly approved HB 435, amending the *Code of Virginia* at 63.2-1701, exempting adult day care centers (ADCC) from the requirement to be licensed by the Virginia Department of Social Services (VDSS) if they provide services only to individuals enrolled in Programs of All Inclusive Care for the Elderly (PACE). Current Department of Medical Assistance Services regulations require that all PACE programs must be licensed by VDSS as an Adult Day Health Center (ADHC), which is the same as an ADCC (according to the definition set forth in 12VAC30-50-330). As the Code has been amended to strike the ADCC requirement for those programs serving only individuals enrolled in PACE, the DMAS regulation no longer conforms to *Code*. Regulatory action is needed to amend

regulations to remove the requirement that PACE programs be licensed as Adult Day Care Centers (also referred to as Adult Day Health Care Centers) in 12 VAC 30-50-335(F).

Statement of final agency 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 Summary with the attached amended regulation entitled General PACE Plan Requirements (12 VAC 30-50-335), 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

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

Legal Basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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.

HB 435, passed during the 2016 Virginia General Assembly session, changes the requirements for PACE organizations. This change in state law requires DMAS to change its regulations so that they conform with state law.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

Currently, the Virginia Program of All-Inclusive Care for the Elderly (PACE) regulations require PACE organizations in the Commonwealth must be licensed as an Adult Day Care Center. This licensing process is completed by the Virginia Department of Social Services.

During the 2016 session of the Virginia General Assembly, legislation was passed (HB 435) amending the *Code of Virginia* §63.2-1701 to remove the requirement that PACE organizations be licensed as Adult Day Care Centers. The Virginia PACE regulations are now in conflict with the *Code.*

DMAS proposes to amend the General PACE Plan Requirement regulation (12 VAC 30-50-335) to remove section F, which is the section requiring PACE organizations sites within the Commonwealth to be licensed as an Adult Day Care Center.

Family Impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.