



State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

August 25, 2021

The Honorable Anthony J. Portantino, Chair
Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, CA 95814

ASSEMBLY BILL 523 (AS AMENDED June 15, 2021) – OPPOSE UNLESS AMENDED

Dear Senator Portantino:

The Department of Health Care Services (DHCS) must inform you of its oppose unless amended position to Assembly Bill (AB) 523. AB 523 would require DHCS to make permanent the specified Program of All-Inclusive Care for the Elderly (PACE) program flexibilities instituted, on or before January 1, 2021, in response to the public health emergency (PHE) caused by the 2019 novel coronavirus (COVID-19). AB 523 also requires DHCS to work with the Centers for Medicare and Medicaid Services (CMS) to determine how to extend PACE flexibilities approved during the COVID-19 PHE.

As part of the Budget Act of 2021, all telehealth flexibilities in the Medi-Cal program were extended until December 31, 2022. In order to inform the 2022-23 Governor's Budget, DHCS will convene an advisory group consisting of consultants, subject matter experts, and other affected stakeholders to provide recommendations to inform DHCS in establishing and adopting billing and utilization management protocols for telehealth modalities to increase access and equity and reduce disparities in the Medi-Cal program. This advisory group would be the appropriate venue to participate and provide telehealth recommendations specific to the PACE program. Therefore, DHCS requests these provisions be removed from the bill.

The authorities governing the PACE program are primarily established through federal law. A PACE plan provides for all participants, regardless of the source of payment, all Medicare-covered services, all Medicaid-covered services, and other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status. DHCS does not have authority to waive or modify federal PACE requirements. Making some of the COVID-19 PHE flexibilities proposed in the bill permanent, such as those related to enrollment agreements and Adult Day Health Care (ADHC) services, would be in conflict with the intent of the PACE center model of care and in some cases violate current federal rules [See 42 Code of Federal

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Regulations Sections 460.154 and 460.72(a)(2)]. DHCS requests these provisions be removed from the bill.

Additionally, the bill states that DHCS shall make the changes permanent, without conditioning the permanent changes on DHCS obtaining necessary federal approvals and federal financial participation, or taking into consideration federal legal mandates. DHCS requests that the bill include these important federal contingencies to protect federal and state funding.

DHCS provided technical assistance amendments (see attachment) to the author to indicate which provisions of the bill would not conflict with federal PACE regulations or DHCS' telehealth policy proposal, specifically, the provisions relating to marketing and discharge planning. However, this technical assistance has not been accepted.

If you have any questions regarding our position, please feel free to contact me at (916) 440-7500.

Sincerely,

O/S Carol Gallegos

Carol Gallegos, Deputy Director
Legislative & Governmental Affairs
Department of Health Care Services

cc: Assemblymember Adrin Nazarian, Author
Senator Patricia C. Bates, Vice-Chair
Senator Steven Bradford
Senator Brian W. Jones
Senator Sydney Kamlager
Senator John Laird
Senator Bob Wieckowski

AMENDMENTS

Plain text = existing law

~~Red strikethrough~~ and *blue italic* = Author's proposed language

Bold font in underline = DHCS proposed additions to the bill

Bold font in strikethrough, plain text = DHCS proposed deletions of current law

Bold font in strikethrough, italicized text = DHCS proposed deletions of author's proposed language

SECTION 1. Section 14593.3 is added to the Welfare and Institutions Code, to read:

*14593.3. (a) The department shall make permanent the changes in the California Program of All-Inclusive Care for the Elderly (PACE) program the department instituted, on or before January 1, 2021, in response to the state of emergency caused by the 2019 novel coronavirus (COVID-19) by means of all-facility letters, or other similar instructions, which were taken without regulatory action, in the areas described under paragraphs (1) ~~to~~ **and** ~~(2)(5)~~ inclusive.*

~~(1)(A) Telehealth.~~

~~(B) A PACE organization may use telehealth, as defined in Section 2290.5 of the Business and Professions Code, to conduct assessments for eligibility for enrollment in the PACE program, or for service modifications, subject to the federal waiver process.~~

~~(2)(A) PACE enrollment agreements.~~

~~(B) A PACE organization shall be approved to collect and document a verbal agreement of enrollment in lieu of the participant signature normally required to complete the enrollment agreement for the PACE program. A PACE organization shall document the conversation of the verbal agreement and shall obtain a written signature within 14 days of submission of the enrollment agreement.~~

~~(3)(A) Adult Day Health Care (ADHC) services provided in the home.~~

~~(B) A PACE organization that exclusively serves PACE participants shall not be required to provide all nursing services, as defined in Section 14550.6, at the center. The PACE interdisciplinary team shall have flexibility to determine how to provide those nursing services to participants. Services may be provided via telehealth or other remote methods, including, but not limited to, check-in calls, health screening calls, and video conferencing, taking into account the participant's medical, physical, emotional, and social needs.~~

~~(1)(4)~~ (A) Marketing.

(B) A PACE organization shall have the flexibility to use a broker for marketing purposes as provided by the federal regulations on PACE. A PACE organization may use individuals and entities to market on their behalf, if the individuals or entities have been appropriately trained on PACE program requirements, and, specifically, participant rights, and requirements on participant enrollment and disenrollment.

~~(2)(5)~~ (A) Discharge planning.

(B) If a discharge planner at a PACE referral source, including, but not limited to, a hospital, emergency room, nursing home, or health plan, determines that a PACE plan would be an appropriate program to facilitate the patient's discharge and serve the patient's needs in their home or community, the discharge planner may ask the patient or the patient's representative if they would prefer to be contacted by a PACE organization. If the patient affirmatively answers, then all of the following apply:

(i) The discharge planner shall document in the patient's record that the patient or authorized representative consented to be contacted by a PACE organization.

(ii) The discharge planner may inform the PACE organization that the patient consented to being contacted by a PACE organization, and may provide information on how the patient or representative stated they wish to be contacted.

(iii) The PACE organization may directly contact the patient or representative in the manner chosen by the patient or representative. The PACE organization may make one attempt to contact the patient or their representative by various means, including a phone call, email, or mail. If the individual or their representative indicates that the patient is uninterested in the PACE program or does not respond, the PACE organization shall not make further direct contact.

(b) The department shall work with the federal Centers for Medicare and Medicaid Services to ~~determine how to extend PACE program flexibilities approved during the COVID-19 emergency.~~ seek any federal approvals necessary to implement the provisions of this section. The provisions for which appropriate federal approvals cannot be obtained shall not be implemented. No provision of this section shall be implemented unless federal financial participation is available.