

## Office of Health Insurance Programs

### Division of Health Plan Contracting and Oversight

#### Managed Long Term Care (MLTC) Policy 24.03: The Program of All-Inclusive Care for the Elderly (PACE) – Establishment of Multiple PACE Centers

**Date of Issuance: October 9, 2024**

**Effective Date: October 9, 2024**

**Purpose:** This policy provides guidance for existing Program of All-Inclusive Care for the Elderly (PACE) organizations seeking to construct and/or operate an additional PACE center and/or expand its service area.

#### 1. Introduction

Recognizing that the construction and operation of a PACE center initially requires a significant capital investment, in addition to demonstrating the ability to manage ongoing operational and administrative overhead costs, the New York State Department of Health (Department) has developed a policy to guide and prescribe the requirements and factors which will inform its decision on whether to issue a State Assurances document in support of any proposed construction or expansion. This policy is guided by the requirements and factors promulgated in federal regulation. (42 CFR Part 460)

#### 2. Definitions from the Federal Code of Regulations 42 CFR Part 460 Applicable to this Policy

##### 42 CFR 460.6 PACE Center

***PACE center*** is a facility which includes a primary care clinic, and areas for therapeutic recreation, restorative therapies, socialization, personal care, and dining, and which serves as the focal point for coordination and provision of most PACE services.

##### 42 CFR 460.6 Trial Period

***Trial period*** means the first 3 contract years in which a PACE organization operates under a PACE program agreement.

##### 42 CFR 460.12 (a) (1) Application Requirements

***Submission of application.*** An individual authorized to act for an entity that seeks to become a PACE organization or a PACE organization that seeks to expand its service area or add a PACE center site must submit to the Centers for Medicare and Medicaid Services (CMS) a complete application in the form and manner, including timeframes for submission, specified by CMS, that describes, and provides evidence to the satisfaction of the Department, how the entity or PACE organization meets all requirements in this regulation.

#### **42 CFR 460.12 (b) (2) State Assurance**

A PACE organization's application to expand its service area and/or add a PACE center site must include an assurance from the State administering agency of the State in which the program is located indicating that the State is willing to amend the PACE program agreement to include the new site and/or expand the PACE organization's service area.

#### **42 CFR 460.12 (d) Service Area/Center Site Expansion**

**Service area and/or PACE center site expansion.** CMS and the State administering agency will only approve a service area expansion or PACE center site expansion after the PACE organization has successfully completed its first trial period audit and, if applicable, has implemented an acceptable corrective action plan.

#### **42 CFR 460.32 (a) (1) Service Area**

A designation of the service area of the organization's program. The area may be identified by county, zip code, street boundaries, census tract, block, or tribal jurisdictional area, as applicable. CMS and the State administering agency must approve any change in the designated service area.

#### **42 CFR 460.80 (a) Fiscal Soundness**

A PACE organization must have a fiscally sound operation, as demonstrated by the following: (1) Total assets greater than total unsecured liabilities; (2) Sufficient cash flow and adequate liquidity to meet obligations as they become due; (3) A net operating surplus or a financial plan for maintaining solvency that is satisfactory to CMS and the State administering agency.

### **3. Policy Statement**

The Department will consider applications from an existing PACE Organization (PO) to construct, or operate an additional PACE center either as:

1. An additional PACE center within the POs already approved service area; or
2. An additional PACE center as part of a Service Area Expansion (SAE).

In both cases, the Department requires the PO to submit a completed application pursuant to New York Public Health Law §4403-f (Art. 44 application). Upon submission of the Art. 44 application, the Department will conduct an initial review to determine if a State Assurances document is warranted and subsequently, can be executed. Upon the issuance of a State Attestation and Assurances document, the PO is authorized to submit its application to the Centers for Medicare and Medicaid Services (CMS). Final approval from both the Department and CMS is required. (Note: The State Attestation and Assurances document does not constitute final approval by the Department.)

### **a. PO Requirements for Constructing an Additional PACE Center**

An PO entity that wishes to expand to an additional PACE center or a Service Area must demonstrate the following in its application to the Department:

1. The successful operation of its existing PACE center in a manner that is financially responsible and complies with any solvency requirements as directed in applicable statutes and/or regulations.
2. The PACE center or PO successfully operates its existing centers in a manner that meets all federal, state, and municipal code requirements (generally, as determined at the completion of the first 12 months of the initial 3-year CMS designated trial period).
3. A documented record of successful CMS and State audit performance(s), with no outstanding Statements of Deficiencies.
4. When the construction of the additional PACE center is part of an SAE, the PO must demonstrate to the satisfaction of the Department that there is currently an unmet need within the proposed service area and financial projections that are comparable to current industry standards.
5. For the construction of an additional center in an already approved service area, the PO must demonstrate:
  - Its existing PACE center is at, or near capacity;
  - There is unmet need in the PO's already approved service area;
  - The administrative capacity to operate an additional center; and
  - The financial viability of operating an additional center.

### **b. Completing Applications**

The Department will not consider an application for an additional PACE center or SAE while its application for an initial PACE center is under review. The initial application must receive approval by CMS and the Department. Additionally, the initial PACE center must be operational for a minimum period of 12 months and demonstrate successful operations of their currently approved center before an additional application will be considered for review and approval by the Department.

### **c. Certificate of Authority (COA)**

When PACE centers share common ownership, they must operate under a single parent organization with a single COA and State contract. The Department will not approve a single parent organization's operation of multiple PACE centers using competing subsidiaries. A proposed PACE center cannot be approved as an *additional* PACE center if it does not operate under the same parent organization and the same COA as that used by the initial PACE center. A separate ownership structure and COA would trigger the implementation of a separate CMS Program Agreement and therefore cannot be considered an expansion. The Department will not approve the construction of an additional PACE center that would trigger the implementation of a separate CMS Program Agreement (PA). (Note: The PA is incorporated into the State contract as Appendix A-1.)

#### **d. SAE without the Construction of an Additional PACE Center**

The Department may consider an SAE application without the construction of a new PACE center if the following organizational criteria are met:

- The SAE is contiguous with the PO's already approved service area;
- There is existing capacity in the current PACE center to handle the SAE; and
- Maximum travel times for participants within the proposed SAE footprint are consistent with both Department and CMS standards.

**Questions, please contact [MLTCinfo@health.ny.gov](mailto:MLTCinfo@health.ny.gov)** with the subject line: PACE application and also copy both [Karen.Murphy@health.ny.gov](mailto:Karen.Murphy@health.ny.gov) and, [Patrick.cucinelli@health.ny.gov](mailto:Patrick.cucinelli@health.ny.gov).