

## § 460.10

*Services* includes both items and services.

*State administering agency* means the State agency responsible for administering the PACE program agreement.

*Trial period* means the first 3 contract years in which a PACE organization operates under a PACE program agreement, including any contract year during which the entity operated under a PACE demonstration waiver program.

### Subpart B—PACE Organization Application and Waiver Process

#### § 460.10 Purpose.

This subpart sets forth application requirements for an entity that seeks approval from CMS as a PACE organization.

EFFECTIVE DATE NOTE: At 67 FR 61504, Oct. 1, 2002, § 460.10 was revised, effective Oct. 31, 2002. For the convenience of the user, the revised text is set forth as follows:

#### § 460.10 Purpose.

This subpart sets forth the application requirements for an entity that seeks approval from CMS as a PACE organization and the process by which a PACE organization may request waiver of certain regulatory requirements. The purpose of the waivers is to provide for reasonable flexibility in adapting the PACE model to the needs of particular organizations (such as those in rural areas).

#### § 460.12 Application requirements.

(a) *General.* (1) An individual authorized to act for the entity must submit to CMS a complete application that describes how the entity meets all requirements in this part.

(2) CMS evaluates only complete applications from entities located in States with approved State plan amendments electing PACE as an optional Medicaid benefit.

(3) CMS accepts applications from entities that seek approval as PACE organizations beginning on February 22, 2000 except for the following:

(i) Beginning on November 24, 1999, CMS accepts applications from entities that meet the requirements for priority consideration in processing of applications, as provided in § 460.14.

(ii) Beginning on January 10, 2000, CMS accepts applications from entities that meet the requirements for special

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consideration in processing applications, as provided in § 460.16.

(b) *State assurance.* An entity's application must be accompanied by an assurance from the State administering agency of the State in which the program is located indicating that the State—

(1) Considers the entity to be qualified to be a PACE organization; and

(2) Is willing to enter into a PACE program agreement with the entity.

EFFECTIVE DATE NOTE: At 67 FR 61505, Oct. 1, 2002, § 460.12 was amended by removing and reserving paragraph (a)(2), effective Oct. 31, 2002.

#### § 460.14 Priority consideration.

Until August 5, 2000, CMS gives priority consideration in processing applications for PACE organization status to an entity that meets either of the following criteria:

(a) Is operating under PACE demonstration waivers under one of the following authorities:

(1) Section 603(c) of the Social Security Amendments of 1983, as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.

(b) Has applied to operate under a PACE demonstration under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 as of May 1, 1997.

#### § 460.16 Special consideration.

Until August 5, 2000, CMS gives special consideration in processing applications to an entity that meets the following conditions:

(a) Indicated, by May 1, 1997, a specific intent to become a PACE organization through formal activities.

(b) Includes documentation of its formal activities.

#### § 460.18 CMS evaluation of applications.

CMS evaluates an application for approval as a PACE organization on the basis of the following information:

(a) Information contained in the application.

(b) Information obtained through on-site visits conducted by CMS or the State administering agency.

(c) Information obtained by the State administering agency.

**§ 460.20 Notice of CMS determination.**

(a) *Time limit for notification of determination.* Within 90 days after an entity submits a complete application to CMS, CMS takes one of the following actions:

- (1) Approves the application.
- (2) Denies the application and notifies the entity in writing of the basis for the denial and the process for requesting reconsideration of the denial.
- (3) Requests additional information needed to make a final determination.

(b) *Additional information requested.* If CMS requests from an entity additional information needed to make a final determination, within 90 days after CMS receives all requested information from the entity, CMS takes one of the following actions:

- (1) Approves the application.
- (2) Denies the application and notifies the entity in writing of the basis for the denial and the process for requesting reconsideration of the denial.

(c) *Deemed approval.* An application is deemed approved if CMS fails to act on the application within 90 days after one of the following dates:

- (1) The date the application is submitted by the organization.
- (2) The date CMS receives all requested additional information.

(d) *Date of submission.* For purposes of the 90-day time limit described in this section, the date that an application is submitted to CMS is the date on which the application is delivered to the address designated by CMS.

**§ 460.22 Service area designation.**

(a) An entity must state in its application the service area it proposes for its program.

(b) CMS, in consultation with the State administering agency, may exclude from designation an area that is already covered under another PACE program agreement to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

**§ 460.24 Limit on number of PACE program agreements.**

(a) *Numerical limit.* Except as specified in paragraph (b) of this section, CMS does not permit the number of PACE organizations with which agreements are in effect under this part or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, to exceed the following:

- (1) As of August 5, 1997—40.
- (2) As of each succeeding August 5, the numerical limit for the preceding year plus 20, without regard to the actual number of agreements in effect on a previous anniversary date. (For example, the limit is 60 on August 5, 1998 and 80 on August 5, 1999.)

(b) *Exception.* The numerical limit does not apply to a private, for-profit PACE organization that meets the following conditions:

- (1) Is operating under a demonstration project waiver under section 1894(h) and 1934(h) of the Act.
- (2) Was operating under a waiver and subsequently qualifies for PACE organization status in accordance with sections 1894(a)(3)(B)(i) and 1934(a)(3)(B)(ii) of the Act.

**§ 460.26 Submission and evaluation of waiver requests.**

(a) A PACE organization must submit its waiver request through the State administering agency for initial review. The State administering agency forwards waiver requests to CMS along with any concerns or conditions regarding the waiver.

(b) CMS evaluates a waiver request from a PACE organization on the basis of the following information:

- (1) The adequacy of the description and rationale for the waiver provided by the PACE organization, including any additional information requested by CMS.

(1) Information obtained by CMS and the State administering agency in on-site reviews and monitoring of the PACE organization.

(c) Requirements related to the following principles may not be waived:

- (1) A focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.