

(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.