

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 318

An Act to amend and reenact § 32.1-330.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-226.2, relating to medical assistance services; operation and oversight of pre-PACE and PACE plans.

[S 626]

Approved April 9, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-330.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-226.2 as follows:

§ 32.1-330.3. Operation of a pre-PACE plan or PACE plan; oversight by Department of Medical Assistance Services.

A. ~~1.~~ Operation of a pre-PACE plan *or PACE plan* that participates in the medical assistance services program must be in accordance with a prepaid health plan contract *or other PACE contract consistent with Chapter 6 of Title IV of the federal Balanced Budget Act of 1997* with the Department of Medical Assistance Services.

2. 1. As used in this section, "~~pre-PACE plans~~" *mean "pre-PACE" means of or associated with long-term care prepaid health plans* (i) authorized by the United States Health Care Financing Administration pursuant to § 1903 (m) (2) (B) of Title XIX of the United States Social Security Act (42 U.S.C. § 1396b *et seq.*) and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 *et seq.*) of ~~Title 32.1~~ *this title* and (ii) which have signed agreements with the Department of Medical Assistance Services as long-term care prepaid health plans.

2. As used in this section, "PACE" *means of or associated with long-term care health plans* (i) *authorized as programs of all-inclusive care for the elderly by Subtitle I (§ 4801 et seq.) of Chapter 6 of Title IV of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 528 et seq., §§ 4801-4804, 1997, pursuant to Title XVIII and Title XIX of the United States Social Security Act (42 U.S.C. § 1395eee et seq.), and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 et seq.) of this title* and (ii) which have signed agreements with the Department of Medical Assistance Services as long-term care health plans.

B. All contracts and subcontracts shall contain an agreement to hold harmless the Department of Medical Assistance Services and pre-PACE ~~participants~~ *and PACE enrollees* in the event that a pre-PACE *or PACE* provider cannot or will not pay for services performed by the subcontractor pursuant to the contract or subcontract.

C. During the pre-PACE *or PACE* period, the ~~program plan~~ shall have a fiscally sound operation as demonstrated by total assets being greater than total unsubordinated liabilities, sufficient cash flow and adequate liquidity to meet obligations as they become due, and a plan for handling insolvency approved by the Department of Medical Assistance Services.

D. The pre-PACE *or PACE* plan must demonstrate that it has arrangements in place in the amount of, at least, the sum of the following to cover expenses in the event of insolvency:

1. One month's total capitation revenue to cover expenses the month prior to insolvency; and
2. One month's average payment of operating expenses to cover potential expenses the month after the date of insolvency has been declared or operations cease.

The required arrangements to cover expenses shall be in accordance with the PACE Protocol as published by On Lok, Inc. in cooperation with the United States Health Care Financing Administration, as of April 14, 1995, or any successor protocol that may be agreed upon between the United States Health Care Financing Administration and On Lok, Inc.

Appropriate arrangements to cover expenses ~~must~~ *shall* include one or more of the following: reasonable and sufficient net worth, insolvency insurance, letters of credit or parental guarantees.

E. ~~Pre-PACE plans which contract with private pay participants shall, at all times, hold in a segregated escrow account an amount at least equal to two months' capitation payment for each private pay participant of the pre-PACE site. Such amounts shall be in addition to any amounts or other arrangements required under subsection D and shall be used to assist the private pay participants in obtaining substitute services in the case of insolvency or other failure of the pre-PACE site.~~

1. Enrollment at any one pre-PACE site of private pay participants shall be limited to a maximum of five percent.

2. For the purposes of this section, "private pay participants" means those persons who do not participate in programs authorized pursuant to Title XVIII of the United States Social Security Act, or Title XIX of the United States Social Security Act and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 *et seq.*) of Title 32.1. *Enrollment in a pre-PACE or*

PACE plan shall be restricted to those individuals who participate in programs authorized pursuant to Title XIX or Title XVIII of the United States Social Security Act, respectively.

F. Full disclosure shall be made to all ~~private pay participants, and to those~~ individuals in the process of enrolling in the pre-PACE site, ~~that the pre-PACE program is not insurance and should not be considered a substitute for insurance. In addition, disclosure shall include a statement or PACE plan that~~ services are not guaranteed beyond a thirty-day period.

G. The Board of Medical Assistance Services shall establish a Transitional Advisory Group to determine license requirements, regulations and ongoing oversight. The Advisory Group shall include representatives from each of the following organizations: Department of Medical Assistance Services, Department of Social Services, Department of Health, Bureau of Insurance, Board of Medicine, Board of Pharmacy, Department for the Aging, and a pre-PACE or PACE provider.

§ 38.2-226.2. Provisions of title not applicable to certain long-term care health plans.

A. *This title shall not apply to pre-PACE long-term care health plans (i) authorized by the United States Health Care Financing Administration pursuant to § 1903 (m) (2) (B) of Title XIX of the United States Social Security Act (42 U.S.C. § 1396b et seq.) and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 and (ii) which have signed agreements with the Department of Medical Assistance Services as long-term care health plans.*

B. *This title shall not apply to PACE long-term care health plans (i) authorized as programs of all-inclusive care for the elderly by Subtitle I (§ 4801 et seq.) of Chapter 6 of Title IV of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 528 et seq., §§ 4801-4804, 1997, pursuant to Title XVIII and Title XIX of the United States Social Security Act (42 U.S.C. § 1395eee et seq.) and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 and (ii) which have signed agreements with the Department of Medical Assistance Services as long-term care health plans.*

C. *Enrollment in a pre-PACE or PACE plan shall be restricted to those individuals who participate in programs authorized pursuant to Title XIX or Title XVIII of the United States Social Security Act, respectively.*