

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

**FINAL**

**ORDER**

**Program of All-Inclusive Care for the Elderly (PACE)**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the October 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 1, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after October 1, 2021, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

**Background**

The Centers for Medicare & Medicaid Services (CMS) advised states to no longer use the Upper Payment Limit (UPL) when drafting rates for the Program of All-Inclusive Care for the Elderly (PACE). States are required to use the Amount that Would Otherwise be Paid (AWOP) and submit a SPA indicating compliance.

**Statutory Authority**

42 CFR 460

**Purpose**

The proposed amendment is to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on November 1, 2021.

*Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

*Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

**Fiscal Impact Statement**

There is no anticipated fiscal impact.

## Summary of Comments Received with Agency Response and Explanation of Changes

There is no anticipated fiscal impact.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 1, 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint, is adopted and shall be final effective March 11, 2022.

2/15/2022  
Date of Signature

Molly K. Magarik, Secretary, DHSS

**\*Please Note: Due to the formatting requirements of the regulation, it is being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/march2022/final/Supp 2 3.1-A Page 1 PACE.pdf>  
<http://regulations.delaware.gov/register/march2022/final/Supp 2 3.1-A Page 2 PACE.pdf>  
<http://regulations.delaware.gov/register/march2022/final/Supp 2 3.1-A Page 3 PACE.pdf>  
<http://regulations.delaware.gov/register/march2022/final/Supp 2 3.1-A Page 4 PACE.pdf>  
<http://regulations.delaware.gov/register/march2022/final/Supp 2 3.1-A Page 5 PACE.pdf>  
<http://regulations.delaware.gov/register/march2022/final/Supp 2 3.1-A Page 6 PACE.pdf>  
<http://regulations.delaware.gov/register/march2022/final/CMS Pre-Print Pages PACE.pdf>

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