

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 6, 2025

The licensure policy changes are currently in effect as Emergency Rules and must be promulgated as Permanent Rules. The licensure policy was presented at the Tribal Consultation held on November 5, 2024 and the Medical Advisory Committee held on November 7, 2024. All other proposed changes are Permanent Rules. The proposed policy changes were presented at the Tribal Consultation held on November 5, 2024.

All proposed changes will be presented at a Public Hearing on January 6, 2025. All changes are scheduled to be presented as Permanent Rules to the Medical Advisory Committee on January 9, 2025 and to the OHCA Board of Directors on January 15, 2025.

SUMMARY: The proposed revisions remove the requirement that PACE providers be licensed as an adult day care as directed by House Bill 3238 of the 2024 legislative session. The proposed changes also clarify a PACE organization's responsibility to address housing insecurity for potential or current participants, requirements surrounding the involuntary disenrollment process, and participant use of assisted living.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 56 OS 1017.7; 63 OS 1-872; 63 OS 1-1961

RULE IMPACT STATEMENT

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 24-13

A. Brief description of the purpose of the rule:

The proposed policy changes remove the requirement that Program of All-Inclusive Care for the Elderly (PACE) providers be licensed as an adult day care and clarify regulatory requirements for PACE providers. House Bill 3238 of the 2024 legislative session amended the Adult Day Care Act and the Home Care Act to exempt PACE organizations from the licensure requirements of adult day cares and home health organizations. It assigned new regulatory authority to OHCA to enforce federal PACE regulations (42 CFR Part 460). The

proposed changes also clarify a PACE organization's responsibility to address housing insecurity for potential or current participants, requirements surrounding the involuntary disenrollment process, and participant use of assisted living. These rule changes will reduce the administrative burden on PACE providers and ensure OHCA expectations and requirements are clear.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

PACE organizations are most likely to be affected by the proposed rule.

- C. A description of the classes of persons who will benefit from the proposed rule:

PACE organizations and participants will benefit from the reduced administrative burden resulting from the removal of licensure requirements and improved clarity in OHCA oversight expectations.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable impact of the proposed rule upon any classes of persons or political subdivisions.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The proposed changes are budget neutral.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

There is no economic impact on political subdivisions.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule is not expected to have an adverse effect on small business.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a

determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no adverse effect on the public health, safety, and environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

OHCA does not believe there is a detrimental effect on the public health and safety if the rule is not passed.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: November 19, 2024

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-
ELIGIBILITY**

**SUBCHAPTER 18. PROGRAMS FOR THE ALL-INCLUSIVE CARE FOR THE
ELDERLY (PACE)**

317:35-18-4. Provider regulations

(a) The provider must comply with provisions of this Subchapter, ~~and~~ the regulations in 42 CFR, Part 460, ~~and all applicable local, state, and federal regulations.~~ The provider must comply with all evaluation, monitoring, oversight, and other activities of the State Administering Agency (OHCA) as described in 42 CFR, Part 460.

~~(b) The provider agency must be licensed by the State of Oklahoma as an adult day care center.~~

~~(c) The provider must meet all applicable local, state, and federal regulations.~~

~~(d)~~(b) The provider must maintain an inquiry log of all individuals requesting Programs of All-Inclusive Care for the Elderly (PACE) services. This log will be available to the OHCA at all times. The log must include:

- (1) type of contact;

- (2) date of contact;
 - (3) name and phone number of the individual requesting services;
 - (4) name and address of the potential participant; and
 - (5) date of enrollment, or reason for denial if the individual is not enrolled.
- (c) Pursuant to 42 CFR 460.70, any entity contracted by the provider to render PACE benefits must comply with the provisions of this Subchapter, the regulations in 42 CFR Part 460, and any other local, state, and federal regulations applicable to the provider.
- (d) OHCA reserves the right to deny a provider's application for a new or renewed contract or terminate a contract with a provider as described in OAC 317:30-3-19.3 and OAC 317:30-3-19.5.
- (e) PACE programs are license-exempt only when they provide services exclusively to PACE participants.

317:35-18-5. Eligibility criteria

- (a) To be eligible for participation in Programs of All-Inclusive Care for the Elderly (PACE), the applicant must:
- (1) Be age fifty-five (55) years or older;
 - (2) Live in a PACE service area;
 - (A) Applicants are permitted to utilize assisted living. The applicant must have a landlord-tenant relationship with the assisted living facility. Should the applicant become a PACE participant, the participant must maintain the landlord-tenant relationship with the assisted living facility. The PACE organization cannot be involved in payment for room and board from the participant to the assisted living facility. The PACE organization may provide supplemental payments to an assisted living facility outside of the room and board payments paid by the participant.
 - (3) Be determined by the state to meet nursing facility level of care; and
 - (4) Be determined by the PACE interdisciplinary team (IDT) as able to be safely served in the community at the time of enrollment. If the PACE provider denies enrollment because the IDT determines that the applicant cannot be served safely in the community, the PACE provider must:
 - (A) Notify the applicant in writing of the reason for the denial;
 - (B) Refer the applicant to alternative services as appropriate;
 - (C) Maintain supporting documentation for the denial and notify the Centers for Medicare and Medicaid Services and the Oklahoma Health Care Authority (OHCA) of the denial and submit that documentation to the OHCA for review; and
 - (D) Advise the applicant orally and in writing of the grievance and appeals process.
- (b) To be eligible for SoonerCare capitated payments, the individual must:
- (1) Meet categorical relationship for the aged, blind, or disabled [refer to Oklahoma Administrative Code (OAC) 317:35-5-4];
 - (2) Be eligible for Title XIX services if institutionalized as determined by the Oklahoma Department of Human Services (OKDHS)
 - (3) Be eligible for SoonerCare State Plan services;
 - (4) Meet the same financial eligibility criteria as set forth for the SoonerCare ADvantage program per OAC 317:35-17-10 and 317:30-17-11; and
 - (5) Meet appropriate medical eligibility criteria.

(c) The nurse designee makes the medical determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT) Part I, Part III, and other available medical information.

(1) When PACE services are requested:

(A) The PACE nurse or OKDHS nurse is responsible for completing the UCAT assessment.

(B) The PACE intake staff is responsible for aiding the PACE enrollee in contacting OKDHS to initiate the financial eligibility application process.

(2) The nurse completes the UCAT, Part III visit with the PACE enrollee, in the participant's home, within ten (10) days of receipt of the referral for PACE services.

(3) The nurse sends the UCAT, Part III to the designated OHCA nurse staff member for review and level of care determination.

(4) A new medical level of care determination may be required when a member requests any of the following changes in service programs:

(A) From PACE to ADvantage;

(B) From PACE to State Plan Personal Care Services;

(C) From Nursing Facility to PACE;

(D) From ADvantage to PACE if previous UCAT was completed more than six (6) months prior to member requesting PACE enrollment; or

(E) From PACE site to PACE site.

(d) To obtain and maintain eligibility, the individual must agree to accept the PACE providers and its contractors as the individual's only service provider. The individual may be held financially liable for services received without prior authorization except for emergency medical care.

317:35-18-8. Enrollment

(a) The provider determines whether the applicant meets PACE enrollment requirements.

(b) The enrollment effective date is the first day of the month after the provider receives the signed enrollment form.

(c) During the initial eligibility determination and prior to enrollment, the provider must assess the prospective participant's housing status to determine if they are housing insecure. If the prospective participant is determined to be housing insecure and is enrolled, the participant's housing insecurity must be addressed in their plan of care. If the participant's housing insecurity has not improved after two (2) months of enrollment, the provider must disenroll the participant according to the involuntary disenrollment procedures defined in 317:35-18-10. For the purposes of this requirement, OHCA considers housing insecurity to be the lack of stable occupancy of a decent, safe, and affordable housing unit.

(ed) Enrollment continues until the participant's death, regardless of changes in health status, unless either of the following actions occur:

(1) The participant voluntarily disenrolls and/or elects to transfer to other eligible PACE program.

(2) The participant is involuntarily disenrolled.

317:35-18-10. Disenrollment (voluntary and involuntary)

(a) A participant may voluntarily disenroll from PACE at any time without cause however, the

effective date of disenrollment must be the last day of the month that the participant elects to disenroll.

(b) A participant may be involuntarily disenrolled for any of the following reasons:

- (1) The participant/caregiver or guardian fails to pay, or to make satisfactory arrangements to pay, any premium due the PACE organization after a 30-day grace period.
- (2) The participant/caregiver or guardian engages in disruptive or threatening behavior, as described in subsection (c) of this section.
- (3) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.
- (4) The participant is determined to no longer meet the SoonerCare nursing facility level of care requirements and is not deemed eligible.
- (5) The PACE program agreement with CMS and OHCA is not renewed or is terminated.
- (6) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(c) Disruptive or threatening behavior

(1) A participant may be involuntarily disenrolled for disruptive or threatening behavior. For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:

(A) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or

(B) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.

(2) If a PACE organization proposes to disenroll a participant who is disruptive or threatening, the organization must document the following information in the participant's medical record:

(A) The reasons for proposing to disenroll the participant.

(B) All efforts to remedy the situation.

~~(c) A participant may be involuntarily disenrolled for disruptive or threatening behavior. For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:~~

~~(1) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or~~

~~(2) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.~~

~~(d) If a PACE organization proposes to disenroll a participant who is disruptive or threatening, the organization must document the following information in the participant's medical record:~~

~~(1) The reasons for proposing to disenroll the participant.~~

~~(2) All efforts to remedy the situation.~~

(ed) A participant may be disenrolled involuntarily for noncompliant behavior

(1) PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.

- (2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.
- (e) Before an involuntary disenrollment is effective, OHCA will review the participant's medical record and determine in a timely manner ~~that~~if the PACE organization has adequately documented acceptable grounds for disenrollment. Once OHCA confirms receipt of the involuntary disenrollment form from the PACE organization, the PACE organization must submit the following documentation within fourteen (14) days.
- (1) A justification summary for involuntary disenrollment.
 - (2) Documentation of all efforts made to resolve the issue(s) underlying the request for involuntary disenrollment and the anticipated date of involuntary disenrollment.
 - (3) The two (2) most recent assessments by the Interdisciplinary Team (IDT).
 - (A) If the participant has not been enrolled long enough to have completed two IDT assessments, the participant's UCAT should be submitted.
 - (4) The two (2) most recent IDT care plans.
 - (5) Initial and most recent Nursing Level of Care (NF LOC) assessments.
 - (A) The PACE organization must complete a new level of care assessment for a disenrolling participant whose most recent assessment was completed more than 12 months prior to the anticipated date of disenrollment.
 - (B) The PACE organization must complete a new level of care assessment for a disenrolling participant who is Deemed Continued Eligibility/waived.
 - (6) Any related assessments and documentation by specialists relevant to the criteria for involuntary disenrollment.
 - (7) A list of the participant's medications.
 - (8) A transition plan indicating how care and services will be coordinated between the PACE organization and the participant's new providers as PACE enrollment ends and new provider enrollment begins.
- (f) Involuntary disenrollment procedures for PACE organizations
- (1) 30-Day Notice of Disenrollment- Upon authorization by OHCA of the involuntary disenrollment, the PACE organization shall give a "30-Day Notice of Disenrollment" to the participant. The Involuntary Disenrollment is effective the first day of the next month that begins 30 days after the day the PACE Organization sends notice of disenrollment to the participant.
 - (A) The notification shall include information about the right to appeal and how to access the appeal process.
 - (B) The participant shall be advised that, in light of an adverse appeal determination, the participant may be responsible for payment.
 - (2) Options counseling- Upon authorization of an involuntary disenrollment, the PACE organization shall provide face-to-face options counseling with the participant.
 - (A) If the participant declines a face-to-face meeting, the counseling may occur via telephone.
 - (B) If unable to contact the participant/participant representative, the PACE organization shall specifically document, in the participant's record, all efforts to engage the participant/participant representative in options counseling.
 - (C) As part of options counseling, the PACE organization shall make reasonable efforts

to provide the participant with the following information:

(i) If the participant withdraws from PACE without enrollment into a Medicaid waiver program, such as ADvantage waiver services, this may result in loss of eligibility for Medicaid State Plan services due to the financial eligibility requirement;

(ii) The PACE and/or State Plan services that will be lost or unavailable as a result of the involuntary withdrawal;

(iii) What the participant must do to remain eligible to receive SoonerCare, if applicable;

(iv) Other services or programs for which the participant may be eligible, including information about contacting the Oklahoma Human Services (OHS) and Community Living, Aging, and Protective Services (CAP);

(v) How to access PACE services in the future; and

(vi) The withdrawal process, timeframes, and outcomes and the need for the participant to sign applicable consent forms.

(3) Disenrollment documentation- The PACE organization shall complete the following applicable disenrollment forms and documentation requirements with the participant and shall submit them to OHCA.

(A) Disenrollment form

(B) Nursing facility level of care (NC LOC) status

(i) The PACE organization must complete a new level of care assessment for a disenrolling participant whose most recent assessment was completed more than 12 months prior to the anticipated date of disenrollment.

(ii) The PACE organization must complete a new level of care assessment for a disenrolling participant who is Deemed Continued Eligibility/waived.

(C) The two (2) most recent assessments by the Interdisciplinary Team (IDT).

(D) The two (2) most recent IDT care plans.