



COVID-19 Related NPA Congressional and Regulatory Advocacy Update

3/27/2020

Summary

NPA staff members have been working with Members of Congress to monitor, assess and advocate for COVID-19-related legislation that addresses the challenges PACE organizations are facing as they respond to the pandemic. In reviewing Congress' efforts to date, its primary health care related areas of focus have been to provide relief to hospital and health care providers and, to a much lesser extent, health plans. None of the provisions passed recently by Congress directly address PACE organizations' concerns regarding the potential for significantly reduced revenues at a time of drastically increased costs.

Working with NPA's Board of Directors, next week NPA staff will put forth a set of legislative requests specific to PACE that will address PACE organizations' revenue and cost concerns. In addition to its Congressional advocacy, NPA has been working with CMS to assure needed flexibility for PACE organizations' operations as they respond to their participants' needs during the COVID-19 pandemic. NPA also has communicated with CMS and the Federal Emergency Management Agency to strongly emphasize the needs of PACE organizations for personal protective equipment and COVID-19 test kits, so that the highest quality of care can be provided to participants while minimizing participants' and staff exposure.

COVID-19-Related Legislation to Date

Congress has passed three legislative packages related to COVID-19. These three packages are summarized below:

COVID-19 Response Package 1, The Coronavirus Preparedness and Response Supplemental Appropriations Act, P.L. 116-213: This legislation, enacted on March 6, provided \$8.3 billion in supplemental funds for federal government agencies and states to support their COVID-19 related activities. While there is no language in the bill containing specific relief for PACE organizations, there may be trickle down effects as a result of the increased funding made available.

COVID-19 Response Package 2, The Families First Coronavirus Response Act, P.L. 116-127: The legislation provided a 6.2 percent increase in the federal funding match (FMAP) to States for their Medicaid expenditures. States can use these funds to address the higher than expected costs their Medicaid providers experience in responding to COVID-19. It is not clear at this point that states can use these funds to make supplemental payments to PACE organizations outside of the Medicaid capitation rate or to increase the Medicaid capitation rates received by PACE organizations.

CMS recently issued guidance to states allowing a range of payment adjustments for Medicaid health plans, but it is not clear to NPA that this guidance includes PACE organizations (which are separately authorized in federal statute). NPA continues to research the possible impact of the CMS guidance and the FMAP increase to states on PACE organizations and will provide additional information as soon as possible.

COVID-19 Response Package 3, The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)– This legislation provides over \$2 trillion dollars in economic stimulus and financial assistance funding, including unemployment funds and a small business rescue fund. Relating to health care, \$340 billion is targeted to hospitals and federal agencies. An additional \$274 billion will be provided to state and local governments.

Future Legislation

Looking forward, a bill introduced by House Speaker Pelosi as a counterpoint to the Senate package during the third bill negotiations is likely to be the starting point for the anticipated fourth COVID bill. The Speaker's package included a 5 percent risk corridor for MA plans that would likely apply to PACE by extension, because our payment methodology is linked to that of MA in statute. Above this 5% risk corridor, CMS would pay 75% of the excess costs. It is not clear if the risk corridor would be for Medicare covered costs only, if it would be applied on a per beneficiary or total plan cost basis, and how it would be applied to PACE. We will continue to monitor this provision for its potential inclusion in future legislation and will work to include PACE in it if it proceeds.

The House bill also included a grant program for home and community-based providers. Despite assurances from Members of Congress who developed and supported the grant program provision that their intent was for PACE to be included, the construction of the program in the legislative language would exclude PACE organizations from being eligible to receive funds from the grants. NPA worked with the supporters of the HCBS provision to have PACE explicitly included in the grant funds. At the time, NPA was advised that there was insufficient time to make any changes in the bill language. As we enter the next phase of Congressional negotiations, NPA will continue to push for clarification that PACE is included.

NPA Advocacy Action

What is emerging from the Congressional efforts we have seen thus far is that PACE, as a provider-sponsored plan that is authorized in its own distinct provision of federal law, is not addressed by the types of legislative actions aimed at providers (i.e. hospitals, home and community based providers, nursing homes) or plans (i.e. Medicaid plans, Medicare Advantage plans) that are top of mind for Members of Congress and their staff. This is in spite of Members of Congress and their staff's good intentions towards PACE.

NPA is working actively with our Congressional champions to apply their good intent to assure that the fast-moving upcoming legislative actions include PACE. Working with NPA's Executive Committee and Board, NPA will be proposing a set of legislative actions that provide revenue stabilization for PACE organizations and address increased care costs driven by COVID-19 including hospitalizations, nursing home and home care. We will disseminate the list of actions to our member PACE organizations next week with an update on how best to support advocacy efforts related to their introduction and passage in Congress.

NPA Regulatory Action

In addition to the legislative response to COVID-19, NPA staff members are working closely with staff in the Centers for Medicare & Medicaid Services regarding regulatory flexibility for PACE organizations. As a result of these communications, NPA:

1. Understands that routine PACE program audits already scheduled in 2020 have been delayed, and we are hopeful that CMS will announce soon that routine audits will be suspended for the duration of the crisis. In addition, CMS has notified us that 1/3 financial audits have been suspended.
2. Received written and verbal guidance from CMS that regulatory flexibility will be provided to PACE organizations as they adapt their delivery of services in response to COVID-19. This flexibility comes in the form of enforcement discretion which CMS and its contractors will exercise during audit review periods that span the COVID-19 response period. Flexibility should include but not be limited to requirements related to assessment formats (in person vs. remote), assessment timing, service delivery requests, contracted providers, and access to the PACE Center. CMS staff stated that, while they understand PACE organizations' desire for more specific guidance, they believe that PACE organizations are in best position to fulfill responsibilities as best they can while meeting participant and staff needs.
3. Communicated with CMS on several additional issues including a delay in fielding of the HOS-M survey out of concern that low response rates will negatively impact PACE organizations' 2021 frailty scores; a delay in the deadline for submission of Q1 PACE Quality Data; and inclusion of diagnoses made in the context of telehealth visits for risk adjustment (current requirement is for face-to-face visits only).

In a letter to CMS Administrator Seema Verma, NPA raised the urgency of PACE organizations' access to Personal Protective Equipment (PPE) and COVID-19 test kits and described the range of PACE operations for which regulatory flexibility will be needed.

Lastly, as we focus on the COVID-19 issues, NPA is mindful of the April 6, 2020 deadline to submit comments on the proposed rule CMS released in February which includes significant regulatory changes for PACE. We have requested an extension of the deadline to submit comments on the proposed rule, but at the point we are preparing for the public policy committee's call, the April 6, 2020 deadline remains in place, NPA is working with members of the Regulatory Subcommittee to finalize its comments and provide our PACE organizations with a template comment letter for your use.