



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPT. OF AGING

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Regulation/Package Title (a general description of the rules' substantive content):

PACE

Chapter 173-50 regulates the eligibility, enrollment, reassessment, and disenrollment processes for PACE in Ohio. This rule package updates ODA's PACE rules to comply with June 3, 2019 amendments to 42 C.F.R. Part 460.

Rule Number(s): Chapter 173-50 (173-50-01, 173-50-02, 173-50-03, 173-50-04, and 173-50-05)

Date of Submission for CSI Review: December 5, 2019

Public Comment Period End Date: December 19, 2019 at 11:59PM.

Rule Type/Number of Rules:

☒ **New/ 4 rules**

173-50-02, 173-50-03, 173-50-04, 173-50-05

☒ **Amended/ 1 rule (FYR? ☒)**

173-50-01

☐ **No Change/ 0 rules (FYR? ☐)**

☒ **Rescinded/ 4 rules (FYR? ☒)**

173-50-02, 173-50-03, 173-50-04, 173-50-05

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

Please review the next page.

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The rule(s):

- ☐ a. **Require a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ☐ b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.** An involuntary disenrollment under 173-50-05 is a disciplinary action upon a participant, but not upon the PACE organization. Please review ODA's response to #1d for more information.
- ☒ c. **Requires specific expenditures or the report of information as a condition of compliance.**
 - 173-50-03 requires the PACE organization to (1) conduct a comprehensive assessment of each applicant, (2) enroll eligible applicants—either directly into the program or onto a waiting list, (3) develop a plan of care for each participant, and (4) reassess each participant at least semiannually.
 - 173-50-04 requires the PACE organization to forward any voluntary disenrollment form completed by a participant to ODA.
 - 173-50-05 requires the PACE organization to submit documentation to ODA regarding a participant slated for involuntary disenrollment.
 - 173-50-04 and 173-50-05 require the PACE organization to provide the medical records of a disenrolling participant to the participant's new providers.
- ☒ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.** An involuntary disenrollment under 173-50-05 may decrease the revenue of a PACE organization.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 173-50 regulates the eligibility, enrollment, reassessment, and disenrollment processes for PACE in Ohio. This rule package primarily updates ODA's PACE rules to comply with recent changes to federal PACE rules in 42 CFR Part 460.

ODA proposes to amend 173-50-01 by updating the incorporation by reference and by defining "IDT."

ODA proposes to rescind the current versions of 173-50-02, 173-50-03, 173-50-04, and 173-50-05 and replace each with a proposed new rule of the same number.¹

Proposed new rule 173-50-02 would differ from the current rule in the following ways:

- ODA reworded and reorganized the new rule to comply with the June 3, 2019 amendments to 42 CFR 460.150.
- ODA replaced "an intermediate level of care under rule 5160-3-05 of the Administrative Code or a skilled level of care under rule 5160-3-06 of the Administrative Code" in (B) with "a skilled level of care under rule 5160-3-08 of the Administrative Code."

Proposed new rule 173-50-03 would differ from the current rule in the following ways:

¹ For the public-comment period, rules 173-50-02, 173-50-03, 173-50-04, and 173-50-05 will appear as rules with proposed amendments rather than proposed new rules.

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- ODA reworded and reorganized the new rule to comply with the June 3, 2019 amendments to 42 CFR 460.152, 460.154, and 460.156.
- ODA added language on plan of care that complies with 42 CFR 460.106, as CMS amended that section on June 3, 2019.
- ODA added language on reassessment that complies with 42 CFR 460.102 and 460.104, as CMS amended those sections on June 3, 2019.

Proposed new rule 173-50-04 would differ from the current rule because ODA reworded and reorganized it to comply with the June 3, 2019 amendments to 42 CFR 460.162.

Proposed new rule 173-50-05 would differ from the current rule because ODA reworded and reorganized it to comply with the June 3, 2019 amendments to 42 CFR 460.164, 460.166, 460.172.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

R.C. §§ [173.01](#), [173.02](#), and [173.50](#).

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

These rules align with 42 C.F.R. §§ [460.6](#) (definitions), [460.102](#) (interdisciplinary team), [460.104](#) (participant assessment), [460.106](#) (plan of care), [460.150](#) (eligibility to enroll in a PACE program), [460.152](#) (enrollment process), [460.154](#) (enrollment agreement), [460.156](#) (other enrollment procedures), [460.158](#) (effective date of enrollment), [460.160](#) (continuation of enrollment), [460.162](#) (voluntary disenrollment), [460.164](#) (involuntary disenrollment), [460.166](#) (disenrollment responsibilities), [460.172](#) (documentation of disenrollment), and [460.210](#) (medical records).

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rules exist to comply with the state laws (especially R.C. §[173.50](#)) mentioned in ODA's response to #2, which establish ODA as the state agency administering PACE and authorize ODA to adopt rules for PACE to the extent authorized in ODA's interagency agreement with ODM.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules ensure necessary safeguards are in place to ensure that qualified applicants are enrolled, participants who do not want to participate are voluntarily disenrolled, and those who no longer qualify are involuntarily disenrolled.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

[42 CFR Part 460.192](#) requires CMS and ODA to conduct ongoing monitoring of the PACE organization to ensure compliance. The rules are judged as being successful when CMS and ODA find few violations from its monitoring.

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8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On October 17, 2019, ODA sent an email to the McGregor PACE, which is currently the only PACE organization in Ohio asking for organization's comments on ODA's proposed amendments to the rules.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

On October 29, 2019, ODA received 2 comments from McGregor PACE to its October 17, 2019 email.

- For 173-50-03, the PACE organization wanted to clarify that there is no need for the PACE organization's inter-disciplinary team to conduct the comprehensive in-person assessment of a person while the person is applying for PACE. ODA agreed and proposes for the new rule to require the PACE organization, instead of the PACE organization's inter-disciplinary team, to conduct the assessment.
- For 173-50-05, the PACE organization stated that current language in paragraph (A)(1)(c) of this rule on a participant having no right to file a grievance when being disenrolled for failure to pay premiums did not belong in the rule because 42 CFR 460.170 allows for reinstatement with no break in coverage if the participant pays the premium before the effective date of disenrollment. ODA agreed and the language will not appear in the proposed new rule.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

ODA's proposed amendments implement CMS' recent amendments to 42 CFR Part 460. They are not based upon scientific data.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

ODA's proposed amendments to Chapter 173-50 align the chapter of rules with, rather than provide alternatives to, 42 CFR Part 460 as CMS amended those rules on June 3, 2019.

13. Did the Agency specifically consider a performance-based regulation? Please explain. Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Before the proposed new rules take effect, ODA will post them on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature them.

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Through its ongoing monitoring activities under [42 CFR 460.192](#), CMS and ODA will monitor the PACE organization for compliance.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

R.C. [§173.50](#) authorizes ODA to develop standards for PACE. ODA did not find duplicate rules in the Ohio Administrative Code.

15. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Before the proposed new rules take effect, ODA will post them on ODA’s website. ODA will also send an email to subscribers of our rule-notification service to feature the rule.

Through its ongoing monitoring activities under [42 CFR 460.192](#), CMS and ODA will monitor the PACE organization for compliance.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

McGregor PACE is Ohio’s only PACE organization.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

- 173-50-03 requires the PACE organization to (1) conduct a comprehensive assessment of each applicant, (2) enroll eligible applicants—either directly into the program or onto a waiting list, (3) develop a plan of care for each participant, and (4) reassess each participant at least semiannually.
- 173-50-04 requires the PACE organization to forward any voluntary disenrollment form completed by a participant to ODA.
- 173-50-05 requires the PACE organization to submit documentation to ODA regarding a participant slated for involuntary disenrollment.
- 173-50-04 and 173-50-05 require the PACE organization to provide the medical records of a disenrolling participant to the participant’s new providers.
- An involuntary disenrollment under 173-50-05 may decrease the revenue of a PACE organization.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

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The provider voluntarily agrees to become a PACE organization.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

ODA develops rules for PACE to ensure that qualified applicants are enrolled, participants who do not want to participate are voluntarily disenrolled, and those who no longer qualify are involuntarily disenrolled. ODA also seeks to implement the June 3, 2019 amendments to 42 CFR Part 460.

Providers voluntarily apply to become a PACE organization. Compliance with Chapter 173-50 is only required if a provider chooses to become a PACE organization. ODA pays the PACE organization for the services it provides through PACE to Medicaid-enrolled participants.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Although the rules would treat all PACE organizations the same, regardless of their size, Ohio currently has only one PACE organization. Additionally, the primary purpose of Chapter 173-50 is to ensure the health and safety of participants enrolled in PACE, regardless of the size of the PACE organization providing services to the participants.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODA is concerned primarily about ensuring that qualified applicants are enrolled, participants who do not want to participate are voluntarily disenrolled, and those who no longer qualify are involuntarily disenrolled through compliance with these rules. Whenever possible, ODA will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

20. What resources are available to assist small businesses with compliance of the regulation?

ODA and its designees are available to help PACE organizations of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rules.

Additionally, ODA maintains an [online rules library](#) to help providers find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

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173-50-01

PACE: introduction and definitions.

(A) Introduction: Chapter 173-50 of the Administrative Code regulates PACE. PACE is a managed-care program that provides its participants with all of their necessary health care, medical care, and ancillary services in acute, sub-acute, institutional, and community settings. Examples of PACE services are primary and specialty care, adult day services, personal care services, inpatient hospital stays, prescription drugs, occupational therapy, physical therapy, and nursing facility care.

(B) Definitions for this chapter:

"Authorized representative" has the same meaning as in rule 5160-36-01 of the Administrative Code.

"CDJFS" means the "county department of job and family services."

"CMS" means "the centers for medicare and medicaid services."

"IDT" means "inter-disciplinary team."

"ODA" means "the Ohio department of aging."

"ODM" means "the Ohio department of medicaid."

"ODM's administrative agency" has the same meaning as "administrative agency" in rule 5160:1-1-01 of the Administrative Code.

"PACE" means "the program of all-inclusive care for the elderly," which is established by 42 C.F.R. Part 460 (October 1, ~~2015~~ 2019).

"PACE organization" means an entity that provides services to participants under a PACE program agreement with CMS and ODA.

"Participant" means a person who receives services through PACE.

173-50-02

PACE: eligibility requirements.

(A) ~~A person may enroll in PACE only if the~~ To be eligible for PACE, a person ~~meets~~ shall meet all the following requirements:

(1) The person is at least fifty-five years of age.

(2) The person resides within a PACE organization's service area.

(3) The person ~~requires~~ has an intermediate ~~level of care under rule 5160-3-05 of the Administrative Code~~ or skilled level of care ~~under~~ in accordance with rule 5160-3-08 of the Administrative Code.

~~(4) At the time of initial enrollment, the person resides in a non-institutional setting (e.g., house, apartment) without jeopardizing his or her health or safety.~~

(4) ODA or its designee determine the person can live in a community setting without jeopardizing his or her health and safety.

(5) The person may be enrolled as a medicaid or a non-medicaid enrollee. The person shall be responsible for payment to the PACE organization as follows:

~~(5)(a) The~~ If a person is applying for, or enrolled in, PACE through the medicaid program, the person shall ~~maintains~~ maintain medicaid eligibility either under the financial eligibility standard or under a needs allowance if the person has moved from an institutional setting to a non-institutional setting, or pays the premiums and any post-eligibility treatment of income (i.e., patient liability or share of cost) ODM may require in rule 5160:1-6-07.1 of the Administrative Code.

(b) If a person is applying for, or enrolled in, PACE as a non-medicaid enrollee, the person may remain eligible for PACE if the person pays the premiums and incurred while using PACE. (For more information, see rule 173-50-05 of the Administrative Code and 42 C.F.R. 460.150 and 460.160.)

(6) The person agrees to obtain medicaid services, if any, or medicare services, if any, only through the PACE organization during the period of enrollment in PACE.

(7) At the time of initial enrollment, the person meets the following:

~~(7)(a)~~ (a) The person is not enrolled in one or more of the following (or will discontinue being enrolled in one or more of the following upon enrollment in PACE):

~~(a)~~[\(i\)](#) A medicaid managed-care program other than PACE.

~~(b)~~[\(ii\)](#) A hospice program.

~~(c)~~[\(iii\)](#) The primary alternative care and treatment (PACT) program.

~~(d)~~[\(iv\)](#) A medicaid waiver program (e.g., PASSPORT or assisted living).

~~(e)~~[\(v\)](#) The residential state supplement (RSS) program.

~~(f)~~[\(vi\)](#) A nursing facility certified by medicaid while medicaid is covering the person's nursing facility expenses.

[\(b\) The person resides in a non-institutional setting \(e.g., house, apartment\).](#)

(B) 42 C.F.R. 460.160 requires ODA to assess, at least once per year, whether each participant continues to require an intermediate ~~level of care under rule 5160-3-05 of the Administrative Code~~ or a skilled level of care ~~under~~ [in accordance with](#) rule ~~5160-3-06~~ [5160-3-08](#) of the Administrative Code. ODA may permanently waive the ~~requirement to perform this~~ [annual](#) assessment if ODA does not reasonably expect the participant's health to improve or significantly change.

(C) ~~If, at~~ [At](#) any time, ~~a participant in PACE no longer meets the requirements in~~ [and for any reason listed under](#) paragraph (A) of rule 173-50-05 of the Administrative Code, the PACE organization may use the process [in that rule](#) for involuntary disenrollment ~~described in that rule. However, a participant who no longer meets the financial eligibility requirements for medicaid may remain eligible for PACE as long as the participant pays the premiums and incurred while using PACE. (For more information, see rule 173-50-05 of the Administrative Code; 42 C.F.R. 460.150 (d) and 42 C.F.R. 460.160 (a)).~~

173-50-03

PACE: enrollment ~~process~~, plan of care, and reassessment.

(A) Oversight:

- (1) ODA manages the enrollment for PACE.
- (2) ODA determines if a slot is available in PACE.
- (3) ODA reserves the right to restrict enrollment based upon funding appropriated for PACE.
- (4) ODA reserves the right to increase or decrease the maximum number of PACE slots.

(B) Enrollment process, in general:

- (1) To begin the enrollment process, a person may apply through either ODM's administrative agency or a PACE organization.
- (2) ODM's administrative agency and the PACE organization shall coordinate efforts regarding the enrollment process.

~~(C) Enrollment process when a person initially contacts ODM's administrative agency to apply for enrollment into PACE:~~

- ~~(1) The applicant shall apply for medicaid (unless already enrolled in medicaid) with the assistance of ODM's administrative agency.~~
- ~~(2) After the applicant applies, ODM's administrative agency shall determine if the applicant meets all financial eligibility requirements for medicaid in Chapters 5160:1-1 to 5160:1-6 of the Administrative Code.~~
- ~~(3) If ODM's administrative agency determines the applicant does not meet all financial eligibility requirements, it shall send a notice of denial and appeal rights to the applicant (or the authorized representative) according to Chapters 5101:6-1 to 5101:6-9 of the Administrative Code. It shall also send a notice of denial to ODA and the PACE organization.~~
- ~~(4) ODM's administrative agency may help the applicant apply, or partially apply for PACE and notify the PACE organization of the application.~~
- ~~(5) Once a PACE organization receives the application, it shall contact the applicant to complete the application, if necessary, and to provide the applicant with an in-person assessment to determine eligibility for PACE.~~

- ~~(6) Once the in-person assessment is completed, the PACE organization shall forward the information from its assessment to ODA.~~
- ~~(7) After receiving the information, ODA shall determine if the applicant meets all eligibility requirements in rule 173-50-02 of the Administrative Code.~~
- ~~(8) If ODA determines an applicant meets all eligibility requirements, then:~~
- ~~(a) ODA shall notify the PACE organization of its determination.~~
 - ~~(b) Once the PACE organization receives the determination from ODA, it shall notify the applicant (or the authorized representative) of the approval of enrollment into PACE and provide the applicant (or the authorized representative) with an enrollment agreement to sign.~~
 - ~~(c) In order to be enrolled into the program, the applicant shall sign the enrollment agreement and return it to the PACE organization.~~
 - ~~(d) The applicant's enrollment into PACE is effective the first day of the month following the day ODA determined the applicant met all eligibility requirements and the PACE organization received the signed enrollment agreement.~~
- ~~(9) If ODA determines an applicant does not meet all eligibility requirements, then:~~
- ~~(a) ODA shall notify the PACE organization of its determination.~~
 - ~~(b) ODA shall provide the applicant (or the authorized representative) with a notice of denial and appeal rights in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code.~~
- ~~(D)~~(C) Enrollment process when a person initially ~~contacts a PACE organization to apply~~ applies for PACE:
- ~~(1) The PACE organization shall provide the applicant with an in-person assessment to determine if the applicant meets the non-financial eligibility requirements for PACE.~~
 - (1) The PACE organization's shall conduct a comprehensive in-person assessment of the applicant's medical, physical, emotional, and social needs and ability to remain in the community without jeopardizing his/her health or safety.
 - (2) The PACE organization may help the applicant apply for medicaid (unless the applicant is already enrolled in medicaid) ~~and PACE.~~

- (3)(a) After the application is received, ODM's administrative agency shall determine if the applicant meets all financial eligibility requirements for medicaid in Chapters 5160:1-1 to 5160:1-6 of the Administrative Code.
- (4)(b) If ODM's administrative agency determines the applicant does not meet all financial eligibility requirements, it shall send a notice of denial and appeal rights to the applicant (or the authorized representative) in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code. It shall also send a notice of denial to ODA and the PACE organization. An applicant who is denied medicaid may still enroll in PACE if the applicant is willing to privately pay the premium that would have been covered by medicaid.
- (5)(3) After completing the in-person assessment, the PACE organization shall submit the information from its assessment to ODA.
- (6)(4) After receiving the information, ODA shall determine if the applicant meets all eligibility requirements in rule 173-50-02 of the Administrative Code.
- (7)(5) If ODA determines an applicant meets all eligibility requirements, then:
- (a) ODA shall notify the PACE organization of its determination.
 - (b) Once the PACE organization receives the determination from ODA, it shall notify the applicant (or the authorized representative) ~~of the approval of enrollment into PACE and provide the applicant (or the authorized representative) with an enrollment agreement to sign~~ of the opportunity to proceed with the process of enrolling into PACE.
 - (c) In order to be enrolled into the program, the applicant shall sign the enrollment agreement ~~and return it to~~ with the PACE organization.
 - (d) The applicant's enrollment into PACE is effective the first day of the month following the day ODA determines the applicant meets all eligibility requirements and the PACE organization received the signed enrollment agreement.
- (8)(6) If ODA determines an applicant does not meet all eligibility requirements, then:
- (a) ODA shall notify the PACE organization of its determination.

(b) ODA shall provide the applicant (or the authorized representative) with a notice of denial and appeal rights ~~in~~ under section 5101.35 of the Revised Code and Chapters division 5101:6-1 to 5101:6-9 5101:6 of the Administrative Code.

~~(E)~~(D) No available slot: If a slot is not available in PACE, the PACE organization shall enroll the applicant when a slot ~~does become~~ becomes available (if the individual continues to meet the eligibility requirements ~~for PACE to want to enroll in the PACE~~) by one of two means: the unified waiting list or the home-first component of PACE.

(1) Unified waiting list: If the applicant meets the non-financial eligibility requirements for enrollment into PACE, but a slot in the program is not available, the PACE organization shall place the applicant on the unified waiting list under the terms of rule 173-44-04 of the Administrative Code.

(2) Home first: If the applicant meets all requirements for the home first component of PACE in section 173.501 of the Revised Code, the PACE organization shall enroll the applicant in PACE before enrolling any applicant from the unified waiting list in PACE.

(E) Plan of care: The PACE organization shall do all of the following for any participant enrolled into PACE:

(1) The PACE organization shall collaborate with the participant to develop a plan of care for the participant that includes all of the following:

(a) The services necessary to meet the participant's medical, physical, emotional, and social needs, as identified in the initial comprehensive assessment in paragraph (C)(1) of this rule and the reassessment under paragraph (E)(3)(a) of this rule.

(b) The measurable outcomes to be achieved for the participant.

(2) The PACE organization shall implement, coordinate, and monitor the participant's plan of care.

(3) Reassessment:

(a) At least semiannually, or more often if the participant's condition dictates or if requested by the participant or the participant's authorized representative, the team shall conduct a comprehensive assessment of the applicant's medical, physical, emotional, and social needs and ability to remain in the community without jeopardizing his/her health

or safety.

(b) If the comprehensive assessment in paragraph (E)(3)(a) of this rule indicates a need to revise the plan of care, the team shall collaborate with the participant to revise the plan of care.

(c) The PACE organization shall submit at least one of the semiannual comprehensive assessments in paragraph (E)(3)(a) of this rule to ODA at least once per year with no more than three hundred and sixty-five days between submissions of assessments.

(d) Deemed eligibility: ODA may deem a PACE participant to be eligible if at least one of the following conditions exist:

(i) The participant has a severe cognitive impairment (mini-mental of nine or less).

(ii) The participant has complex medical conditions that require continual clinical oversight on a weekly basis by the IDT to remain medically stable.

(iii) Within six months after the most-recent annual redetermination date, the participant has had two or more hospitalizations or two or more trips to an emergency department.

(iv) The participant has a psychiatric diagnosis and/or behavior requiring coordination of continuous and ongoing intervention(s) by the IDT. In the absence of support and services from the PACE organization, the participant would not likely be able to comply with medical regimen for chronic disease.

173-50-04

PACE: ~~Voluntary~~ voluntary disenrollment.

(A) A participant may voluntarily disenroll from PACE at any time without cause.

(B) The PACE organization shall ensure its employees or contractors do not engage in any practice that would reasonably be expected to have the effect of steering or encouraging disenrollment of participants due to a change in health status.

~~(B)~~(C) Process for voluntary disenrollment:

(1) A participant who wishes to voluntarily disenroll from PACE shall initiate the voluntary disenrollment process by informing the PACE organization orally or in writing.

(2) Once the PACE organization receives the participant's request, it shall provide the participant with a disenrollment form.

(3) Once the participant receives the disenrollment form, he or she shall sign the form and return it to the PACE organization.

(4) After the PACE organization receives the signed disenrollment form, it shall forward the form to ODA on the participant's behalf no later than one ~~working~~ business day after receiving the form.

(5) A participant's voluntary disenrollment is effective on ~~Once ODA receives a signed disenrollment form, it shall chose a date of disenrollment occurring no earlier than the date on which the signed disenrollement form was received by the PACE organization and no later than~~ the first day of the month after the ~~month during which~~ date the PACE organization ~~forwards the disenrollment form to ODA~~ receives the participant's notice of voluntary disenrollment.

(6) ~~After ODA chooses a date of disenrollment, it~~ ODA shall notify the participant of the effective date in writing.

(7) After receiving a signed document from the PACE organization, ODA shall enter the disenrollment request in the ODA- and ODM-approved eligibility systems.

~~(E)~~(D) After a participant initiates a voluntary disenrollment, the PACE organization shall do the following:

(1) Complete the mandates regarding the disenrollment form in paragraphs ~~(B)~~(2) (C)(2) and ~~(B)(4)~~ (C)(4) of this rule.

- (2) Continue to provide necessary services to the participant until the date of disenrollment;

(E) Before disenrollment, the PACE organization shall initiate a discharge plan for each participant who is voluntarily disenrolled. In each discharge plan, it shall state how it plans to do the following:

- ~~(3)(1) Create a discharge plan to help~~ Help the participant obtain necessary transitional care through referrals to other medicaid or medicare service providers, ~~preferably within the service area; and,~~

- ~~(4)(2) Provide the participant's medical records of the participant in a timely manner to any provider to whom a referral is made as part of the discharge plan to new providers no later than thirty days after disenrollment.~~

~~(D)~~(F) After the participant initiates a voluntary disenrollment, he or she shall:

- (1) Complete the mandate regarding the disenrollment form in paragraph ~~(B)(3)~~ (C)(3) of this rule;
- (2) Continue to obtain necessary services from the PACE organization until the date of disenrollment; and,
- (3) Remain liable for any premium or patient-liability costs incurred for services rendered by the PACE organization for all dates before the date of disenrollment.

173-50-05

PACE: involuntary disenrollment.

(A) The PACE organization shall involuntarily disenroll a participant from PACE for one or more of the following reasons:

(1) Failure to pay: The ~~PACE organization shall involuntarily disenroll a~~ participant, after a thirty-day grace period, ~~for not paying~~ fails to pay (or satisfactorily ~~arranging~~ arrange to pay) any premium ~~due the PACE organization, or patient liability~~ any applicable medicaid patient liability costs owed, or any amount due to the PACE organization under the post-eligibility treatment of income process, if the PACE organization documented at least one attempt it made in writing to the participant containing all the following components:

(a) The PACE organization ~~requested all unpaid costs~~ has notified the participant of the participant's outstanding financial obligations and requested payment.

(b) The PACE organization warned the participant that disenrollment may result from non-payment.

~~(c) The PACE organization explained that no right to file a grievance exists for a participant who is disenrolled because he or she did not pay patient liability costs.~~

(2) Fraud: The ~~PACE organization shall involuntarily disenroll a~~ participant ~~who~~ commits medicaid fraud or medicaid eligibility fraud, as described in sections 2913.40 and 2913.401 of the Revised Code, if the PACE organization has a signed narrative of the events from the staff person who discovered the fraud.

~~(3) Abusive behavior: The PACE organization shall involuntarily disenroll a participant who engages in abusive behavior (e.g. threats with a weapon, physical abuse, or recurrent verbal abuse) jeopardizing the participant's safety, other participants' safety, or the safety of employees of the PACE organization, an affiliate, or a subcontractor if the PACE organization has the following documentation retains one or both of the following records regarding at least one incident:~~

~~(a) A signed statement from a witness or the provider.~~

~~(b) A police report or a security staff report.~~

(3) Disruptive or threatening behavior: The participant (or the participant's caregiver) engages in disruptive or threatening behavior meeting the following conditions:

- (a) A participant engages in disruptive or threatening behavior when he or she jeopardizes his or her health or safety, the safety of others, or when he or she has decision-making capacity and consistently refuses to comply with his or her plan of care or the terms of the enrollment agreement. When a participant with decision making-capacity fails to comply with his or her plan of care (e.g., repeated non-compliance with medical advice or repeated failure to keep appointments), the PACE organization shall document at least two attempts it made in the past six months to educate the participant on the importance of following the care plan, the negative health consequences of not doing so, and a warning that not doing so may result in disenrollment. Medical records and copies of letters written to the participation are examples of acceptable documentation.
- (b) A participant's caregiver engages in disruptive or threatening behavior when he or she jeopardizes the participant's health or safety, or the safety of himself, herself, or others.
- (c) The PACE organization shall only involuntarily disenroll a participant for the participant's or caregiver's disruptive or threatening behavior if the PACE organization retains the following in the participant's medical record:
 - (i) The reasons for proposing to disenroll the participant.
 - (ii) Documentation of all efforts to remedy the situation.
 - (iii) One or both of the following records regarding at least one incident of disruptive or threatening behavior:
 - (a) A signed statement from a witness or the provider.
 - (b) A police report or a security staff report.

(4) Geography:

- (a) The ~~PACE organization shall involuntarily disenroll a participant~~ participant's ~~whose~~ permanent residence is no longer located in the service area.
- (b) The ~~PACE organization shall involuntarily disenroll a~~ participant ~~for~~ remaining remains outside the service area for a period of more than thirty consecutive days, unless the PACE organization authorizes a longer period of absence for extenuating circumstances.

- (5) Incarceration: The ~~PACE organization shall involuntarily disenroll a~~ participant ~~for being~~ is incarcerated for a period of more than thirty consecutive days.
- ~~(6) Physician-patient relationship: The PACE organization shall involuntarily disenroll a participant for not maintaining a satisfactory physician-patient relationship (e.g., repeated non-compliance with medical advice or repeated failure to keep appointments).~~
- ~~(7) Care plan: The PACE organization shall involuntarily disenroll a participant for not complying with the interdisciplinary team's care plan if all the following apply:~~
- ~~(a) The participant is capable of making informed decisions.~~
- ~~(b) Non-compliance with the care plan may result in a negative health outcome.~~
- ~~(c) The PACE organization documented at least two attempts it made in the past six months to educate the participant on the importance of following the care plan, the negative health consequences of not doing so, and a warning that not doing so may result in disenrollment. Medical records and copies of letters written to the participation are examples of acceptable documentation.~~
- ~~(8)~~(6) Level of care: The ~~PACE organization shall involuntarily disenroll a~~ participant ~~who~~ no longer meets the level-of-care requirements in rule 173-50-02 of the Administrative Code and is not deemed eligible~~;~~.
- ~~(9)~~(7) Providers: The ~~PACE organization shall involuntarily disenroll a participant if the~~ PACE organization is unable to offer healthcare services because of a loss of state licenses or contracts with outside providers.
- ~~(10)~~(8) PACE agreement: The ~~PACE organization shall involuntarily disenroll a participant if the~~ agreement between the PACE organization, ODA, and CMS is not renewed or is terminated.

(B) Process to involuntarily disenroll a PACE participant:

- (1) If a PACE organization requests permission to disenroll a participant under this rule, it shall submit the request to ODA along with:
- (a) Documentation supporting one or more requirements in paragraph (A) of this rule; and,

- (b) The participant's utilization profile.
- (2) In the time between the request and ODA's decision~~;~~, the PACE organization shall continue to provide necessary services to the participant.
- ~~(a) The PACE organization shall continue to provide for the necessary services to the participant; and,~~
- ~~(b) The participant shall continue to obtain necessary services under medicaid only through the PACE organization.~~
- (3) ODA shall approve or deny the request based upon the requirements in paragraph (A) of this rule, then notify the PACE organization and send the participant a notice of denial and hearing rights under section 5101.35 of the Revised Code and division 5101:6 of the Administrative Code.
- (4) If ODA does not approve the request~~;~~, the PACE organization shall continue to provide necessary services to the participant.
- ~~(a) The PACE organization shall continue to provide necessary services to the participant; and,~~
- ~~(b) The participant shall continue to obtain necessary services under medicaid only through the PACE organization.~~
- (5) If ODA approves the request:
- ~~(a) It shall establish the last date of enrollment for the participant as:~~
- ~~(i) The last day of the month in which the request was made;~~
- ~~(ii) The date of death, if the participant dies before the last day of the month in which the request was made; or,~~
- ~~(iii) The date on which the PACE agreement terminates, if the date occurs before the last day of the month in which the request was made.~~
- (a) A participant's involuntary disenrollment is effective on the first day of the month beginning thirty days after the day the PACE organization sends notice of the disenrollment to the participant.
- (b) The PACE organization shall notify the participant in writing of the last

day of enrollment;

- (c) The PACE organization shall continue to provide for the necessary services to the participant through the last day of enrollment;
- (d) The participant shall continue to obtain necessary services ~~under medicaid~~ only through the PACE organization and shall continue to remain liable for any premiums or ~~patient liability~~ post-eligibility treatment of income costs incurred through the last day of enrollment; and,
- (e) Before disenrollment, The the PACE organization shall ~~create~~ initiate a discharge plan for each participant who is involuntarily disenrolled; ~~regardless of the reason for the disenrollment.~~ In each discharge plan, it shall state how it plans to do the following:
 - (i) Help the participant obtain necessary transitional care; through referrals to other medicaid or medicare service providers.
 - (ii) Provide the participant's medical records to new providers; no later than thirty days after disenrollment.
 - ~~(iii) Initiate the process of returning the participant to a fee-for-service medicaid program if the participant was enrolled in a fee-for-service medicaid program before enrolling into PACE.~~

(6) After ODA approves an involuntary disenrollment, ODA does all of the following:

- (a) ODA notifies the PACE organization.
- (b) ODA sends the participant a notice of denial and hearing rights under section 5101.35 of the Revised Code and division 5101:6 of the Administrative Code.
 - (i) If the participant requests a hearing within fifteen days after ODA approves the involuntary disenrollment, ODA places the disenrollment on hold until a state hearing has been conducted.
 - (a) If the decision of the state hearing is that ODA made a correct decision to disenroll, ODA implements the requirements under paragraph (B)(5) of this rule and enters the decision into the ODA- and ODM-approved eligibility systems.

(b) If the decision of the state hearing is that ODA made an incorrect decision to disenroll, the participant remains enrolled in PACE.

(ii) If the participant does not request a hearing, ODA proceeds with disenrolling the participant from PACE and implement the requirements under paragraph (B)(5) of this rule.