TO: Health and Human Services Executive Council

DATE: September 23, 2016

FROM: Schnina Reed
Medical and Social Services, HHSC

AGENDA ITEM: 3.e

SUBJECT: Recommendation to propose an amendment to §60.6, the repeal of §60.10, and new §60.10, in Title 40, Texas Administrative Code, Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE).

BACKGROUND: Federal Requirement ☒ Legislative Requirement ☐ Other ☐

The proposed rules implement Senate Bill (S.B.) 169, 84th Legislature, Regular Session, 2015, which added Texas Government Code, §531.0931 regarding certain military members and their family members on interest lists. The proposed rules require a PACE provider agency to keep the name of a military family member who resides out of state on an interest list while the military member is on active duty or for up to one year after a former military member’s active duty ends. The proposed rules describe how a PACE provider agency maintains an interest list and offers services to an individual. The proposed rules also allow the Department of Aging and Disability Services (DADS) or its successor agency to remove an individual from the interest list if the individual or legally authorized representative fails to respond to a PACE vacancy offer within 30 days.

ISSUES AND ALTERNATIVES:

There are no outstanding issues or concerns with the proposed rules.

STAKEHOLDER INVOLVEMENT:

On March 24, 2016, DADS shared a draft of the proposed rules with external stakeholders via email. No questions or comments were received.

FISCAL IMPACT:

☒ None

SERVICES IMPACT STATEMENT:

For each year of the first five years the amendment, repeal, and new section are in effect, the public benefit expected is that the rules more clearly address an individual's placement on the PACE interest list and the timeframes for an individual on the interest list to enroll in PACE before the individual's name is removed from the interest list and an offer is made to another individual.
RULE DEVELOPMENT SCHEDULE:

August 11, 2016       Present to Medical Care Advisory Committee
September 23, 2016    Present to the HHSC Executive council
October 2016          Publish proposed rules in Texas Register
January 2017          Publish adopted rules in Texas Register
January 2017          Effective date

REQUESTED ACTION:

☑ The Council recommends that the proposed rule be published in the Texas Register and later adopted should there be no substantive comment.

☐ Information Only
The Texas Health and Human Services Commission (HHSC) proposes an amendment to §60.6, the repeal of §60.10, and new §60.10, in Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE).

BACKGROUND AND PURPOSE

The proposed rules implement Senate Bill (S.B.) 169, 84th Legislature, Regular Session, 2015, which added Texas Government Code, §531.0931 regarding certain military members and their family members on interest lists. The proposed rules require a PACE provider agency to keep the name of a military family member who resides out of state on an interest list while the military member is on active duty or for up to one year after a former military member’s active duty ends. The proposed rules describe how a PACE provider agency maintains an interest list and offers services to an individual. The proposed rules also allow the Department of Aging and Disability Services or its successor agency to remove an individual from the interest list if the individual or legally authorized representative fails to respond to a PACE vacancy offer within 30 days.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §60.6 adds definitions of “former military member,” “individual,” “LAR” (legally authorized representative), “military family member,” and “military member,” because these are terms used in proposed new §60.10 related to implementation of S.B. 169. The proposed amendment also adds a definition of “nursing facility” because that term is used in Chapter 60 but is not defined. The proposed amendment deletes the definition of “SAA” (state administering agency) because the term is not used in Chapter 60.

The proposed repeal of §60.10 removes the outdated rule regarding an inquiry log, which contains information about individuals requesting PACE services. The proposed new §60.10 makes the inquiry log unnecessary.

The proposed new §60.10 requires a provider agency to maintain an interest list with names and contact information of applicants interested in receiving PACE services. The proposed new rule describes the process a PACE provider agency follows to add an individual's name to the PACE interest list and the conditions under which an individual's name may be removed from the PACE interest list. The process implements S.B. 169 by addressing military family members on PACE interest lists.

FISCAL NOTE

David Cook, Deputy Chief Financial Officer, has determined that, for the first five years the
proposed amendment, repeal, and new section are in effect, enforcing or administering the amendment, repeal, and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the proposed amendment, repeal, and new section will not have an adverse economic effect on small businesses or micro-businesses. The proposed amendment, repeal, and new section do not impose new requirements on any persons regulated by the rules.

PUBLIC BENEFIT AND COSTS

Gary Jessee, Deputy Executive Commissioner for Medical and Social Services, has determined that, for each year of the first five years the amendment, repeal, and new section are in effect, the public benefit expected is that the rules more clearly address an individual's placement on the PACE interest list and the timeframes for an individual on the interest list to enroll in PACE before the individual's name is removed from the interest list and an offer is made to another individual.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the amendment, repeal, and new section. The amendment, repeal, and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Schnina Reed at (512) 438-2973 in HHSC Medical and Social Services. Written comments on the proposal may be submitted to Texas Register Liaison, HHSC Policy and Performance-15R20, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@hhsc.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to HHSC before 5:00 p.m. on HHSC last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R20" in the subject line.
Legend:

Single Underline = Proposed new language
[Strikethrough and brackets] = Current language proposed for deletion
Regular print = Current language
(No change.) = No changes are being considered for the designated subdivision.

TITLE 40
SOCIAL SERVICES AND ASSISTANCE
PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 60
CONTRACTING TO PROVIDE PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

RULE
§60.10

Proposed action:
X  Repeal

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

[§60.10. Inquiry Log.]

[The provider agency must maintain an inquiry log of all individuals requesting Programs of All-Inclusive Care for the Elderly (PACE) services. The log must include the:

— (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 client; and
— (5) date of enrollment, or the reason for denial if the individual is not enrolled.]
STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§60.6. Definitions.

The words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise.

(1) Capitation--The uniform per client monthly amount that DADS pays to a provider agency.

(2) CFR--The Code of Federal Regulations.

(3) CMS--The Centers for Medicare and Medicaid Services.

(4) DADS--The Department of Aging and Disability Services or its successor agency.

(5) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

   (A) who declared and maintained Texas as the person’s state of legal residence in the manner provided by the applicable military branch while on active duty; and

   (B) who was killed in action or died while in service, or whose active duty otherwise ended.
(6) Individual--A person seeking to enroll or who is enrolled in PACE services.

(7) Interdisciplinary Team (IDT)--The IDT is a team of persons who interact and collaborate to assess clients and plan for their care. The IDT must include the client's primary care physician, registered nurse, Programs of All-Inclusive Care for the Elderly (PACE) center director, social worker, physical therapist, occupational therapist, activities director, dietician, home care coordinator, personal care attendant or his or her representative, and driver or his or her representative.

(8) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(9) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(10) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member’s state of legal residence in the manner provided by the applicable military branch.

(11) Nursing facility--A facility required to be licensed under Texas Health and Safety Code, Chapter 242.

(12) PACE--Programs of All-Inclusive Care for the Elderly.

(13) PACE contract--A written agreement between DADS and the provider agency to provide PACE services for one year.

(14) Program agreement--A three-party agreement between the provider agency, CMS, and DADS.

(15) Provider agency--An entity that delivers required PACE services under a PACE contract and a program agreement.

(16) Respite services--Services provided to an individual unable to care for himself or herself, because of the absence or need for relief of those persons normally providing the care.

(17) Service area--The geographic area served by a provider agency according to its program agreement and PACE contract.

[SAA--State administering agency. The Department of Aging and Disability Services.]
§60.10. Interest List.

(a) A provider agency must maintain an up-to-date interest list of individuals who are interested in receiving PACE services and reside in the provider agency’s service area.

(b) A person may request an individual’s name be added to the PACE interest list maintained by the provider agency serving the service area in which the individual resides by submitting a request in person, by phone, or in writing, and providing the following information:
   
   (1) the name of the individual;
   
   (2) the date of the request for PACE services;
   
   (3) the individual’s physical and mailing addresses;
   
   (4) the individual’s birth date;
   
   (5) the individual’s contact phone number;
   
   (6) the name and phone number of the LAR, if applicable; and
   
   (7) the name and phone number of the person requesting services on behalf of the individual, if different from the LAR.

(c) When a PACE vacancy occurs, a provider agency offers the vacancy to the individual whose name is first on the PACE provider agency’s interest list.

(d) A provider agency removes an individual’s name from the PACE interest list if:
   
   (1) the individual accepts a PACE vacancy;
   
   (2) the individual or LAR requests in writing that the individual’s name be removed from the interest list;
   
   (3) the individual moves out of the service area, unless the individual is a military family member living outside of Texas:
      
      (A) while the military member is on active duty; or
      
      (B) for less than one year after the former military member’s active duty ends;
   
   (4) the individual or LAR declines the offer of PACE services, unless the individual is a military family member living outside of Texas:
      
      (A) while the military member is on active duty; or
______ (B) for less than one year after the former military member’s active duty ends;

______ (5) the individual is a military family member living outside of Texas for more than one year after the former military member’s active duty ends;

______ (6) the individual or LAR fails to respond to a PACE vacancy offer within 30 days after receiving the offer; or

______ (7) the individual is deceased.