

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

Chapter 5 – Participant Rights and Restraint Policies

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10 - Participant Bill of Rights

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

The PACE organization is required to have a written participant Bill of Rights designed to protect and promote the rights of each participant. Those rights include; at a minimum, those specified in 42 CFR § 460.112.

The PACE organization must inform a participant upon enrollment, in writing, of his or her rights and responsibilities, and all rules and regulations governing participation. This should include:

- Written policies: A PACE organization must have written policies and implement procedures to ensure that the participant, his or her representative, if any, and staff understand these rights;
- Explanation of rights: The PACE organization must fully explain the rights to the participant and his or her representative, if any, at the time of enrollment in a manner understood by the participant;
 - The participants rights must be available in writing in English and in any other principal languages of the community;
 - The participant rights must be displayed in a prominent place within the PACE center.

The PACE organization must protect and provide for the exercise of the participant's rights. The PACE organization must have established documented procedures to respond to and rectify a violation of a participant's rights. A template for the Bill of Rights may be obtained from the following

link <http://www.cms.hhs.gov/PACE/Downloads/participantrights.pdf>.

[42 CFR §460.116]

20 - Specific Rights to which a Participant is Entitled

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

20.1 - Right #1 - Respect and Nondiscrimination

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each participant has the right to considerate, respectful care from all PACE employees and contractors at all times and under all circumstances. Each participant has the right not to be discriminated against in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, sexual orientation, mental or physical disability, or source of payment.

Specifically, each PACE participant has the right to the following:

- To receive comprehensive health care in a safe and clean environment and in an accessible manner;
- To be treated with dignity and respect, be afforded privacy and confidentiality in all aspects of care, and to be provided humane care;
- Not to be required to perform services for the PACE organization;
- To have reasonable access to a telephone;
- To be free from harm, including physical or mental abuse, neglect, corporal punishment, involuntary seclusion, excessive medication, and any physical or chemical restraint imposed for purposes of discipline or convenience and not required to treat the participant's medical symptoms;
- To be encouraged and assisted to exercise rights as a participant, including the Medicare and Medicaid appeals processes as well as civil and other legal rights;
- To be encouraged and assisted to recommend changes in policies and services to PACE staff.

[42 CFR § 460.112(a)]

20.2 - Right #2 - Information Disclosure

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each PACE participant (or the designated representative of the participant) has the right to receive accurate, easily understood information and to receive assistance in making informed health care decisions.

Specifically, each participant has the following rights:

- To be fully informed, in writing, of the services available from the PACE organization, including identification of all services that are delivered through contracts, rather than furnished, directly by the PACE organization at the following times:
 - o Before enrollment;
 - o At enrollment; and
 - o At the time a participant's needs necessitate the disclosure and delivery of such information in order to allow the participant to make an informed choice;

- To have the enrollment agreement, described in 42 CFR § 460.154, fully explained in a manner understood by the participant;
- To examine, or upon reasonable request, to be assisted to examine the results of the most recent review of the PACE organization conducted by CMS or the State Administering Agency and any plan of correction in effect.

[42 CFR § 460.112(b)]

20.3 - Right #3 - Choice of Providers

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each participant has the right to a choice of health care providers, within the PACE organization's network, that is sufficient to ensure access to appropriate high-quality health care.

Specifically, each participant has the right to the following:

- To choose his or her primary care physician and specialists from within the PACE network;
- To disenroll from the program at any time;
- To request that a qualified specialist for women's health services provide routine or preventive women's health services. The PACE organization must:
 - o Provide access to all specialties within its network and explain to participants that they are required to receive all services through the PACE organization;
 - o Give participants the choice of providers as well as communicate the right of female participants to choose a qualified specialist in woman's health;
 - o Contract, when possible, with more than one provider of gynecological services.

[42 CFR § 460.112(c); 71 FR 71291 (Dec. 8, 2006)]

20.4 - Primary Care Physician

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

A Primary Care Physician (PCP) is qualified to perform primary care including basic Gynecological (GYN) services, but the PCP is not a "qualified specialist for women's health services." Although female participants may choose their PCP for basic GYN services, if a participant requests a GYN specialist or the participant requires more

complex GYN services, the participant must be provided a GYN specialist and, when possible, be provided a choice of GYN specialists.

[71 FR 71291 (Dec. 8, 2006)]

20.5 - Informing Female Participants

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

The Interdisciplinary Team (IDT) physician or alternative IDT member identified in the organization's care planning policy must inform female participants that they are entitled to choose a qualified specialist for women's health services to provide routine or preventive women's health services from the PACE organization's network. In some PACE organizations, the physician makes this notification during intake, the enrollment process, or at the initial physician assessment. If notification has not been made prior to development of the care plan, 42 CFR § 460.104(b) requires the IDT team to make this notification during the care plan development or when the proposed care plan is subsequently presented to the participant and/or care giver for discussion, revision, and incorporation of the participant's preferences.

[42 CFR § 460.104(b); 71 FR 71296 (Dec. 8, 2006)]

20.6 - Right #4 - Access to Emergency Services

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each participant has the right to access emergency health care services when and where the need arises without prior authorization by the PACE IDT.

[42 CFR § 460.112(d)]

20.7 - Right #5 - Participation in Treatment Decisions

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each participant has the right to participate fully in all decisions related to his or her treatment. A participant who is unable to participate fully in treatment decisions has the right to designate a representative.

Specifically, each participant has the right:

- To have all treatment options explained in a culturally competent manner and to make health care decisions, including the right to refuse treatment, and be informed of the consequences of the decisions;
- To have the PACE organization explain advance directives and to establish them, if the participant so desires, in accordance with 42 CFR §§ 489.100 and 489.102;

- To be fully informed of his or her health and functional status by the interdisciplinary team;
- To participate in the development and implementation of the plan of care;
- To request a reassessment by the interdisciplinary team;
- To be given reasonable advance notice, in writing, of any transfer to another treatment setting and the justification for the transfer (that is, due to medical reasons or for the participant's welfare, or that of other participants). The PACE organization must document the justification in the participant's medical record.

[42 CFR § 460.112(e)]

20.8 - Right #6 - Confidentiality of Health Information

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each participant has the right to communicate with health care providers in confidence and to have the confidentiality of his or her individually identifiable health care and other information protected. Each participant also has the right to review and copy his or her own medical records and request amendments to those records.

Specifically, each participant has the following rights:

- To be assured of confidential treatment of all information contained in the health record, including information contained in an automated data bank;
- To be assured that his or her written consent will be obtained for the release of information to persons not otherwise authorized under law to receive it;
- To provide written consent that limits the degree of information and the persons to whom information may be given.

[42 CFR § 460.112(f)]

20.9 - Right #7 - Complaints and Appeals

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

Each participant has the right to a fair and efficient process for resolving differences with the PACE organization, including a rigorous system for internal review by the organization and an independent system of external review.

Specifically, each participant has the following rights:

- To be encouraged and assisted to voice complaints to PACE staff and outside representatives of his or her choice, free of any restraint, interference, coercion, discrimination, or reprisal by the PACE staff;
- To appeal any treatment decision of the PACE organization, its employees, or contractors through the process described in 42 CFR § 460.122.

[42 CFR § 460.112(g)]

30 - Restraints

(Rev. 2, Issued: 06-09-11; Effective: 06-03-11; Implementation: 06-03-11)

The use of restraints must be based on the assessed needs of the participant, be monitored and reassessed appropriately, and be ordered for a defined and limited period of time. The least restrictive and most effective method available must be utilized and it must conform to the participant's plan of care. Restraints may only be used as a last resort and must be removed or ended at the earliest possible time. Restraints of any kind should never be used as a preferred approach to care and PACE organizations are expected to ensure that their programs are "restraint free" to the greatest extent possible.

The term restraint includes physical or chemical restraints. A physical restraint is any manual method or physical or mechanical device, materials, or equipment attached or adjacent to the participant's body that he or she cannot easily remove and that restricts freedom of movement or normal access to one's body. A chemical restraint is a medication used to control behavior or to restrict the participant's freedom of movement, and that is not a standard treatment for the participant's medical or psychiatric condition.

If the IDT determines that a restraint is needed to ensure the participant's physical safety or the safety of others, the use must meet the following conditions:

- Be imposed for a defined, limited period of time, based upon the assessed needs of the participant;
- Be imposed in accordance with safe and appropriate restraining techniques;
- Be imposed only when other less restrictive measures have been found to be ineffective to protect the participant or others from harm;
- Be removed or ended at the earliest possible time.

A PACE organization must have policies and procedures regarding restraints that:

- Define physical and chemical restraints as described above;
- Include the conditions on use described above;

- Describe how personnel will continually assess, monitor and reevaluate (specify time intervals) the participant's condition while in restraints.

[42 CFR § 460.114; 71 FR 71299 (Dec. 8, 2006)]

Transmittals Issued for this Chapter

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