

**Department of Health Care Services
Proposed Trailer Bill Language**

**Home and Community-Based Alternatives Waiver and Program of All-Inclusive Care
for the Elderly Sanctions**

Fact Sheet

Issue Title: Sanctions for the Home and Community-Based Alternatives (HCBA) Waiver and the Program of All-Inclusive Care for the Elderly (PACE). The Department of Health Care Services (DHCS) proposes to expand the definition of “contractors” subject to sanctions to include providers of the HCBA Waiver (Waiver Agencies) and PACE (PACE Organizations).

Background: Existing law provides the DHCS Director the authority to terminate contracts and/or impose sanctions against entities that contract with DHCS for the delivery of health care services, including Medi-Cal managed care plans and county behavioral health plans if a contractor fails to comply with contract requirements, state or federal law or regulations, or the state plan or approved waivers, or for other good cause, as specified (Welfare and Institutions Code Section 14197.7).

HCBA Waiver

The HCBA Waiver is approved by the Centers for Medicare & Medicaid Services (CMS) in five-year waiver terms and was most recently approved on February 2, 2023, for the 2023-2027 waiver period. The HCBA Waiver provides care management services to vulnerable Californians at risk of nursing home or institutional placement due to their medical diagnoses and conditions. The care management services are provided by a multidisciplinary Care Management Team (CMT) comprised of nurses and social workers. CMTs coordinate Waiver and State Plan services (such as medical, behavioral health, In-Home Supportive Services, etc.), and arranges for other long-term services and supports available in the local community. Care management and Waiver services are provided in the participant's community-based residence of their choice. This residence can be privately owned, secured through a tenant lease arrangement, or the residence of a participant's family member. DHCS has established federal authority to issue financial sanctions in the current 2023-2027 HCBA Waiver, approved by CMS.

PACE

PACE is an optional state plan benefit authorized under Section 1934 of the Social Security Act and governed by Title 42 CFR Part 460. The PACE model of care provides a comprehensive health care and social service delivery system using an interdisciplinary team approach in a PACE Center that provides and coordinates all needed preventive, primary, acute, and long-term care services. Services are provided to older adults who would otherwise reside in nursing facilities. The PACE model affords eligible individuals to remain independent and in their homes for as long as possible. The PACE Organization is the sole source of Medicaid and Medicare benefits for its enrolled members. To be eligible, a person must be 55 years or older, reside in a PACE service area, be determined eligible at the nursing home level of care by DHCS, and be able to live safely in their home or community at the time of enrollment.

DHCS contracts with “Waiver Agencies” and PACE Organizations to perform specified administrative, care management, and service delivery functions as defined in each program contract. DHCS monitors and oversees each program by conducting various compliance activities to ensure Waiver Agencies and PACE Organizations are operating in compliance with applicable state and federal laws and regulations, and that they are in compliance with contractual requirements.

When Waiver Agencies and PACE Organizations are not in compliance with program and contract requirements, DHCS issues a notice of findings and requires a Waiver Agency or a PACE Organization to submit a corrective action plan to remedy the deficiencies. However, when Waiver Agencies and PACE Organizations do not adequately remediate deficiencies, or if deficiencies are egregious to the point of beneficiary or participant harm, DHCS does not have the authority to issue financial sanctions as it does for Medi-Cal managed care plans and county behavioral health plans. DHCS has failed to meet CMS compliance thresholds and reported negative performance to CMS over the past several reporting periods due to the Waiver Agencies’ lack of compliance. In a look back of quality assurance reviews conducted from 2021 – 2023, Waiver Agencies only passed an average of five reviews out of the twelve conducted. DHCS is also engaged in ongoing compliance actions with multiple PACE organizations due in part to the inability to apply effective enforcement actions (e.g., financial sanctions). For example, currently there are seven active corrective action plans with various PACE organizations and an average of 10-12 per year.

Justification for Change: DHCS proposes to expand the definition of “contractors” subject to sanctions to include Waiver Agencies and PACE Organizations (proposed WIC Section 14197.7(t)). This proposal would align state law with the federal authority included in the HCBA Waiver to issue sanctions. Including the contractors of these programs will strengthen DHCS’ ability to enforce compliance and improve California’s performance outcomes, reduce health disparities, and align programs administered by DHCS.

Summary of Arguments in Support: Aligns the HCBA Waiver program and PACE with existing statutory sanction/enforcement structure for Medi-Cal managed care plans and programs administered by DHCS.