



State of California—Health and Human
Services Agency
**California Department of
Public Health**



January 12, 2021

AFL 21-03

TO: Primary Care Clinics (PCCs)
Adult Day Health Centers (ADHCs)
Home Health Agencies (HHAs)

SUBJECT: Implementation of Assembly Bill (AB) 1128 – Program of All-Inclusive Care for the Elderly (PACE):
Facility Licensing Exemption

AUTHORITY: Health and Safety Code sections 1206(q), 1231.5, 1580.1, 1734.5, 1738(b); Welfare and Institutions
Code section 14592

All Facilities Letter (AFL) Summary

- This AFL notifies PCCs, ADHCs, and HHAs of the implementation of AB 1128 (Chapter 821, Statutes of 2019). AB 1128 exempts those facilities that exclusively serve PACE participants, or that serve individuals being assessed for PACE program eligibility, from licensure by the California Department of Public Health (CDPH).
- Beginning January 1, 2021, the Department of Health Care Services (DHCS) will be solely responsible for regulating license-exempt PACE facilities.

Effective no later than January 1, 2021, AB 1128 exempts a PCC, ADHC, or HHA that exclusively serves PACE participants, or that serves individuals being assessed for PACE program eligibility for not more than 60 calendar days after an individual applies for enrollment, from CDPH licensure. This bill requires DHCS to fully assume responsibility for license-exempt PACE facilities, provided the necessary federal approvals have been acquired and federal financial participation is available.

Beginning January 1, 2021, license-exempt PACE facilities will be subject to DHCS' oversight and regulatory authority. If DHCS determines that a license-exempt PACE facility has provided services to individuals who are not PACE participants, or provided assessment services to prospective enrollees beyond a timeframe of 60 calendar days, the facility will be required to apply for licensure with CDPH within 60 calendar days of DHCS' determination and cease accepting new participants until licensure is obtained.

License-exempt PACE facilities must maintain compliance with HSC operating standards appropriate to their facility type, except as modified by DHCS, to meet the needs of PACE participants or those individuals being assessed. Any exemptions to statutory or regulatory requirements previously granted to a PACE facility by CDPH will no longer be valid after December 31, 2020, unless DHCS reapproves the exemption at its discretion. Additionally, license-exempt PACE facilities must cooperate with DHCS' evaluation, oversight, and ongoing monitoring and will be required to permit DHCS immediate access to inspect any physical locations and provide any requested records or information

regarding the PACE organization and its services. DHCS may refuse to enter into a contract, terminate an existing contract, or take enforcement actions if a PACE organization fails to meet operating standards or submit to oversight.

As the state certifying agency for the Centers for Medicare and Medicaid Services (CMS), CDPH will maintain its responsibility to certify PCCs for participation in the Medi-Cal program and non-deemed HHAs for participation in the Medicare and Medi-Cal programs. CDPH will also continue to conduct validation surveys for deemed facilities and investigate complaints and reported incidents for PCCs, HHAs, and ADHCs.

For license-exempt PACE providers, the licensure fee will be replaced with an administrative fee assessed by DHCS upon a facility's enrollment as a PACE provider and annually thereafter, in an amount to be determined by DHCS and not to exceed the corresponding licensure fee otherwise assessed by CDPH.

PACE facilities that provide care to both PACE and non-PACE participants will remain under the regulatory oversight of CDPH.

Facilities currently licensed by CDPH and that DHCS determines are exempt from licensure by CDPH due to operating exclusively as part of a PACE organization will need to surrender their license to CDPH. If the facility decides to no longer operate exclusively in the PACE program and intends to provide services to individuals who are not PACE participants, the facility is required to apply for licensure with CDPH.

Intermittent and affiliate clinics must have a licensed parent facility. Facilities that intend to surrender their license to CDPH cannot be parent facilities of other clinics. An intermittent clinic previously operating with a newly license-exempt PCC that intends to continue seeing patients must be established under a new parent facility prior to the original parent facility surrendering its license. To operate an intermittent clinic, a new parent facility must submit the appropriate paperwork to CDPH. An affiliate clinic, including a mobile health care unit (MHCU) licensed as an affiliate clinic, intending to continue seeing patients must submit a full initial licensure packet to CDPH prior to the parent facility surrendering its license. Pursuant to PCC and MHCU licensure waivers issued in AFL 20-30.1 related to the Coronavirus Disease 2019 (COVID-19) state of emergency, a PCC or MHCU that has submitted an application for initial licensure may begin providing care prior to obtaining approval and licensure by CDPH; these waivers are effective until March 1, 2021. If no extension is granted, upon expiration of these waivers an affiliate clinic seeking full initial licensure must receive approval and licensure prior to providing care to patients. If the waivers granted in AFL 20-30.1 expire and the affiliate clinic's parent surrenders its license before the affiliate clinic can obtain approval and initial licensure, the affiliate clinic may not continue seeing patients until full licensure is granted by CDPH. Failure to properly document parent facility or licensure changes may cause both licensing and billing issues.

For questions concerning exemption from licensure for PACE facilities, please contact the appropriate local CDPH Licensing and Certification district office or the DHCS Integrated Systems of Care Division's PACE Unit.

For questions concerning CDPH licensure, intermittent or affiliate clinics, or license surrender, please contact CDPH's Centralized Applications Branch at 916-552-8632.

Facilities are responsible for following all applicable laws. CDPH's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities should refer to the full text of all applicable sections of the Health and Safety Code, Welfare and Institutions Code, and Title 22 of the California Code of Regulations.

Sincerely,

Original signed by Heidi W. Steinecker

Heidi W. Steinecker
Deputy Director

Center for Health Care Quality, MS 0512 . P.O. Box 997377 . Sacramento, CA
95899-7377
(916) 324-6630 . (916) 324-4820 FAX
Department Website (cdph.ca.gov)



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