



MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

DATE: August 11, 2011

TO: All PACE Organizations

FROM: Danielle R. Moon, J.D., M.P.A., Director

SUBJECT: Attestation of Subordinated Debt Arrangements

The Centers for Medicare & Medicaid Services (CMS) has recently received inquiries suggesting parent organizations should be reviewed for fiscal solvency requirements instead of their subsidiary PACE entity. The CMS' Office of General Counsel (OGC) has opined that CMS' contracts are with the PACE entities and not the Parent organizations. Therefore, all fiscal solvency requirements must be met by the individual PACE entity and any substitutions are unallowable. In an effort to ensure PACE organizations are accurately reviewed, CMS wants to identify any subordinated debt that should be removed from the PACE organization's financial statements, prior to making the final fiscal solvency requirement determination.

Pursuant to section 460.80 (a) of the Code of Federal Regulations (CFR), "a PACE organization must have a fiscally sound operation as demonstrated by the following: (1) Total assets greater than total unsecured liabilities. (2) Sufficient cash flow and adequate liquidity to meet obligations as they become due. (3) A net operating surplus or a financial plan for maintaining solvency that is satisfactory to CMS and the State administering agency."

Subordinated debt is defined as an unsecured debt whose repayment to its parent company ranks after all other debts have been paid when the subsidiary files for bankruptcy. In an effort to ensure all PACE organizations are reviewed appropriately, CMS will ensure that all subordinated debt is removed from the PACE liabilities prior to making the final fiscal solvency determination. It is the responsibility of the PACE organization to demonstrate which liabilities, and how much money is recorded as subordinated debt.

PACE organizations will be required to deliver an attestation to CMS from any entity that is providing the PACE organization with subordinated debt. Such attestation must describe the commitment of the subordinating entity's financial commitment to the PACE entity, be on the subordinating entity's letterhead, and signed and dated by either that company's Chief Executive Officer or the Chief Financial Officer. Please use the attached attestation template.

The initial attestation is due forty-five (45) days from the date of this memorandum, and subsequent attestations will accompany all financial submissions by the PACE organization.

If an attestation is not received within forty-five (45) days, or with future PACE organization financial submissions in identifying the portion or portions of the liabilities that are subordinated,

it will be assumed the PACE organization is solely responsible for all debt. The CMS will review those PACE organizations for fiscal solvency with no adjustments to their liabilities.

Please email the attestation document to franklin.regulski@cms.hhs.gov by September XX, 2011. If your organization has any questions regarding this letter, please contact Franklin Regulski at 410-786-6278.