SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1554

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Care for Elderly Persons

DATE: March 3, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parham	Wilson	HC	Favorable/CS
2.			AHS	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

This bill directs the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) to assist a private, not-for-profit organization located in Lee County, and a private, not-for-profit organization in Martin County, that provide comprehensive services, including hospice services to the frail and elderly, to gain approval as Program of All-inclusive Care for the Elderly (PACE) sites. By September 30, 2005, subject to federal approval and provider readiness, AHCA must approve 50 initial enrollees and up to 200 enrollees within 2 years, subject to the ability of a private organization to expand its capacity to do so. Any authorization for enrollment levels above 200 requires documentation of program effectiveness.

This bill also provides that by July 1, 2005, and subject to an appropriation, AHCA must contract with a private, not-for-profit organization in Lee County to provide services under the PACE program in Lee County and the surrounding counties, and a private not-for-profit organization in Martin County, to provide services under the PACE program in Martin County, subject to federal approval of the provider application.

The bill creates one undesignated section of law.

II. Present Situation:

The Program of All-inclusive Care for the Elderly is a capitated benefit authorized by the Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system which integrates Medicare and Medicaid financing for the elderly. The program is modeled after the system of acute and long-term care services developed by On Lok Senior Health Services in San Francisco, California. The model was tested as a demonstration project that began in the mid-1980s through the federal Health Care Financing Administration, now the Centers for

Medicare & Medicaid Services (CMS). The PACE model was developed to address the needs of long-term care clients, providers, and payers. For most participants, the comprehensive service package permits them to continue living at home while receiving services, rather than being institutionalized. Capitated financing allows providers to deliver all services that participants need rather than being limited to those services reimbursable under the Medicare and Medicaid fee-for-service systems.

The Balanced Budget Act established the PACE model of care as a permanent model within the Medicare program and enables states to provide PACE services to Medicaid beneficiaries under the state plan. The state Medicaid plan must include PACE as an optional Medicaid benefit before the state and the Secretary of the U.S. Department of Health and Human Services (DHHS) can enter into program agreements with PACE providers.

The annual growth of the PACE program is limited under the BBA. The number of PACE program agreements in the first year after enactment were limited to no more than 60; the limit increases by 20 each year thereafter under the BBA. The Balanced Budget Act further provides for priority processing and special consideration of applications for existing PACE demonstration sites and to those entities that applied to operate a PACE demonstration project on or before May 1, 1997.

PACE participants must be at least 55 years old, live in the PACE service area, and be certified as eligible for nursing home care by the appropriate state agency. The PACE program becomes the sole source of services for Medicare and Medicaid eligible enrollees.

Under the PACE program, an interdisciplinary team, consisting of professional and paraprofessional staff, assesses participants' needs, develops care plans, and delivers all services (including acute care services and when necessary, nursing facility services) which are integrated for a seamless provision of total care. A PACE program provides social and medical services primarily in an adult day health center, supplemented by in-home and referral services in accordance with the participant's needs. The PACE service package must include all Medicare and Medicaid covered services, and other services determined necessary by the multidisciplinary team for the care of the PACE participant.

A PACE provider receives monthly Medicare and Medicaid capitation payments for each eligible enrollee. Medicare eligible participants who are not eligible for Medicaid pay monthly premiums equal to the Medicaid capitation amount, but no deductibles, coinsurance, or other type of Medicare or Medicaid cost-sharing applies. A PACE provider assumes full financial risk for participants' care without limits on amount, duration, or scope of services.

A PACE site has the option to seek an extension of its current demonstration authority for a limited period of time after the date of promulgation of the PACE regulations. Therefore, states that currently have PACE demonstration sites do not need to submit a state plan amendment electing the PACE state option to continue to provide services through the demonstration. However, to continue the PACE program at any time the demonstration ceases, a state must elect to provide PACE as a Medicaid state plan option in their state plan, and the PACE demonstration

site must submit an application to enter into a program agreement with the state and the Secretary of DHHS as a PACE provider.
The development and approval process for PACE involves a three-way partnership between CMS, the state, and the provider. The state must approve the PACE application before sending it to CMS and CMS has 90 days to review the application and either approve it or request additional information. After the state responds to any request for information, CMS has an additional 90-day period to approve the application or request additional information. As a result, the federal approval process may be lengthy. Before CMS approves the PACE application, the state must conduct an on-site visit to the PACE site and certify that it meets all state and federal requirements to serve enrollees.

PACE Programs in Florida

Under s. 430.707, F.S., DOEA, in consultation with AHCA, may contract with entities that have submitted an application as a community nursing home diversion project as of July 1, 1998, to provide benefits under PACE. There is one PACE provider in Florida, Florida PACE Centers, Inc., a subsidiary of Miami Jewish Home and Hospital for the Aged. Florida PACE Centers, Inc. began serving enrollees in part of Dade County on February 1, 2003. The PACE provider is exempt from the requirements of chapter 641, F.S., relating to health maintenance organizations, if the entity is a private, non-profit, superior-rated nursing home with at least 50 percent of its residents eligible for Medicaid. The current monthly capitated payment for the PACE program is $1943.62 per enrollee.

Currently, there are 41people enrolled in the PACE program in Dade County; 35 who are dually eligible for Medicare and Medicaid. A joint review of the program by CMS and AHCA in January found the program to be out of compliance on a number of federal regulations, pointing to the difficulty of even experienced providers successfully implementing the program.

Hospice

Hospices are regulated under part VI of chapter 400, F.S. Section 400.601(3), F.S., defines "hospice" to mean a centrally administered corporation not for profit, as defined in chapter 617, F.S., providing a continuum of palliative and supportive care for the terminally ill patient and his or her family. "Terminally ill" is defined to mean that the patient has a medical prognosis that his or her life expectancy is 1 year or less if the illness runs its normal course. The Social Security Act requires that a hospice must serve terminally ill patients. Under the Social Security Act, "terminally ill" is defined to mean a medical prognosis that the individual's life expectancy is six months or less.

The care may be provided in the patient's home; in a hospice residential unit or other residential setting such as an assisted living facility, adult family care home, or nursing home; or in a freestanding hospice inpatient facility or other inpatient facility such as a hospital or nursing home.

Hospice services are provided to terminally ill patients who are no longer pursuing curative medical treatment. The following core services must be directly provided by the hospice care

team: nursing services, social work services, pastoral or counseling services, dietary counseling, and bereavement counseling services. Physician services may be provided by the hospice directly or through contract. Hospices must also provide or arrange for additional services needed to meet the palliative and support needs of the patient and family, including services such as physical therapy, massage therapy, home health aide services, and provision of medical supplies and durable medical equipment.

Hospices are licensed by the Agency for Health Care Administration and are also subject to certificate-of-need regulation, as a health care facility, under chapter 408, F.S. Under s. 400.605, F.S., DOEA, in consultation with the Agency for Health Care Administration, must by rule establish minimum standards and procedures for hospice.

III. Effect of Proposed Changes:

The bill creates the "All-inclusive Care for the Elderly Act." The bill provides Legislative findings that:

- The establishment of additional sites for the Program of All-inclusive Care for the Elderly, as established under federal law, should be encouraged in Florida as one method to enhance the ability of frail and elderly persons who are certified as needing placement in a residential nursing home to delay the necessity of such placement as long as possible;
- The PACE Program offers a means to control Medicaid costs for long-term care;
- Lee County and surrounding counties and Martin County represent a growing region where an opportunity exists to assist elderly persons to maintain independence outside of nursing homes and where the state may reduce Medicaid expenditures for providing long-term care;
- Due to the relative newness and comprehensiveness of the PACE program, AHCA and DOEA must cooperate with private organizations interested in providing services under the program; and
- There is a need to develop a model for hospice providers to offer nursing home diversion services as part of an array of end-of-life care and services available to frail and elderly persons.

AHCA and DOEA must assist a private, not-for-profit organization located in Lee County, and a private, not-for-profit organization in Martin County, which provide comprehensive services including hospice care for frail and elderly persons, to gain approval for providing services under the PACE program.

By September 30, 2005, subject to federal approval and provider readiness, AHCA must approve 50 initial enrollees in the PACE program and up to 200 enrollees within 2 years, subject to the ability of a private organization to sufficiently expand its capacity for the additional enrollees. For enrollments greater than 200, the PACE site must document the effectiveness of its program.

By July 1, 2005, AHCA must contract with a private, not-for-profit organization in Lee County, to provide services under PACE to the elderly in Lee County and surrounding counties, and a private, not-for-profit organization in Martin County to provide services under PACE to the elderly in Martin County, subject to federal approval of the PACE provider application.

The effective date of the bill is July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals in need of comprehensive home and community-based long-term care services in Lee County and the surrounding counties and in Martin County will have an additional choice of programs to serve their needs.

The new PACE providers would compete with other providers of long-term care services in those areas.

C. Government Sector Impact:

The fiscal impact on AHCA is based on the assumption that the provider will not be approved and serving enrollees until FY 2005-2006. This is due to the multi-step state and federal provider approval process and is consistent with the timeframes both in-state and nationally to approve new PACE providers.

The analysis assumes 50 participants in the first 12 months of operation at a cost of $1,943.62 per person, per month. The bill specifies that 50 participants will be authorized for the first year in Lee County and the surrounding counties and in Martin County. The monthly cost is the rate currently being paid to the state's only PACE provider.

FY 2005-2006 cost =

50 participants x 12 months x $1,943.62 per person/month = $1,166,172

The bill calls for up to 200 enrollees within two years for Lee County and the surrounding counties and in Martin County. In the event that this many individuals were enrolled, expenditures could increase by four times the expenditures estimated for FY 2005-2006.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current state statutes for hospice (ss. 400.6005-400.611, F.S.) do not prevent hospice providers from being, simultaneously, other forms of providers, i.e., PACE providers. However, hospice services should only be provided to those persons who are terminally ill to prevent any conflict with state law. Thus, in order for a person to receive both hospice services and PACE services, he/she would have to meet the eligibility requirements for both programs. Section (1)(e) of the bill may conflict with these federal and state laws if the services to be offered by the hospice are offered to patients that do not meet the terminally ill definition. According to AHCA, the hospice providers would likely need to incorporate a subsidiary organization to provide PACE services that would not be licensed directly as a hospice provider in order to avoid conflict with these laws. The subsidiary organizations would then have to establish an adult day care center and obtain state licensure for it under chapter 400, Part V, F.S., in order for the state to approve their PACE provider applications.

VIII. Amendments:

None.