

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1621 w/CS Care for Elderly Persons

**SPONSOR(S):** Negron & Others

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SB 1554

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder Affairs &amp; Long Term Care (Sub)</u>	<u>8 Y, 0 N</u>	<u>Meyer</u>	<u>Liem</u>
2) <u>Future of Florida's Families</u>	<u>15 Y, 0 N w/CS</u>	<u>Meyer</u>	<u>Liem</u>
3) <u>Health Appropriations (Sub)</u>	<u>10 Y, 0 N</u>	<u>Speir</u>	<u>Massengale</u>
4) <u>Appropriations</u>	<u>38 Y, 0 N w/CS</u>	<u>Massengale</u>	<u>Baker</u>
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

House Bill 1621 with CS directs the Agency for Health Care Administration (AHCA) and the Department of Elderly 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. If 50 enrollees in PACE are diverted from a year of nursing home care by participating in PACE for a year, the net difference in expenditures is a reduction of almost \$1 million dollars.

If the two sites have sufficient capacity for additional enrollment, AHCA is directed to approve enrollment of an additional 200 participants no later than September 30, 2007.

The bill also allow additional public representative directors to be added to the Alzheimer's Center board of directors by a majority vote of the directors, and designates a new memory disorder clinic at Morton Plant Hospital.

The bill also directs the Louis de la Parte Florida Mental Health Institute within the University of South Florida to establish a workgroup to focus on the needs of older adults who have dementia or related disorders and are subjected to the Florida Mental Health Act (the "Baker Act") for involuntary mental health treatment. The workgroup is to report to the Legislature and the Governor no later than January 1, 2005, and the authority for the workgroup is repealed February 1, 2005.

The bill also creates the "Office of Destination Florida" in DOEA.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1621f.ap.doc

**DATE:** April 16, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Subject to federal approval, the timeline is:

By July 1, 2005: AHCA must contract with a private, not-for-profit organization in Lee County to provide a PACE program to the elderly in Lee County and surrounding counties; and contract with a private, not-for-profit organization in Martin County to provide PACE to the elderly in Martin and the surrounding counties.

September 30, 2005: AHCA must approve 50 initial enrollees in the PACE program

Within 2 more years: AHCA must approve an additional 200 enrollees, 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 seeking to expand must document the effectiveness of its program.

#### The Program of All-inclusive Care for the Elderly (PACE)

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 that 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 (BBA) 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 Medicaid state plan. States must elect to 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.

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 is the sole source of services for Medicare and Medicaid eligible enrollees.

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. This risk also includes nursing home care.

The development and approval process for PACE involves a three-way partnership between CMS, the state Medicaid agency, 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 the site 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 41 people 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 section 400.601(3), F.S. A "hospice" is 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. By contrast to state law, the Social Security Act defines "terminally ill" as 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 contracts. Hospices must also provide or arrange for additional services that are needed to meet the palliative and support needs of the patient and family. This includes services such as physical therapy, massage therapy, home health aide services, medical supplies, and durable medical equipment.

C. SECTION DIRECTORY:

**Section 1.** Creates section 430.7032, F.S., "Program of All-inclusive Care for the Elderly, or PACE Act." This transfers subsection (2) from 430.707, F.S. and adds authority for AHCA and DOEA to work with a hospice in Martin County and one in Lee County to establish two new PACE sites.

**Section 2.** Provides that a PACE provider are exempted from the requirements of chapter 641, F.S., (related to health maintenance organizations and pre-paid health plans) if the provider is a private non-profit hospice as defined in section 400.601(3).

**Section 3.** Deletes subsection (2) from section 430.707, F.S., and transfers those provisions to the newly created 430.7032, F.S.

**Section 4.** Amends section 430.502, F.S., to designate a new Memory Disorder Clinic in Clearwater.

**Section 5.** Directs the Louis de la Parte Florida Mental Health Institute within the University of South Florida to establish a workgroup to focus on the needs of older adults who have dementia or related disorders and who are subjected to the Florida Mental Health Act (the "Baker Act") for involuntary mental health treatment. The workgroup is to report to the Legislature and the Governor no later than January 1, 2005, and the authority for the workgroup is repealed February 1, 2005.

**Section 6.** Creates section 430.042, F.S. establishing in DOEA the "Office of Destination Florida."

**Section 7.** Amends section 1004.445, F.S., as amended by Senate Bill 2002, 2004 Regular Session, to allow the Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute board of directors to add additional public representative directors by a majority vote of the directors.

**Section 8.** Provides that this act shall take effect July 1, 2004.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

<i>Nursing Home Diversion Waiver</i>	<i>FY 2004-2005</i>	<i>FY 2005-2006</i>
General Revenue Fund	\$0	\$ 479,297
Medical Care Trust Fund	<u>\$0</u>	<u>\$ 686,875</u>
Total Recurring Expenditures	\$0	\$1,166,172

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some non-profit providers of Medicaid reimbursed long-term care services, subject to federal approval, will be able to test in a pilot the effectiveness of a PACE model for persons receiving hospice care. Consumers of long-term care services will have another choice.

**D. FISCAL COMMENTS:**

Although the Governor's Recommended Budget for FY 2004-05 had \$600,000 in general revenue funds for the Office of Destination Florida, DOEA reports no fiscal impact from the establishment of the Office of Destination Florida in the department.

The fiscal impact on AHCA is based on the assumption that the provider will not be providing services to program participants until FY 2005-06. This is based on 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. The monthly cost is the rate currently being paid to the state's only PACE provider.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Not applicable.

**B. RULE-MAKING AUTHORITY:**

DOEA is granted rulemaking authority for the Office of Destination Florida.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Subcommittee on Elder Affairs & Long Term Care amended the bill to:

- Designate a new Memory Disorder Clinic.
- Create a workgroup to study the use of the Florida Mental Health Act to provide involuntary commitment for persons suffering with dementia.

The Committee on the Future of Florida's Families amended the bill, which differs from the bill recommended by the Subcommittee, by creating the "Office of Destination Florida" in the Department of Elderly Affairs.

The Subcommittee on Health Appropriations recommended for the following amendments:

- To clarify that the initial enrollees are to be split equally between Lee and Martin counties.
- To allow additional public representative directors to be added to the Alzheimer's Center board of directors by a majority vote of the directors.
- To correct drafting errors.

The Committee on Appropriations adopted the amendments recommended by the subcommittee and favorably reported the bill.