# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1621 Care for Elderly Persons
**SPONSOR(S):** Negron & Others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1554

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Elder Affairs & Long Term Care (Sub) | | Meyer | Liem |
| 2) Future of Florida's Families | | | |
| 3) Health Appropriations (Sub) | | | |
| 4) Appropriations | | | |
| 5) | | | |

## SUMMARY ANALYSIS

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.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

| | | | |
|---|---|---|---|
| 1. Reduce government? | Yes[] | No[] | N/A[x] |
| 2. Lower taxes? | Yes[] | No[] | N/A[x] |
| 3. Expand individual freedom? | Yes[x] | No[] | N/A[] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[x] |
| 5. Empower families? | Yes[x] | No[] | N/A[] |

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

B. EFFECT OF PROPOSED CHANGES:

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

- Additional Program of All-inclusive Care for the Elderly sites should be established;
- PACE is a way to control Medicaid costs for long-term care;
- Lee and Martin counties and the surrounding counties are a growing region that offer an opportunity to use PACE to help divert elders from nursing homes;
- Because PACE is relatively new and because it is so comprehensive, 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.

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: | Approve an additional 200 enrollees, subject to the ability of a private organization to sufficiently expand its capacity for the additional enrollees.<br><br>For enrollments greater than 200, the PACE site seeking to expand must document the effectiveness of its program. |

<u>The Program of All-inclusive Care for the Elderly (PACE)</u>
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 (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 becomes 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 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 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 provides legislative intent and a popular name.

Section 2 exempts a PACE provider from the requirements of chapter 641, F.S., (related to health maintenance organizations and pre-paid health plans) if the PACE provider is a nonprofit hospice as defined in section 400.601(3) and chapter 617, F.S.

Section 3 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:

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 in Martin County and in Lee County and its surrounding counties. In the event that this many individuals were enrolled, expenditures could increase proportionally.

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:

One of the strengths of the PACE model is that it combines two disparate payment systems (Medicare and Medicaid) into one capitated payment to one provider who is then responsible for meeting all of the enrollee's needs. The PACE program is incented to prevent hospitalization, excessive medication, and nursing home placement because the provider is financially liable for those high cost services.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

No rule-making authority is created.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under state law and federal Medicare reimbursement requirements, hospice services are limited to persons who are terminally ill. 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. It is not clear if the PACE sites authorized under this bill would serve only persons who qualified both for hospice and for nursing home care or if they would seek to serve persons who were not terminally ill but who were in need of the level of care provided in a nursing home.

The bill creates a section of undesignated law. However, section 430.707, F.S., provides the authority for the existing PACE project. It may be desirable to group all PACE related provisions together.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES