

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 125 Program of All-inclusive Care for the Elderly

**SPONSOR(S):** Health Care Appropriations Subcommittee; Health Innovation Subcommittee; Smith

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Entress	Shaw
2) Health Care Appropriations Subcommittee	10 Y, 0 N, As CS	Pridgeon	Pridgeon
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Program of All-inclusive Care for the Elderly (PACE) is a federal program, which integrates Medicaid and Medicare programs, and is available to qualified Floridians in need of nursing home level of care. PACE offers a continuum of services to individuals in the community with the goal of delaying nursing home entry. There are currently four PACE providers operating in Florida, serving clients in six counties.

The bill creates a new PACE center to serve individuals in Duval, St. Johns, Baker, and Nassau counties. The PACE center must be a not-for-profit organization that has been jointly formed by a lead agency designated as a community care service system and licensed as a nursing home diversion program provider, and by a not-for-profit hospice provider to provide PACE services to frail elders who reside in Duval, St. Johns, Baker, and Nassau Counties. The not-for-profit organization must have been licensed for more than 30 years to serve individuals in Duval, St. Johns, Baker, and Nassau counties. The bill requires the Agency for Health Care Administration (AHCA), in consultation with the Department of Elder Affairs (DOEA) and subject to an appropriation, to approve up to 300 initial enrollees in the newly created PACE organization.

The bill creates a new PACE center to serve individuals in Alachua and Clay counties. The PACE center must be a not-for-profit corporation with more than 30 years of experience as a licensed hospice and currently be licensed as a hospice serving individuals and families in Alachua and Clay counties. The bill requires AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 300 initial enrollees in the newly created PACE organization.

The bill creates a new PACE center to serve individuals in Hernando and Pasco counties. The PACE center must be a not-for-profit organization with more than 25 years of experience as a licensed hospice and currently licensed as a hospice serving individuals and families in Hernando and Pasco counties. The bill requires AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 150 initial enrollees in the newly created PACE organization.

The bill prohibits AHCA from issuing additional PACE contracts until the statewide managed long-term care program is re-procured or October 1, 2018, whichever is first.

The bill provides that each PACE project approved after July 1, 2013 is subject to rate setting requirements, encounter data submission requirements, and enrollment requirements as set forth in current statute.

The bill specifies that the requirements for each PACE site are subject to federal approval of the application to be a PACE site.

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

The Program for All-Inclusive Care for the Elderly (PACE) is a federal program, which integrates Medicare and Medicaid programs to provide an array of preventive, primary, acute, home and community-based, and long-term care services, with the goal of delaying nursing home admission.<sup>1</sup> The PACE model was tested through CMS demonstration projects that began in the mid-1980s and was established as a permanent Medicare program by the Balancing Budget Act of 1997.<sup>2</sup> A PACE organization is a non-profit private or public entity primarily engaged in providing PACE health care services.<sup>3</sup> As of June 3, 2011, there were approximately 20,000 PACE participants and 80 operational PACE organizations throughout 30 states.<sup>4</sup>

#### Payment

PACE providers receive both Medicare and Medicaid capitated payments and are responsible for providing the full continuum of medical and long-term care services.<sup>5</sup> In addition, PACE sites receive an enhanced capitation payment from Medicare, beyond that of a traditional Medicare health maintenance organization.<sup>6</sup> In exchange, PACE organizations assume full financial risk for all enrollee care, including nursing home care.<sup>7</sup> The rate is specified in the PACE agreement, set up between CMS, AHCA, and the PACE providers.<sup>8</sup>

PACE covers a variety of services, including, but not limited to:

- Adult day care;
- Transportation;
- Prescription drugs;
- Meals;
- Hospice care;
- Primary care; and
- Physical therapy.<sup>9</sup>

#### Florida PACE

The Florida PACE project is one project among many that provide alternative, long-term care options for elders who qualify for Medicare and the state Medicaid program. The PACE project was initially

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<sup>1</sup> OPPAGA Analysis of Rates for Florida's Program for All-Inclusive Care for the Elderly, OPPAGA research memorandum (January 4, 2013).

<sup>2</sup> Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual, CMS Manual System, page 2, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/Program-of-All-Inclusive-Care-for-the-Elderly-PACE.html>.

<sup>3</sup> PACE benefits, Medicaid.gov, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/PACE-Benefits.html>.

<sup>4</sup> Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual, CMS Manual System, page 2, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/Program-of-All-Inclusive-Care-for-the-Elderly-PACE.html>.

<sup>5</sup> Program for All-Inclusive Care for the Elderly, Florida Department of Elder Affairs, accessible at: <http://elderaffairs.state.fl.us/doea/pace.php>.

<sup>6</sup> *Id.*

<sup>7</sup> OPPAGA Analysis of Rates for Florida's Program for All-Inclusive Care for the Elderly, OPPAGA research memorandum (January 4, 2013).

<sup>8</sup> *Id.*

<sup>9</sup> Quick Fact about Programs of All-inclusive Care for the Elderly, Centers for Medicare & Medicaid Services, accessible at: <http://www.bing.com/search?q=cms+quick+facts+about+pace&src=IE-SearchBox&FORM=IE8SRC>.

authorized in chapter 98-327, Laws of Florida, and is codified in s. 430.707(2), F.S. The PACE model targets individuals who would otherwise qualify for Medicaid nursing home placement and provides them with a comprehensive array of home and community based services at a cost less than the cost of nursing home care.<sup>10</sup> The PACE project is administered by DOEA in consultation with AHCA.<sup>11</sup> There are currently four PACE providers in Florida, serving clients in Hillsborough, Miami-Dade, Collier, Lee, Charlotte, and Pinellas counties.<sup>12</sup> As of February 2013, there were 807 individuals in Florida using PACE services.<sup>13</sup>

To receive PACE, an individual must meet the following qualifications:

- Be 55 years old or older;
- Live in a service area of a PACE organization;
- Meet the need for nursing home level of care (as determined by the Department of Elder Affairs)<sup>14</sup>;
- Be able to live safely in the community with the help of PACE services;<sup>15</sup> and
- Be eligible for Medicare or Medicaid.<sup>16</sup>

Florida PACE programs are subject to funding provided in the General Appropriation Act<sup>17</sup> The capitated rate is negotiated between the Agency for Health Care Administration (AHCA) and the provider and must meet Center for Medicaid and Medicare Services (CMS) guidelines.<sup>18</sup>

PACE providers may contract with AHCA to participate in the Long-Term Care Managed Care Program. PACE providers are not subject to the procurement requirements or the regional plan number limits of the Long Term Care Managed Care Program.

#### *Approval of PACE Sites*

To become a PACE provider, an organization must submit an application to CMS, along with a letter from AHCA stating that AHCA considers the entity to be qualified to be a PACE organization and that AHCA is willing to enter into a PACE program agreement with the entity.<sup>19</sup> CMS must inform the applicant of approval or disapproval within 90 days of receiving all required information.<sup>20</sup>

PACE organizations must:

- Have a governing board that includes community representation;
- Have a physical site to provide adult day services;
- Have a defined service area;
- Be able to provide the complete service package regardless of frequency or duration of services;
- Have safeguards against conflict of interest; and
- Be able to demonstrate fiscal soundness.<sup>21</sup>

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<sup>10</sup> Program for All-Inclusive Care for the Elderly, Florida Department of Elder Affairs, accessible at: <http://elderaffairs.state.fl.us/doea/pace.php>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> PACE Enrollments Self Reported by Health Plan, Florida Department of Elder Affairs, accessible at: [www.PACE\\_Monthly\\_Enrollment\\_Report\[1\].pdf](http://www.PACE_Monthly_Enrollment_Report[1].pdf).

<sup>14</sup> Capitation Rate Development for PACE program, Milliman, accessible at: [http://elderaffairs.state.fl.us/doea/diversion/Capitation\\_Rates\\_2012\\_2013.pdf](http://elderaffairs.state.fl.us/doea/diversion/Capitation_Rates_2012_2013.pdf) (September 2012-August 2013).

<sup>15</sup> Quick Fact about Programs of All-inclusive Care for the Elderly, Centers for Medicare & Medicaid Services, accessible at: <http://www.bing.com/search?q=cms+quick+facts+about+pace&src=IE-SearchBox&FORM=IE8SRC>.

<sup>16</sup> Program for All-Inclusive Care for the Elderly, Florida Department of Elder Affairs, accessible at: <http://elderaffairs.state.fl.us/doea/pace.php>.

<sup>17</sup> S. 409.981(4), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> 42 CFR 460.12.

<sup>20</sup> 42 CFR 460.20.

<sup>21</sup> PACE benefits, Medicaid.gov, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/PACE-Benefits.html>.

A PACE organization must employ or contract with a program director who is responsible for oversight and administration of the entity and a medical director who is responsible for the delivery of participant care, for clinical outcomes, and for the implementation, as well as oversight, of the quality assessment and performance improvement program.<sup>22</sup> Among other requirements, the PACE organization must have an organizational chart,<sup>23</sup> have an insolvency plan,<sup>24</sup> and have a program agreement between the provider, CMS, and AHCA.<sup>25</sup> This process typically takes at least one year to complete.<sup>26</sup>

In addition, in order for two PACE providers to operate in the same geographic area, the providers are responsible for identifying that there is a need and enough potential participants for each PACE provider to be viable.<sup>27</sup> Documentation must be submitted to AHCA that will insure that neither provider will have to compete for the same recipients.<sup>28</sup>

The following sections of law approved or amended PACE sites in Florida:

- Section 3, chapter 2006-25, L.O.F., included proviso language in the 2006-2007 GAA to authorize 150 additional clients for the existing PACE project in Miami-Dade County and funding for the development of PACE projects to serve 200 clients in Martin and St. Lucie counties, and 200 clients in Lee County.
- Section 3, chapter 2008-152, L.O.F., included proviso language in the 2008-09 GAA to reallocate 150 unused PACE slots to Miami-Dade, Lee and Pinellas Counties. Each site received 50 slots.
- Section 20, chapter 2009-55, L.O.F., directed the AHCA, upon federal approval of an application to be a site for PACE, to contract with one private, not-for-profit hospice organization located in Hillsborough County, which provides comprehensive services, including hospice care for frail and elderly persons. This section also authorized the AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 100 slots for the program.
- Section 14, chapter 2010-156, L.O.F., directed the AHCA to contract with a private health care organization to provide comprehensive services to frail and elderly persons residing in Polk, Highlands, Hardee, and Hillsborough Counties. This section also authorized 150 initial slots for the program.
- Section 15, chapter 2010-156, L.O.F., directed AHCA to contract for a new PACE site in Southwest Miami-Dade County and approved 50 initial slots for the program.
- Section 17, chapter 2011-61, L.O.F., directed AHCA to contract for a new PACE site in Palm Beach County and authorized up to 150 initial enrollee slots.
- Section 19, chapter 2012-33, L.O.F., directed AHCA to contract for new PACE sites in Broward County and in Manatee, Sarasota, and DeSoto counties; and approved up to 150 initial enrollees for each site, subject to a specific appropriation.

Section 430.707, F.S. governs contracts for long-term care services within community diversion pilot project areas and requires DOEA to contract with managed care organizations and other qualified providers for long-term care within community diversion pilot project areas. These long term-care providers can be PACE programs.<sup>29</sup> Health care service program requirements are specified in ch. 641, F.S. However, the PACE program is exempt from the program requirements of ch. 641, F.S. if the entity is a private, nonprofit, superior-rated nursing home, and if at least fifty percent of its residents are eligible for Medicaid.<sup>30</sup> The PACE centers which either were created or were expanded between 2009 and 2012 were exempt from requirements under 641 and s. 430.707, F.S.

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<sup>22</sup> 42 CFR 460.60.

<sup>23</sup> *Id.*

<sup>24</sup> 42 CFR 460.80(b).

<sup>25</sup> 42 CFR 460.30.

<sup>26</sup> Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

<sup>27</sup> Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

<sup>28</sup> Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

<sup>29</sup> S. 430.707, F.S.

<sup>30</sup> *Id.*

The state is in the process of implementing the statutorily required Statewide Medicaid Managed Care Long-term Care Managed Care (SMMC LTC) program, which serves the PACE-eligible population, provides a similar set of Medicaid services as PACE, and which incorporates strong quality measurement and monitoring. PACE is a competing model to LTC SMMC in the delivery of long-term care services.<sup>31</sup>

### **Effect of the Bill**

The bill creates a new PACE site to serve individuals in Duval, St. Johns, Baker, and Nassau counties.

The bill requires the AHCA to contract with a not-for-profit organization that has been jointly formed by a lead agency that has been designated a community care service system pursuant to s. 430.205, F.S., and that is licensed as a nursing home diversion program provider, and by a not-for-profit hospice provider to provide PACE services to frail elders who reside in Duval, St. Johns, Baker, and Nassau Counties. The not-for-profit organization must have been licensed for more than 30 years to serve individuals in Duval, St. Johns, Baker, and Nassau counties. The bill requires AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 300 initial enrollees in the newly created PACE organization.

The bill creates a new PACE site to serve individuals in Alachua and Clay counties.

The bill requires the AHCA to contract with a not-for-profit organization to provide PACE services to frail elders who reside in Alachua and Clay counties. The not-for-profit corporation must have more than 30 years of experience as a licensed hospice and currently be licensed as a hospice serving individuals and families in Alachua and Clay counties. The bill requires AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 300 initial enrollees in the newly created PACE organization.

The bill creates a new PACE site to serve individuals in Hernando and Pasco counties.

The bill requires the AHCA to contract with a not-for-profit organization to provide PACE services to frail elders who reside in Hernando and Pasco counties. The not-for-profit organization must have more than 25 years of experience as a licensed hospice and currently be licensed as a hospice serving individuals and families in Hernando and Pasco counties. The bill requires AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 150 initial enrollees in the newly created PACE organization.

Section 430.707, F.S. governs contracts for long-term care services within community diversion pilot project areas. The bill exempts s. 430.707, F.S. from application to the PACE providers. The bill also exempts the PACE providers from the requirements of health care service programs, which are specified in ch. 641, F.S. These exemptions are consistent with the previous legislation to approve new PACE providers.

The bill allows the AHCA to not issue additional PACE contracts until the statewide managed long-term care program is re-procured or October 1, 2018, whichever is first.

The bill provides that each PACE project approved after July 1, 2013, is subject to rate setting and encounter data submission requirements as set forth in current statute.<sup>32</sup> This provision subjects the PACE programs to the same rate setting and encounter data requirements as the providers participating in the Statewide Medicaid Managed Care – Long Term Care program. Additionally, the plans must submit encounter data electronically and certify that the data is accurate and complete, and AHCA must validate the data.

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<sup>31</sup> Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

<sup>32</sup> SS. 409.983(3) and (4), F.S., and 409.979, F.S.

The bill is subject to federal approval of the applications to be a PACE site.

**B. SECTION DIRECTORY:**

- Section 1:** Creates an unnumbered section of law, relating to expansion of the Program of All-inclusive Care for the Elderly in Duval, St. Johns, Baker, and Nassau counties.
- Section 2:** Creates an unnumbered section of law, relating to expansion of the Program of All-inclusive Care for the Elderly in Alachua and Clay counties.
- Section 3:** Creates an unnumbered section of law, relating to expansion of the Program of All-inclusive Care for the Elderly in Hernando and Pasco counties.
- Section 4:** Creates an unnumbered section of law, relating to contracts for the Program of All-inclusive Care for the Elderly.
- Section 5:** Creates an unnumbered section of law, relating to rate-setting, encounter data submission, and enrollment requirements of the Program of All-inclusive Care for the Elderly.
- Section 6:** Provides for an effective date.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

AHCA estimates the fiscal impact to AHCA for administration of the PACE application process would be \$72,128 for Fiscal Year 2013-2014. The estimate includes salary for one FTE and human resource costs.<sup>33</sup> The recurring impact is estimated to be \$67,135.<sup>34</sup> However, it is believed the workload can be handled within existing agency resources.

Funding for the new PACE centers is subject to an appropriation.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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<sup>33</sup> Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

<sup>34</sup> Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 13, 2013, the Health Innovation Subcommittee adopted a strike-all amendment which removed all references to Citrus county from the bill.

On April 2, 2012, the Health Care Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute to the committee substitute. The adopted strike-all amendment:

- Authorizes AHCA to contract for PACE expansion of up to 300 enrollees to frail elders who reside in Duval, St. Johns, Baker, and Nassau counties.
- Authorizes AHCA to contract for PACE expansion of up to 300 enrollees to frail elders who reside in Alachua and Clay counties.
- Authorizes AHCA to contract for PACE expansion of up to 150 enrollees to frail elders who reside in Hernando and Pasco counties.
- Prohibits AHCA from issuing additional contracts for PACE projects until the statewide managed long term care project is re-procured or October 1, 2018, whichever is first.
- Subjects each PACE program approved after July 1, 2013, to certain rate-setting requirements, encounter data submission requirements, and enrollment requirements as set forth in current statute.

This analysis is drafted to the committee substitute to the committee substitute.