

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 905 Program of All-Inclusive Care for the Elderly

SPONSOR(S): Health & Human Services Committee, Roach and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1242

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 905 passed the House on April 1, 2021. The bill was amended in the Senate on April 26, 2021 and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2021.

The Program of All-Inclusive Care for the Elderly (PACE) is a capitated health benefits program authorized by the federal Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system funded by a combination of federal Medicare and state Medicaid financing. PACE was created as a way to provide clients, family, caregivers and professional health care providers the flexibility to meet a person's health care needs while continuing to live safely in the community.

In Florida, the PACE is operated cooperatively by the Department of Elder Affairs (DOEA) and the Agency for Health Care Administration (AHCA). AHCA and DOEA have operated the program using authority granted by the federal government since 1997, without an enabling statute. The program operates under federal standards and is funded through General Appropriations Act allocations.

CS/HB 905 codifies the PACE in Florida law and sets specific parameters on program services and participating organizations. The bill directs AHCA, in consultation with DOEA, to review and consider program applications submitted by entities seeking to become PACE organizations.

The bill also requires PACE organizations to meet specific quality and performance standards, as outlined by the federal Centers for Medicare and Medicaid Services and AHCA. AHCA is charged with monitoring the reporting requirements assigned to PACE organizations.

The bill has no fiscal impact on state or local government.

The bill was approved by the Governor on June 21, 2021, ch. 2021-149, L.O.F., the bill takes effect on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid serves approximately 4.5 million people in Florida, with over half of those being children and adolescents 19 years of age or younger.¹ Medicaid is a partnership between the federal and state governments where the federal government establishes the structure for the program and pays a share of the cost.² Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies. To qualify for nursing home care under Medicaid, both an individual's income and assets must not exceed certain thresholds.

In Florida, the Medicaid program is administered by the Agency for Health Care Administration (AHCA). AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the Department of Elder Affairs (DOEA). AHCA has overall responsibility for the program and qualifies providers, sets payment levels, and pays for services. DCF is responsible for determining financial eligibility for Medicaid recipients.

Program of All-Inclusive Care for the Elderly (PACE)

The PACE is a capitated health benefits program³ authorized by the federal Balanced Budget Act of 1997⁴ that features a comprehensive service delivery system funded by a combination of federal Medicare and state Medicaid financing.⁵ The PACE is an optional Medicaid benefit, but operates as a three-way agreement between the federal government, a state agency, and a PACE organization.⁶ In Florida, the PACE is a Medicaid long-term care managed care plan option providing comprehensive long-term and acute care services which supports Medicaid and Medicare enrollees who would otherwise qualify for Medicaid nursing facility services.⁷

The PACE provides a range of integrated preventative, acute care, and long-term care services to manage the often complex medical, functional, and social needs of the frail elderly. PACE was created as a way to provide clients, family, caregivers and professional health care providers the flexibility to meet a person's health care needs while continuing to live safely in the community.⁸ The purpose of a PACE program is to provide comprehensive health care services that are designed to:

¹ Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, December 2020, available at https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed February 18, 2021).

² Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2021 Through September 30, 2022, 85 FR 76586, November 30, 2020. For FY 2021, the standard federal medical assistance percentage (FMAP) for Florida is 61.96% and the COVID-19 enhanced FMAP is 68.16%.

³ See Centers for Medicare & Medicaid Services, *Capitated Model*, <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/CapitatedModel> (last accessed May 3, 2021).

⁴ Pub. L. 105-33. PACE program requirements are codified at 42 USC 1302, 1395, and 1395eee.

⁵ Services under the PACE program are authorized under Section 1905(a)(26) of the Social Security Act.

⁶ Department of Health and Human Services, Centers for Medicare and Medicaid Services, CMS Manual System: Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual (issued June 9, 2011), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c01.pdf> (last accessed May 3, 2021).

⁷ Department of Elder Affairs and Agency for Health Care Administration, *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014), http://ahca.myflorida.com/docs/PACE_Evaluation_2014.pdf (last accessed May 3, 2021).

⁸ *Supra* note 6.

- Enhance the quality of life and autonomy for frail, older adults;
- Maximize dignity of and respect for older adults;
- Enable frail, older adults to live in their homes and in the community as long as medically and socially feasible; and
- Preserve and support the older adult's family unit.⁹

In Florida, the PACE is operated cooperatively by the DOEA and the AHCA. DOEA is the operating entity and oversees the participating PACE organizations, while AHCA is formally responsible for maintaining the PACE agreement with the federal government and for Medicaid reimbursement of PACE services. DOEA, AHCA, and the CMS must approve any application for new PACE agreements, as well as any expansion of current PACE organizations.¹⁰

PACE Organizations

A PACE organization is a not-for-profit, or for-profit private or public entity that is primarily engaged in providing PACE services. For-profit entities operating PACE organizations do so only under federal demonstration authority.¹¹ A PACE organization must:

- Have a governing body or a designated person functioning as a governing body that includes participant representation.
- Be able to provide the complete service package regardless of frequency or duration of services.
- Have a physical site and staff to provide primary care, social services, restorative therapies, personal care and supportive services, nutritional counseling, recreational therapy, and meals.
- Have a defined service area.
- Have safeguards against conflict of interest.
- Have demonstrated fiscal soundness.
- Have a formal participant bill of rights.
- Have a process to address grievances and appeals.¹²

Before being approved to operate and deliver services, PACE organizations are required to provide evidence of the necessary financial capital to deliver the benefits and services, which include a combined adult day care center and primary care clinic, transportation, and full range of clinical and support staff with an interdisciplinary team of professionals.¹³

Eligibility and Benefits

Under federal program rules, PACE participants must:

- Be age 55 or older.
- Reside in the PACE organization's service area.
- Be certified as eligible for nursing home care by their state and be able to live safely in a community setting at the time of enrollment.

Eligible beneficiaries who choose to enroll in PACE agree to forgo their usual sources of care and receive all their services through the PACE organization. PACE provides participants all the care and services covered by Medicare and Medicaid, as well as additional medically necessary care and

⁹ *Supra* note 7.

¹⁰ *Id.*

¹¹ Sections 1894(a)(3)(B) and 1934(a)(3)(B) of the Balanced Budget Act of 1997 allowed private, for-profit entities to participate in PACE as demonstration projects. While participating in the PACE for-profit demonstration, they must meet all requirements set forth in PACE regulations.

¹² *Supra* note 7.

¹³ *Id.*

services not covered by Medicare and Medicaid. There are no limitations or condition as to amount, duration or scope of services and there are no deductibles, copayments, coinsurance, or other cost sharing that would otherwise apply under Medicare or Medicaid.

Under the PACE, an interdisciplinary team consisting of professional and paraprofessional staff assesses participants' needs, develops care plans, and delivers all services, including acute care and nursing facility services when necessary, which are integrated to provide a seamless delivery model. The benefit package for all PACE participants includes:

- Primary Care;
- Hospital Care;
- Medical Specialty Services;
- Prescription Drugs (including Medicare Part D drugs);
- Nursing Home Services;
- Nursing Services;
- Personal Care Services;
- Emergency Services;
- Home Care;
- Physical Therapy;
- Occupational Therapy;
- Adult Day Health Care;
- Recreational Therapy;
- Meals;
- Dental Care;
- Nutritional Counseling;
- Social Services;
- Laboratory/X-Ray;
- Social Work Counseling;
- End of Life Care; and,
- Transportation.

In most cases, the comprehensive service package permits participants to continue living at home rather than be institutionalized.¹⁴

Quality of Care

Each PACE organization is responsible for identifying areas in which to improve service delivery and patient care as well as developing and implementing plans of action to improve or maintain quality of care. Such activities are documented in the PACE organization's Quality Assessment and Performance Improvement (QAPI) plan. The QAPI plan must demonstrate improved performance in regard to five areas:

- Utilization of services in the PACE organization, especially in key services.
- Participant and caregiver satisfaction with services.
- Data collected during patient assessments to determine if individual and organizational-level outcomes were achieved within a specified time period.
- Effectiveness and safety of direct and contracted services delivered to participants.
- Outcomes in the organization's non-clinical areas.¹⁵

Florida PACE Project

¹⁴ *Id.*

¹⁵ *Id.*

The Florida PACE project provides alternative, long-term care options for elders who qualify for Medicare and the state Medicaid program. Florida's first PACE organization was located in Miami-Dade County and began serving enrollees in February 2003 with 150 slots. "Slots" refers to the maximum number of clients that may be served by a PACE organization in an approved service area. Since 2003, the Legislature has approved additional slots either as part of the General Appropriations Act (GAA) or general law. Currently, PACE organizations with funded slots exist in these Florida counties: Broward, Charlotte, Collier, Duval, Lake, Lee, Martin, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Seminole, and Sumter.

In 2011, the Legislature moved administrative responsibility for the PACE program from the DOEA to the AHCA as part of the expansion of Medicaid managed care into the Statewide Medicaid Managed Care program (SMMC).¹⁶ Participation by PACE in SMMC is not subject to the procurement requirements or regional plan number limits normally applicable to SMMC managed care plans. Instead, PACE plans may continue to provide services to individuals at such levels and enrollment caps as authorized by the GAA.¹⁷

The current PACE approval process requires that an entity interested in becoming a PACE organization must have slots authorized by the Legislature prior to submission of an application to AHCA and DOEA. The application sets forth details about the adult day care center, staffing, provider network, financial solvency and pro forma financial projections, and policies and procedures, among other elements. It is similar in detail to the provider applications submitted by managed care plans seeking to provide medical care to Medicaid recipients. Providers operating in the same geographic region must establish that there is adequate demand for services so that each provider will be viable. The application requires that documentation be submitted demonstrating that neither provider is competing for the same potential enrollees.¹⁸

The AHCA and the DOEA review the application and, when the entity has satisfied all requirements, conduct an on-site survey of the entity's readiness to serve PACE enrollees. Once all requirements are met, including full licensure of the center, staffing for key positions, and signed provider network contracts, the AHCA certifies to federal CMS that the PACE organization is ready. At that time, CMS reviews the application and readiness certification and, if all requirements are satisfied, executes a three-way agreement with the PACE provider and the AHCA. The PACE provider may then begin enrolling members, subject to an appropriation to fund enrollment slots.¹⁹

Funding

Each year since the PACE's inception, the Legislature has appropriated funds for PACE organizations through the state's GAA.²⁰ The 2020-2021 GAA provided just over \$73 million in PACE program funding to PACE organizations around the state.²¹ The following table includes allocation and enrollment information outlined in the 2020-2021 GAA.

¹⁶ Chapter 2011-135, s. 24, L.O.F.

¹⁷ Section 409.981(4), F.S.

¹⁸ Agency for Health Care Administration, *Agency Analysis of HB 905 of 2021*, March 11, 2021. See also 42 CFR Part 460 for a complete list of PACE program requirements.

¹⁹ *Id.*

²⁰ Chapter 2013-40, L.O.F.

²¹ Chapter 2020-111, L.O.F.

Current PACE Programs ²²				
PACE Organization		Enrollment		
Service Area	Organization	Authorized Slots	Funded Slots	Enrollment (Feb. 2021)
Broward	Florida PACE	150	125	99
Charlotte	Hope Select PACE	150	150	89
Collier	Hope Select PACE	120	120	63
Duval	Northeast PACE Partners	300	150	57
Lee	Hope Select PACE	380	380	260
Martin	Morse PACE	150	125	0
Miami-Dade	Florida PACE	828	828	816
Orange, Lake, Sumter, Osceola, Seminole	InnovAge PACE	300	150	0
Palm Beach	Morse PACE	706	706	649
Pinellas	Empath PACE	325	325	314
Statewide Totals		3,409	3,059	2,347

The Legislature appropriates funds to PACE organizations by authorizing slots and then funding those slots. There is no guarantee that authorized slots will be funded, nor are all funded slots necessarily utilized by a PACE provider. Utilization of PACE slots fluctuates with demand for those slots in a PACE organization's service territory. Proviso language included in the annual appropriations act is used to specify any new or increased funding to particular PACE organizations.²³

PACE organizations receive a capitated Medicaid payment for each enrolled Medicaid long-term care recipient and an enhanced Medicare payment for Medicare enrollees for acute care services from the federal government.²⁴

Currently, PACE program criteria are not addressed in Florida Statutes.

Effect of Proposed Changes

The bill creates s. 430.84, F.S., and codifies the Program of All-Inclusive Care for the Elderly (PACE). The program is not currently outlined in statute and has been operationalized through the annual appropriations process. Because the bill codifies current practices, it has no substantial effect on the PACE program.

Program Parameters

The bill authorizes the AHCA, in consultation with the DOEA, to approve organizations who have submitted the necessary application and data to CMS pursuant to federal requirements established under the Balanced Budget Act of 1997. Applications, as required by CMS, will be reviewed by the

²² Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report* (February 28, 2021), available at https://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed May 3, 2021).

²³ See, for example, the Conference Report for SB 2500 of 2021, Specific Appropriation 397.

²⁴ 42 CFR Part 460 Subpart J.

AHCA on an ongoing basis, in consultation with the DOEA for initial approval. Notice of applications must also be published in the Florida Administrative Register.²⁵

A prospective PACE organization must submit an application to the AHCA before submitting a request to the Legislature for program funding. An applicant for a PACE program must:

- Provide evidence that the applicant can meet all of the federal regulations and requirements established by CMS by the proposed implementation date.
- Provide market studies which include an estimate of the potential number of participants and show the geographic area the applicant proposes to serve.
- Develop a business plan of operation, including pro forma financial statements and projections based on the planned implementation date.
- Show evidence of regulatory compliance and meet market study requirements, if applicant is an existing PACE organization that is seeking to expand to an additional service area.
- Implement program within 12 months after date of initial state approval, if granted authorization as a prospective PACE organization or such approval is void.

The bill allows an approved PACE organization to use funding and slots authorized for use in a given geographic area to serve an adjoining geographic area, if that PACE organization is authorized by AHCA to provide services in the adjoining area.

Quality of Care

The bill requires that all PACE organizations meet specific quality and performance standards, as established by CMS and AHCA. The bill designates AHCA as the state agency responsible for oversight of PACE organizations with regard to data reporting requirements.

The bill provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. While AHCA may approve PACE organizations under the bill, approval does not create new PACE enrollment slots or expenditures. The Legislature will continue to make program scope and funding decisions through the appropriations process. Further, the bill codifies the existing process for approving PACE organizations; thus, it does not require new activity by AHCA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

²⁵ See Florida Administrative Code & Florida Administrative Register, *FLRules FAQ*, <https://www.flrules.org/Help/newHelp.asp#FAW> (last accessed May 3, 2021).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.