STATE OF NEW YORK

9542

IN ASSEMBLY

March 16, 2022

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the program of all-inclusive care for the elderly (PACE)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The Program of All-Inclusive Care for the Elderly ("PACE") is a federally recognized model of comprehensive care for persons 55 years of age or older who qualify for nursing home levels of care, who wish to remain in their community, and who are eligible for Medicaid (see, Sections 1894 and 1934 to Title XVIII of the Social Security Act; 42 CFR 460). Uniformity of regulation of PACE organizations will promote efficiency for the organizations and for the state. It is the intent of the legislature through this act to provide a more efficient and uniform structure to promote the prudent development of PACE organizations, to promote better health outcomes for New Yorkers enrolled in PACE organizations, and to realize administrative efficiencies. It is the intent of the legislature to recognize PACE organizations as integrated providers of care. PACE organizations shall not be construed to be managed care organizations under article 44 of the public health law.

§ 2. The public health law is amended by adding a new article 29-EE to read as follows:

ARTICLE 29-EE

PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY

Section 2999-s. Definitions.
2999-t. Program established.
2999-u. Licensure.
2999-v. Eligibility and enrollment.
2999-w. Benefits.
2999-x. Reimbursement.
2999-y. Regulations.

§ 2999-s. Definitions. For purposes of this article, the following definitions apply:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1. "PACE organization" means an entity as defined in 42 U.S.C. § 1395(eee) and established in accordance with federal public law 105-33, subtitle I of title IV of the Balanced Budget Act of 1997, and licensed or otherwise authorized to operate under this article.

2. "Program of all-inclusive care of the elderly" or "PACE" is a federally recognized model of comprehensive care for persons fifty-five years of age or older eligible for Medicaid and may also be eligible for Medicare, qualifying for nursing home levels of care who wish to remain in their community (see, Sections 1894 and 1934 to Title XVIII of the Social Security Act; 42 CFR 460), and established under this article.

3. "Medicaid" means title eleven of article five of the social services law and the program thereunder. "Medicare" means title XVIII of the federal social security act and the programs thereunder.

4. "CMS" means the federal Centers for Medicare and Medicaid Services.

5. "Enrollee" means an individual enrolled in a PACE organization.

§ 2999-t. Program established. 1. The program of all-inclusive care of the elderly is established in the department to provide community-based, risk-based, and capitated long-term care services as optional services under Medicaid and, where applicable, under Medicare, as well as under contracts among CMS, the department and PACE organizations.

2. A PACE organization operating at the time this article becomes law may continue to operate while the organization transitions into full compliance with this article, under a process and requirements established by the commissioner.

§ 2999-u. Licensure. 1. The commissioner shall license an entity as a PACE organization if the entity:

(a) complies with the requirements of a PACE organization under applicable federal law and regulations;

(b) provides a facility or facilities at which primary care and other services are furnished to enrollees;

(c) provides an interdisciplinary team approach to care management, care delivery and care planning;

(d) complies with this article and regulations of the commissioner under this article; and

(e) enters into a PACE organization contract and agreement with CMS.

2. (a) A PACE organization shall comply with applicable requirements of articles forty-four, thirty-six and twenty-eight of this chapter.

(b) A PACE organization shall serve an approved geographic service area.

(c) A PACE organization and its incorporators, directors, sponsors, stockholders and operators shall have the experience, competence, and standing in the community as to give reasonable assurance of their ability to operate the organization to provide a consistently high level of care for enrollees and comply with this article. A PACE organization shall demonstrate that where any incorporator, director, sponsor, stockholder or operator of the organization holds, or within the past seven years has held, a controlling interest or been a controlling person in an organization or facility licensed under this chapter, a consistently high level of care has been rendered in each such organization or facility.

(d) A PACE organization shall meet requirements for financial solvency under paragraph (c) of subdivision one of section forty-four hundred three of this chapter, including a contingent reserve requirement which may, by regulations of the commissioner, be different from that required by that paragraph.

(e) A PACE organization shall be deemed to be a health maintenance organization under article forty-four of this chapter, but solely for purposes of subdivision one of section sixty-five hundred twenty-seven of the education law.

3. The commissioner shall establish a unified licensure process for PACE organizations that includes the applicable program requirements of this article. A license under this article shall require approval of the public health and health planning council.

§ 2999-v. Eligibility and enrollment. 1. To be eligible to enroll in a PACE organization, an individual shall:

(a) be at least fifty-five years old; and

(b) meet the eligibility requirements for a nursing home level of care; and

(c) reside within the PACE organization's approved service area; and

(d) be able to be maintained safely in the community-based setting with the assistance of the PACE organization; or

(e) be otherwise eligible to participate in a PACE demonstration or specialty program authorized by the federal PACE Innovation Act and approved by CMS.

2. Enrollment in a PACE organization shall be voluntary for the eligible individual.

§ 2999-w. Benefits. 1. A PACE organization shall provide the following benefits to its enrollees:

(a) all benefits under Medicaid, including under section three hundred sixty-four-j of the social services law;

(b) all benefits under Medicare, for enrollees that are enrolled in Medicare; and

(c) other services determined necessary by the PACE organization's interdisciplinary team to improve and maintain the enrollee's overall health status.

2. A PACE organization may provide fiscal intermediary services under section three hundred sixty-five-f of the social services law.

§ 2999-x. Reimbursement. 1. The commissioner shall develop and implement, consistent with applicable federal requirements, reimbursement rates and methodologies for Medicaid services provided by a PACE organization to its enrollees.

2. The commissioner shall provide, or shall require any independent actuary used to review PACE reimbursement rates to provide, to PACE organizations the documents and information regarding PACE reimbursement rates submitted to CMS in a form and timeframe consistent with the requirements for providing or causing to be provided documents and information to Medicaid managed care providers under paragraph (c) of subdivision eighteen of section three hundred sixty-four-j of the social services law.

§ 2999-y. Regulations. 1. The commissioner shall make regulations and take other actions reasonably necessary to implement this article.

2. The commissioner shall develop and implement a unified process for PACE organizations to complete reports, submit to audits, respond to surveys, and provide other information, including maximizing conformity with federal requirements.

3. The commissioner may apply for federal waivers under Medicaid or demonstration programs under Medicare relating to the PACE program, provided that the waiver or demonstration shall not diminish any right or benefit of enrollees under this article.

§ 3. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be

inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the commissioner of health shall make regulations and take other actions reasonably necessary to implement this act on that date.