STATE OF NEW YORK

4137

2023-2024 Regular Sessions

IN ASSEMBLY

February 10, 2023

Introduced by M. of A. ARDILA -- 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); and to amend a chapter of the laws of 2022 amending the public health law relating to the program of all-inclusive care for the elderly (PACE), as proposed in legislative bills numbers S. 8903 and A. 9542, in relation to legislative intent

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

Section 1. Section 1 of a chapter of the laws of 2022 amending the public health law relating to the program of all-inclusive care for the elderly (PACE), as proposed in legislative bills numbers S. 8903 and A. 9542, is amended to read 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**, provided however that this shall not prohibit the application of requirements under such article or other applicable laws, or similar requirements, as determined appropriate by the commissioner**

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

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of health or superintendent of insurance pursuant to regulations promulgated by the commissioner under this act.

§ 2. Sections 2999-u, 2999-v, 2999-w, 2999-x and 2999-y of the public health law, as added by a chapter of the laws of 2022 amending the public health law relating to the program of all-inclusive care for the elderly (PACE), as proposed in legislative bills numbers S. 8903 and A. 9542, are amended to read as follows:

§ 2999-u. Licensure. 1. The commissioner shall license an entity applying for licensure as a PACE organization if the [~~entity~~] applicant demonstrates to the satisfaction of the commissioner that the applicant will:

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

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

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

(d) [~~complies~~] comply with this article, the applicable provisions of articles twenty-eight, thirty-six and forty-four of this chapter and regulations thereunder, and regulations of the commissioner under this article; and

(e) [~~enters~~] enter into a PACE organization contract and agreement with the department and 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)~~] (b) A PACE organization and its incorporators, directors, sponsors, stockholders, members, 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, member, 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)~~] (c) 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)~~] (d) 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. (a) The commissioner shall establish in regulation a unified licensure process for PACE organizations that includes the applicable program requirements of this article and articles twenty-eight, thirty-six and forty-four of this chapter.

(b) 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) (i) be at least fifty-five years old; [~~and~~

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

~~(c)~~] (iii) reside within the PACE organization's approved service area; [~~and~~

~~(d)~~] (iv) be able to be maintained safely in the community-based setting with the assistance of the PACE organization; [~~or (e)~~] and

(v) meet any additional program specific eligibility conditions imposed under the PACE program agreement between the PACE organization, the department, and CMS; or

(b) be otherwise eligible to participate in a PACE demonstration or specialty program authorized by the federal PACE Innovation Act and approved by the department and 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 if approved 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 and applicable laws. 1. The commissioner shall make regulations and take other actions reasonably necessary to implement this article, including the establishment of any rules and processes appropriate for the safe, efficient and orderly administration of the program and for the maintenance and revocation of licensure under 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~~] (a) Licensure granted under this article may, in accordance with the approval by the commissioner, entitle the PACE organization to act in the capacity and perform the activities of a diagnostic and treatment center, home care services agency, health maintenance organization, or managed long term care plan for which licensure or certification is otherwise required under article twenty-eight, thirty-six, or forty-four of this chapter as applicable without such separate license or certification for purposes relating to the PACE.

(b) To the extent that a PACE organization is acting in the capacity or performing an activity for which licensure or certification is otherwise required under article twenty-eight, thirty-six, or forty-four of this chapter, the PACE organization shall comply with the applicable requirements of such articles and any applicable regulations adopted thereunder; except that where such requirements are inconsistent with the requirements of this article or regulations adopted by the commissioner under this article, the requirements of this article and such regulations shall apply.

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. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the public health law relating to the program of all-inclusive care for the elderly (PACE), as proposed in legislative bills numbers S. 8903 and A. 9542, takes effect.