

# 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:

1 Section 1. Section 1 of a chapter of the laws of 2022 amending the  
2 public health law relating to the program of all-inclusive care for the  
3 elderly (PACE), as proposed in legislative bills numbers S. 8903 and A.  
4 9542, is amended to read as follows:  
5 Section 1. Legislative intent. The Program of All-Inclusive Care for  
6 the Elderly ("PACE") is a federally recognized model of comprehensive  
7 care for persons 55 years of age or older who qualify for nursing home  
8 levels of care, who wish to remain in their community, and who are  
9 eligible for Medicaid (see, Sections 1894 and 1934 to Title XVIII of the  
10 Social Security Act; 42 CFR 460). Uniformity of regulation of PACE  
11 organizations will promote efficiency for the organizations and for the  
12 state. It is the intent of the legislature through this act to provide a  
13 more efficient and uniform structure to promote the prudent development  
14 of PACE organizations, to promote better health outcomes for New Yorkers  
15 enrolled in PACE organizations, and to realize administrative efficien-  
16 cies. It is the intent of the legislature to recognize PACE organiza-  
17 tions as integrated providers of care. PACE organizations shall not be  
18 construed to be managed care organizations under article 44 of the  
19 public health law, provided however that this shall not prohibit the  
20 application of requirements under such article or other applicable laws,  
21 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.

LBD04216-01-3

1 of health or superintendent of insurance pursuant to regulations promul-  
 2 gated by the commissioner under this act.

3 § 2. Sections 2999-u, 2999-v, 2999-w, 2999-x and 2999-y of the public  
 4 health law, as added by a chapter of the laws of 2022 amending the  
 5 public health law relating to the program of all-inclusive care for the  
 6 elderly (PACE), as proposed in legislative bills numbers S. 8903 and A.  
 7 9542, are amended to read as follows:

8 § 2999-u. Licensure. 1. The commissioner shall license an entity  
 9 applying for licensure as a PACE organization if the [entity] applicant  
 10 demonstrates to the satisfaction of the commissioner that the applicant  
 11 will:

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

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

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

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

22 (e) [~~enters~~] enter into a PACE organization contract and agreement  
 23 with the department and CMS.

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

26 (~~b~~)] A PACE organization shall serve an approved geographic service  
 27 area.

28 [~~(e)~~] (~~b~~) A PACE organization and its incorporators, directors, spon-  
 29 sors, stockholders, members, and operators shall have the experience,  
 30 competence, and standing in the community as to give reasonable assur-  
 31 ance of their ability to operate the organization to provide a consist-  
 32 ently high level of care for enrollees and comply with this article. A  
 33 PACE organization shall demonstrate that where any incorporator, direc-  
 34 tor, sponsor, stockholder, member, or operator of the organization  
 35 holds, or within the past seven years has held, a controlling interest  
 36 or been a controlling person in an organization or facility licensed  
 37 under this chapter, a consistently high level of care has been rendered  
 38 in each such organization or facility.

39 [~~(d)~~] (~~c~~) A PACE organization shall meet requirements for financial  
 40 solvency under paragraph (c) of subdivision one of section forty-four  
 41 hundred three of this chapter, including a contingent reserve require-  
 42 ment which may, by regulations of the commissioner, be different from  
 43 that required by that paragraph.

44 [~~(e)~~] (~~d~~) A PACE organization shall be deemed to be a health mainte-  
 45 nance organization under article forty-four of this chapter[~~, but sole-~~  
 46 ~~ly~~] for purposes of subdivision one of section sixty-five hundred twen-  
 47 ty-seven of the education law.

48 3. (~~a~~) The commissioner shall establish in regulation a unified licen-  
 49 sure process for PACE organizations that includes the applicable program  
 50 requirements of this article and articles twenty-eight, thirty-six and  
 51 forty-four of this chapter.

52 (~~b~~) A license under this article shall require approval of the public  
 53 health and health planning council.

54 § 2999-v. Eligibility and enrollment. 1. To be eligible to enroll in a  
 55 PACE organization, an individual shall:

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

1 ~~(b)~~ (ii) meet the eligibility requirements for a nursing home level  
2 of care; [~~and~~  
3 ~~(e)~~ (iii) reside within the PACE organization's approved service  
4 area; [~~and~~  
5 ~~(d)~~ (iv) be able to be maintained safely in the community-based  
6 setting with the assistance of the PACE organization; [~~or (e)~~] and  
7 (v) meet any additional program specific eligibility conditions  
8 imposed under the PACE program agreement between the PACE organization,  
9 the department, and CMS; or

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

13 2. Enrollment in a PACE organization shall be voluntary for the eligi-  
14 ble individual.

15 § 2999-w. Benefits. 1. A PACE organization shall provide the following  
16 benefits to its enrollees:

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

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

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

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

27 § 2999-x. Reimbursement. 1. The commissioner shall develop and imple-  
28 ment, consistent with applicable federal requirements, reimbursement  
29 rates and methodologies for Medicaid services provided by a PACE organ-  
30 ization to its enrollees.

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

39 § 2999-y. Regulations and applicable laws. 1. The commissioner shall  
40 make regulations and take other actions reasonably necessary to imple-  
41 ment this article, including the establishment of any rules and proc-  
42 esses appropriate for the safe, efficient and orderly administration of  
43 the program and for the maintenance and revocation of licensure under  
44 this article.

45 2. [~~The commissioner shall develop and implement a unified process for~~  
46 ~~PACE organizations to complete reports, submit to audits, respond to~~  
47 ~~surveys, and provide other information, including maximizing conformity~~  
48 ~~with federal requirements~~] (a) Licensure granted under this article may,  
49 in accordance with the approval by the commissioner, entitle the PACE  
50 organization to act in the capacity and perform the activities of a  
51 diagnostic and treatment center, home care services agency, health main-  
52 tenance organization, or managed long term care plan for which licensure  
53 or certification is otherwise required under article twenty-eight, thir-  
54 ty-six, or forty-four of this chapter as applicable without such sepa-  
55 rate license or certification for purposes relating to the PACE.

1 (b) To the extent that a PACE organization is acting in the capacity  
2 or performing an activity for which licensure or certification is other-  
3 wise required under article twenty-eight, thirty-six, or forty-four of  
4 this chapter, the PACE organization shall comply with the applicable  
5 requirements of such articles and any applicable regulations adopted  
6 thereunder; except that where such requirements are inconsistent with  
7 the requirements of this article or regulations adopted by the commis-  
8 sioner under this article, the requirements of this article and such  
9 regulations shall apply.

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

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