

105TH CONGRESS
1ST SESSION

H. R. 1464

To amend titles XVIII and XIX of the Social Security Act to expand and make permanent the availability of cost-effective, comprehensive acute and long-term care services to frail elderly persons through Programs of All-inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1997

Mr. THOMAS (for himself, Mr. CARDIN, Mr. BILIRAKIS, and Mr. STARK) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XVIII and XIX of the Social Security Act to expand and make permanent the availability of cost-effective, comprehensive acute and long-term care services to frail elderly persons through Programs of All-inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Programs of All-inclu-
3 sive Care for the Elderly (PACE) Coverage Act of 1997”.

4 **SEC. 2, COVERAGE OF PACE UNDER THE MEDICARE PRO-**
5 **GRAM.**

6 (a) IN GENERAL.—Title XVIII of the Social Security
7 Act is amended by adding at the end the following new
8 section:

9 “PAYMENTS TO, AND COVERAGE OF BENEFITS UNDER,
10 PROGRAMS OF ALL-INCLUSIVE CARE FOR THE EL-
11 DERLY (PACE)

12 “SEC. 1894. (a) RECEIPT OF BENEFITS THROUGH
13 ENROLLMENT IN PACE PROGRAM; DEFINITIONS FOR
14 PACE PROGRAM RELATED TERMS.—

15 “(1) BENEFITS THROUGH ENROLLMENT IN A
16 PACE PROGRAM.—In accordance with this section, in
17 the case of an individual who is entitled to benefits
18 under part A or enrolled under part B and who is
19 a PACE program eligible individual (as defined in
20 paragraph (5)) with respect to a PACE program of-
21 fered by a PACE provider under a PACE program
22 agreement—

23 “(A) the individual may enroll in the pro-
24 gram under this section; and

25 “(B) so long as the individual is so en-
26 rolled and in accordance with regulations—

1 “(i) the individual shall receive bene-
2 fits under this title solely through such
3 program, and

4 “(ii) the PACE provider is entitled to
5 payment under and accordance with this
6 section and such agreement for provision
7 of such benefits.

8 “(2) PACE PROGRAM DEFINED.—For purposes
9 of this section and section 1833, the term ‘PACE
10 program’ means a program of all-inclusive care for
11 the elderly that meets the following requirements:

12 “(A) OPERATION.—The entity operating
13 the program is a PACE provider (as defined in
14 paragraph (3)).

15 “(B) COMPREHENSIVE BENEFITS.—The
16 program provides comprehensive health care
17 services to PACE program eligible individuals
18 in accordance with the PACE program agree-
19 ment and regulations under this section.

20 “(C) TRANSITION.—In the case of an indi-
21 vidual who is enrolled under the program under
22 this section and whose enrollment ceases for
23 any reason (including the individual no longer
24 qualifies as a PACE program eligible individual,
25 the termination of a PACE program agreement,

1 or otherwise), the program provides assistance
2 to the individual in obtaining necessary transi-
3 tional care through appropriate referrals and
4 making the individual’s medical records avail-
5 able to new providers.

6 “(3) PACE PROVIDER DEFINED.—

7 “(A) IN GENERAL.—For purposes of this
8 section, the term ‘PACE provider’ means an en-
9 tity that—

10 “(i) subject to subparagraph (B), is
11 (or is a distinct part of) a public entity or
12 a private, nonprofit entity organized for
13 charitable purposes under section
14 501(c)(3) of the Internal Revenue Code of
15 1986, and

16 “(ii) has entered into a PACE pro-
17 gram agreement with respect to its oper-
18 ation of a PACE program.

19 “(B) TREATMENT OF PRIVATE, FOR-PROF-
20 IT PROVIDERS.—Clause (i) of subparagraph (A)
21 shall not apply—

22 “(i) to entities subject to a dem-
23 onstration project waiver under subsection
24 (h); and

1 “(ii) after the date the report under
2 section 5(b) of the Programs of All-inclu-
3 sive Care for the Elderly (PACE) Coverage
4 Act of 1997 is submitted, unless the Sec-
5 retary determines that any of the findings
6 described in subparagraph (A), (B), or (C)
7 of paragraph (2) of such section are true.

8 “(4) PACE PROGRAM AGREEMENT DEFINED.—
9 For purposes of this section, the term ‘PACE pro-
10 gram agreement’ means, with respect to a PACE
11 provider, an agreement, consistent with this section,
12 section 1933, and regulations promulgated to carry
13 out such sections, between the PACE provider, the
14 Secretary, and a State administering agency for the
15 operation of a PACE program by the provider under
16 such sections.

17 “(5) PACE PROGRAM ELIGIBLE INDIVIDUAL
18 DEFINED.—For purposes of this section, the term
19 ‘PACE program eligible individual’ means, with re-
20 spect to a PACE program, an individual who—

21 “(A) is 55 years of age or older;

22 “(B) subject to subsection (c)(4), is deter-
23 mined under subsection (c) to require the level
24 of care required under the State medicaid plan
25 for coverage of nursing facility services;

1 “(C) resides in the service area of the
2 PACE program; and

3 “(D) meets such other eligibility conditions
4 as may be imposed under the PACE program
5 agreement for the program under subsection
6 (e)(2)(A)(ii).

7 “(6) PACE PROTOCOL.—For purposes of this
8 section, the term ‘PACE protocol’ means the Proto-
9 col for the Program of All-inclusive Care for the El-
10 derly (PACE), as published by On Lok, Inc., as of
11 April 14, 1995.

12 “(7) PACE DEMONSTRATION WAIVER PROGRAM
13 DEFINED.—For purposes of this section, the term
14 ‘PACE demonstration waiver program’ means a
15 demonstration program under either of the following
16 sections (as in effect before the date of their repeal):

17 “(A) Section 603(c) of the Social Security
18 Amendments of 1983 (Public Law 98–21), as
19 extended by section 9220 of the Consolidated
20 Omnibus Budget Reconciliation Act of 1985
21 (Public Law 99–272).

22 “(B) Section 9412(b) of the Omnibus
23 Budget Reconciliation Act of 1986 (Public Law
24 99–509).

1 “(8) STATE ADMINISTERING AGENCY DE-
2 FINED.—For purposes of this section, the term
3 ‘State administering agency’ means, with respect to
4 the operation of a PACE program in a State, the
5 agency of that State (which may be the single agen-
6 cy responsible for administration of the State plan
7 under title XIX in the State) responsible for admin-
8 istering PACE program agreements under this sec-
9 tion and section 1933 in the State.

10 “(9) TRIAL PERIOD DEFINED.—

11 “(A) IN GENERAL.—For purposes of this
12 section, the term ‘trial period’ means, with re-
13 spect to a PACE program operated by a PACE
14 provider under a PACE program agreement,
15 the first 3 contract years under such agreement
16 with respect to such program.

17 “(B) TREATMENT OF ENTITIES PRE-
18 VIOUSLY OPERATING PACE DEMONSTRATION
19 WAIVER PROGRAMS.—Each contract year (in-
20 cluding a year occurring before the effective
21 date of this section) during which an entity has
22 operated a PACE demonstration waiver pro-
23 gram shall be counted under subparagraph (A)
24 as a contract year during which the entity oper-

1 ated a PACE program as a PACE provider
2 under a PACE program agreement.

3 “(10) REGULATIONS.—For purposes of this
4 section, the term ‘regulations’ refers to regulations
5 promulgated under subsection (f) to carry out this
6 section and section 1933.

7 “(b) SCOPE OF BENEFITS; BENEFICIARY SAFE-
8 GUARDS.—

9 “(1) IN GENERAL.—Under a PACE program
10 agreement, a PACE provider shall—

11 “(A) provide to PACE program eligible in-
12 dividuals, regardless of source of payment and
13 directly or under contracts with other entities,
14 at a minimum—

15 “(i) all items and services covered
16 under this title (for individuals enrolled
17 under this section) and all items and serv-
18 ices covered under title XIX, but without
19 any limitation or condition as to amount,
20 duration, or scope and without application
21 of deductibles, copayments, coinsurance, or
22 other cost-sharing that would generally
23 apply under this title or such title, respec-
24 tively; and

1 “(ii) all additional items and services
2 specified in regulations, based upon those
3 required under the PACE protocol;

4 “(B) provide such enrollees access to nec-
5 essary covered items and services 24 hours per
6 day, every day of the year;

7 “(C) provide services to such enrollees
8 through a comprehensive, multidisciplinary
9 health and social services delivery system which
10 integrates acute and long-term care services
11 pursuant to regulations; and

12 “(D) specify the covered items and services
13 that will not be provided directly by the entity,
14 and to arrange for delivery of those items and
15 services through contracts meeting the require-
16 ments of regulations.

17 “(2) QUALITY ASSURANCE; PATIENT SAFE-
18 GUARDS.—The PACE program agreement shall re-
19 quire the PACE provider to have in effect at a mini-
20 mum—

21 “(A) a written plan of quality assurance
22 and improvement, and procedures implementing
23 such plan, in accordance with regulations, and

24 “(B) written safeguards of the rights of
25 enrolled participants (including a patient bill of

1 rights and procedures for grievances and ap-
2 peals) in accordance with regulations and with
3 other requirements of this title and Federal and
4 State law designed for the protection of pa-
5 tients.

6 “(c) ELIGIBILITY DETERMINATIONS.—

7 “(1) IN GENERAL.—The determination of
8 whether an individual is a PACE program eligible
9 individual—

10 “(A) shall be made under and in accord-
11 ance with the PACE program agreement, and

12 “(B) who is entitled to medical assistance
13 under title XIX, shall be made (or who is not
14 so entitled, may be made) by the State admin-
15 istering agency.

16 “(2) CONDITION.—An individual is not a PACE
17 program eligible individual (with respect to payment
18 under this section) unless the individual health sta-
19 tus has been determined, in accordance with regula-
20 tions, to be comparable to the health status of indi-
21 viduals who have participated in the PACE dem-
22 onstration waiver programs. Such determination
23 shall be based upon information on health status
24 and related indicators (such as medical diagnoses
25 and measures of activities of daily living, instrumen-

1 tal activities of daily living, and cognitive impair-
2 ment) that are part of a uniform minimum data set
3 collected by PACE providers on potential eligible in-
4 dividuals.

5 “(3) ANNUAL ELIGIBILITY RECERTIFI-
6 CATIONS.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), the determination described in sub-
9 section (a)(5)(B) for an individual shall be re-
10 evaluated at least annually.

11 “(B) EXCEPTION.—The requirement of
12 annual reevaluation under subparagraph (A)
13 may be waived during a period in accordance
14 with regulations in those cases where the State
15 administering agency determines that there is
16 no reasonable expectation of improvement or
17 significant change in an individual’s condition
18 during the period because of the advanced age,
19 severity of the advanced age, severity of chronic
20 condition, or degree of impairment of functional
21 capacity of the individual involved.

22 “(4) CONTINUATION OF ELIGIBILITY.—An indi-
23 vidual who is a PACE program eligible individual
24 may be deemed to continue to be such an individual
25 notwithstanding a determination that the individual

1 no longer meets the requirement of subsection
2 (a)(5)(B) if, in accordance with regulations, in the
3 absence of continued coverage under a PACE pro-
4 gram the individual reasonably would be expected to
5 meet such requirement within the succeeding 6-
6 month period.

7 “(5) ENROLLMENT; DISENROLLMENT.—The en-
8 rollment and disenrollment of PACE program eligi-
9 ble individuals in a PACE program shall be pursu-
10 ant to regulations and the PACE program agree-
11 ment and shall permit enrollees to voluntarily
12 disenroll without cause at any time.

13 “(d) PAYMENTS TO PACE PROVIDERS ON A
14 CAPITATED BASIS.—

15 “(1) IN GENERAL.—In the case of a PACE pro-
16 vider with a PACE program agreement under this
17 section, except as provided in this subsection or by
18 regulations, the Secretary shall make prospective
19 monthly payments of a capitation amount for each
20 PACE program eligible individual enrolled under the
21 agreement under this section in the same manner
22 and from the same sources as payments are made
23 to an eligible organization under a risk-sharing con-
24 tract under section 1876. Such payments shall be

1 subject to adjustment in the manner described in
2 section 1876(a)(1)(E).

3 “(2) CAPITATION AMOUNT.—The capitation
4 amount to be applied under this subsection for a
5 provider for a contract year shall be an amount
6 specified in the PACE program agreement for the
7 year. Such amount shall be based upon payment
8 rates established under section 1876 for risk-sharing
9 contracts and shall be adjusted to take into account
10 the comparative frailty of PACE enrollees and such
11 other factors as the Secretary determines to be ap-
12 propriate. Such amount under such an agreement
13 shall be computed in a manner so that the total pay-
14 ment level for all PACE program eligible individuals
15 enrolled under a program is less than the projected
16 payment under this title for a comparable population
17 not enrolled under a PACE program.

18 “(e) PACE PROGRAM AGREEMENT.—

19 “(1) REQUIREMENT.—

20 “(A) IN GENERAL.—The Secretary, in
21 close cooperation with the State administering
22 agency, shall establish procedures for entering
23 into, extending, and terminating PACE pro-
24 gram agreements for the operation of PACE
25 programs by entities that meet the require-

1 ments for a PACE provider under this section,
2 section 1933, and regulations.

3 “(B) NUMERICAL LIMITATION.—

4 “(i) IN GENERAL.—The Secretary
5 shall not permit the number of PACE pro-
6 viders with which agreements are in effect
7 under this section or under section 9412(b)
8 of the Omnibus Budget Reconciliation Act
9 of 1986 to exceed—

10 “(I) 40 as of the date of the en-
11 actment of this section, or

12 “(II) as of each succeeding anni-
13 versary of such date, the numerical
14 limitation under this subparagraph for
15 the preceding year plus 20.

16 Subclause (II) shall apply without regard
17 to the actual number of agreements in ef-
18 fect as of a previous anniversary date.

19 “(ii) TREATMENT OF CERTAIN PRI-
20 VATE, FOR-PROFIT PROVIDERS.—The nu-
21 merical limitation in clause (i) shall not
22 apply to a PACE provider that—

23 “(I) is operating under a dem-
24 onstration project waiver under sub-
25 section (h), or

1 “(II) was operating under such a
2 waiver and subsequently qualifies for
3 PACE provider status pursuant to
4 subsection (a)(3)(B)(ii).

5 “(2) SERVICE AREA AND ELIGIBILITY.—

6 “(A) IN GENERAL.—A PACE program
7 agreement for a PACE program—

8 “(i) shall designate the service area of
9 the program;

10 “(ii) may provide additional require-
11 ments for individuals to qualify as PACE
12 program eligible individuals with respect to
13 the program;

14 “(iii) shall be effective for a contract
15 year, but may be extended for additional
16 contract years in the absence of a notice by
17 a party to terminate and is subject to ter-
18 mination by the Secretary and the State
19 administering agency at any time for cause
20 (as provided under the agreement);

21 “(iv) shall require a PACE provider to
22 meet all applicable State and local laws
23 and requirements; and

24 “(v) shall have such additional terms
25 and conditions as the parties may agree to

1 consistent with this section and regula-
2 tions.

3 “(B) SERVICE AREA OVERLAP.—In des-
4 ignating a service area under a PACE program
5 agreement under subparagraph (A)(i), the Sec-
6 retary (in consultation with the State admin-
7 istering agency) may exclude from designation
8 an area that is already covered under another
9 PACE program agreement, in order to avoid
10 unnecessary duplication of services and avoid
11 impairing the financial and service viability of
12 an existing program.

13 “(3) DATA COLLECTION.—

14 “(A) IN GENERAL.—Under a PACE pro-
15 gram agreement, the PACE provider shall—

16 “(i) collect data,

17 “(ii) maintain, and afford the Sec-
18 retary and the State administering agency
19 access to, the records relating to the pro-
20 gram, including pertinent financial, medi-
21 cal, and personnel records, and

22 “(iii) make to the Secretary and the
23 State administering agency reports that
24 the Secretary finds (in consultation with
25 State administering agencies) necessary to

1 monitor the operation, cost, and effective-
2 ness of the PACE program under this Act.

3 “(B) REQUIREMENTS DURING TRIAL PE-
4 RIOD.—During the first three years of oper-
5 ation of a PACE program (either under this
6 section or under a PACE demonstration waiver
7 program), the PACE provider shall provide
8 such additional data as the Secretary specifies
9 in regulations in order to perform the oversight
10 required under paragraph (4)(A).

11 “(4) OVERSIGHT.—

12 “(A) ANNUAL, CLOSE OVERSIGHT DURING
13 TRIAL PERIOD.—During the trial period (as de-
14 fined in subsection (a)(9)) with respect to a
15 PACE program operated by a PACE provider,
16 the Secretary (in cooperation with the State ad-
17 ministering agency) shall conduct a comprehen-
18 sive annual review of the operation of the
19 PACE program by the provider in order to as-
20 sure compliance with the requirements of this
21 section and regulations. Such a review shall in-
22 clude—

23 “(i) an on-site visit to the program
24 site;

1 “(ii) comprehensive assessment of a
2 provider’s fiscal soundness;

3 “(iii) comprehensive assessment of the
4 provider’s capacity to provide all PACE
5 services to all enrolled participants;

6 “(iv) detailed analysis of the entity’s
7 substantial compliance with all significant
8 requirements of this section and regula-
9 tions; and

10 “(v) any other elements the Secretary
11 or State agency considers necessary or ap-
12 propriate.

13 “(B) CONTINUING OVERSIGHT.—After the
14 trial period, the Secretary (in cooperation with
15 the State administering agency) shall continue
16 to conduct such review of the operation of
17 PACE providers and PACE programs as may
18 be appropriate, taking into account the per-
19 formance level of a provider and compliance of
20 a provider with all significant requirements of
21 this section and regulations.

22 “(C) DISCLOSURE.—The results of reviews
23 under this paragraph shall be reported prompt-
24 ly to the PACE provider, along with any rec-
25 ommendations for changes to the provider’s

1 program, and shall be made available to the
2 public upon request.

3 “(5) TERMINATION OF PACE PROVIDER AGREE-
4 MENTS.—

5 “(A) IN GENERAL.—Under regulations—

6 “(i) the Secretary or a State admin-
7 istering agency may terminate a PACE
8 program agreement for cause, and

9 “(ii) a PACE provider may terminate
10 such an agreement after appropriate notice
11 to the Secretary, the State agency, and en-
12 rollees.

13 “(B) CAUSES FOR TERMINATION.—In ac-
14 cordance with regulations establishing proce-
15 dures for termination of PACE program agree-
16 ments, the Secretary may terminate a PACE
17 program agreement with a PACE provider for,
18 among other reasons, the fact that—

19 “(i) the Secretary or State admin-
20 istering agency determines that—

21 “(I) there are significant defi-
22 ciencies in the quality of care provided
23 to enrolled participants; or

24 “(II) the provider has failed to
25 comply substantially with conditions

1 for a program or provider under this
2 section or section 1933; and

3 “(ii) the entity has failed to develop
4 and successfully initiate, within 30 days
5 after the date of notice of such a deter-
6 mination, and continue implementation of
7 a plan to correct the deficiencies.

8 “(C) TERMINATION AND TRANSITION PRO-
9 CEDURES.—An entity whose PACE provider
10 agreement is terminated under this paragraph
11 shall implement the transition procedures re-
12 quired under subsection (a)(2)(C).

13 “(6) SECRETARY’S OVERSIGHT; ENFORCEMENT
14 AUTHORITY.—

15 “(A) IN GENERAL.—Under regulations, if
16 the Secretary determines (after consultation
17 with the State administering agency) that a
18 PACE provider is failing substantially to com-
19 ply with the requirements of this section and
20 regulations, the Secretary (and the State ad-
21 ministering agency) may take any or all of the
22 following actions:

23 “(i) Condition the continuation of the
24 PACE program agreement upon timely
25 execution of a corrective action plan.

1 “(ii) Withhold some or all further
2 payments under the PACE program agree-
3 ment under this section or section 1933
4 with respect to PACE program services
5 furnished by such provider until the defi-
6 ciencies have been corrected.

7 “(iii) Terminate such agreement.

8 “(B) APPLICATION OF INTERMEDIATE
9 SANCTIONS.—Under regulations, the Secretary
10 may provide for the application against a
11 PACE provider of remedies described in section
12 1876(i)(6)(B) or 1903(m)(5)(B) in the case of
13 violations by the provider of the type described
14 in section 1876(i)(6)(A) or 1903(m)(5)(A), re-
15 spectively (in relation to agreements, enrollees,
16 and requirements under this section or section
17 1933, respectively).

18 “(7) PROCEDURES FOR TERMINATION OR IMPO-
19 SITION OF SANCTIONS.—Under regulations, the pro-
20 visions of section 1876(i)(9) shall apply to termi-
21 nation and sanctions respecting a PACE program
22 agreement and PACE provider under this subsection
23 in the same manner as they apply to a termination
24 and sanctions with respect to a contract and an eli-
25 gible organization under section 1876.

1 “(f) REGULATIONS.—

2 “(1) IN GENERAL.—The Secretary shall issue
3 regulations to carry out this section and section
4 1933.

5 “(2) USE OF PACE PROTOCOL.—

6 “(A) IN GENERAL.—In issuing such regu-
7 lations, the Secretary shall, to the extent con-
8 sistent with the provisions of this section, incor-
9 porate the requirements applied to PACE dem-
10 onstration waiver programs under the PACE
11 protocol.

12 “(B) FLEXIBILITY.—The Secretary (in
13 close consultation with State administering
14 agencies) may modify or waive such provisions
15 of the PACE protocol in order to provide for
16 reasonable flexibility in adapting the PACE
17 service delivery model to the needs of particular
18 organizations (such as those in rural areas or
19 those that may determine it appropriate to use
20 non-staff physicians accordingly to State licens-
21 ing law requirements) under this section and
22 section 1933 where such flexibility is not incon-
23 sistent with and would not impair the essential
24 elements, objectives, and requirements of the
25 this section, including—

1 “(i) the focus on frail elderly qualify-
2 ing individuals who require the level of
3 care provided in a nursing facility;

4 “(ii) the delivery of comprehensive, in-
5 tegrated acute and long-term care services;

6 “(iii) the interdisciplinary team ap-
7 proach to care management and service de-
8 livery;

9 “(iv) capitated, integrated financing
10 that allows the provider to pool payments
11 received from public and private programs
12 and individuals; and

13 “(v) the assumption by the provider
14 over time of full financial risk.

15 “(3) APPLICATION OF CERTAIN ADDITIONAL
16 BENEFICIARY AND PROGRAM PROTECTIONS.—

17 “(A) IN GENERAL.—In issuing such regu-
18 lations and subject to subparagraph (B), the
19 Secretary may apply with respect to PACE pro-
20 grams, providers, and agreements such require-
21 ments of sections 1876 and 1903(m) relating to
22 protection of beneficiaries and program integ-
23 rity as would apply to eligible organizations
24 under risk-sharing contracts under section 1876
25 and to health maintenance organizations under

1 prepaid capitation agreements under section
2 1903(m).

3 “(B) CONSIDERATIONS.—In issuing such
4 regulations, the Secretary shall—

5 “(i) take into account the differences
6 between populations served and benefits
7 provided under this section and under sec-
8 tions 1876 and 1903(m);

9 “(ii) not include any requirement that
10 conflicts with carrying out PACE pro-
11 grams under this section; and

12 “(iii) not include any requirement re-
13 stricting the proportion of enrollees who
14 are eligible for benefits under this title or
15 title XIX

16 “(g) WAIVERS OF REQUIREMENTS.—With respect to
17 carrying out a PACE program under this section, the fol-
18 lowing requirements of this title (and regulations relating
19 to such requirements) are waived and shall not apply:

20 “(1) Section 1812, insofar as it limits coverage
21 of institutional services.

22 “(2) Sections 1813, 1814, 1833, and 1886, in-
23 sofar as such sections relate to rules for payment for
24 benefits.

1 “(3) Sections 1814(a)(2)(B), 1814(a)(2)(C),
2 and 1835(a)(2)(A), insofar as they limit coverage of
3 extended care services or home health services.

4 “(4) Section 1861(i), insofar as it imposes a 3-
5 day prior hospitalization requirement for coverage of
6 extended care services.

7 “(5) Sections 1862(a)(1) and 1862(a)(9), inso-
8 far as they may prevent payment for PACE program
9 services to individuals enrolled under PACE pro-
10 grams.

11 “(h) DEMONSTRATION PROJECT FOR FOR-PROFIT
12 ENTITIES.—

13 “(1) IN GENERAL.—In order to demonstrate
14 the operation of a PACE program by a private, for-
15 profit entity, the Secretary (in close consultation
16 with State administering agencies) shall grant waiv-
17 ers from the requirement under subsection (a)(3)
18 that a PACE provider may not be a for-profit, pri-
19 vate entity.

20 “(2) SIMILAR TERMS AND CONDITIONS.—

21 “(A) IN GENERAL.—Except as provided
22 under subparagraph (B), and paragraph (1),
23 the terms and conditions for operation of a
24 PACE program by a provider under this sub-
25 section shall be the same as those for PACE

1 providers that are nonprofit, private organiza-
2 tions.

3 “(B) NUMERICAL LIMITATION.—The num-
4 ber of programs for which waivers are granted
5 under this subsection shall not exceed 10. Pro-
6 grams with waivers granted under this sub-
7 section shall not be counted against the numeri-
8 cal limitation specified in subsection (e)(1)(B).

9 “(i) MISCELLANEOUS PROVISIONS.—

10 “(1) CONSTRUCTION.—Nothing in this section
11 or section 1933 shall be construed as preventing a
12 PACE provider from entering into contracts with
13 nongovernmental payers for the care of PACE pro-
14 gram eligible individuals who are not eligible for
15 benefits under part A, or enrolled under part B, or
16 eligible for medical assistance under title XIX.”.

17 **SEC. 3. ESTABLISHMENT OF PACE PROGRAM AS MEDICAID**
18 **STATE OPTION.**

19 (a) IN GENERAL.—Title XIX of the Social Security
20 Act is amended—

21 (1) in section 1905(a) (42 U.S.C. 1396d(a))—

22 (A) by striking “and” at the end of para-
23 graph (24);

24 (B) by redesignating paragraph (25) as
25 paragraph (26); and

1 (C) by inserting after paragraph (24) the
2 following new paragraph:

3 “(25) services furnished under a PACE pro-
4 gram under section 1933 to PACE program eligible
5 individuals enrolled under the program under such
6 section; and”;

7 (2) by redesignating section 1933 as section
8 1934, and

9 (3) by inserting after section 1932 the following
10 new section:

11 **“SEC. 1933. PROGRAM OF ALL-INCLUSIVE CARE FOR THE**
12 **ELDERLY (PACE).**

13 “(a) OPTION.—

14 “(1) IN GENERAL.—A State may elect to pro-
15 vide medical assistance under this section with re-
16 spect to PACE program services to PACE program
17 eligible individuals who are eligible for medical as-
18 sistance under the plan and who are enrolled in a
19 PACE program under a PACE program agreement.
20 Such individuals need not be eligible for benefits
21 under part A, or enrolled under part B, of title
22 XVIII to be eligible to enroll under this section.

23 “(2) BENEFITS THROUGH ENROLLMENT IN
24 PACE PROGRAM.—In the case of an individual en-

1 rolled with a PACE program pursuant to such an
2 election—

3 “(A) the individual shall receive benefits
4 under the plan solely through such program,
5 and

6 “(B) the PACE provider shall receive pay-
7 ment in accordance with the PACE program
8 agreement for provision of such benefits.

9 “(3) APPLICATION OF DEFINITIONS.—The defi-
10 nitions of terms under section 1894(a) shall apply
11 under this section in the same manner as they apply
12 under section 1894.

13 “(b) APPLICATION OF MEDICARE TERMS AND CON-
14 DITIONS.—Except as provided in this section, the terms
15 and conditions for the operation and participation of
16 PACE program eligible individuals in PACE programs of-
17 fered by PACE providers under PACE program agree-
18 ments under section 1894 shall apply for purposes of this
19 section.

20 “(c) ADJUSTMENT IN PAYMENT AMOUNTS.—

21 “(1) CAPITATION PAYMENT.—In the case of in-
22 dividuals enrolled in a PACE program under this
23 section, the amount of payment under this section
24 shall not be the amount calculated under section
25 1894(d), but shall be an amount, specified under the

1 PACE agreement, which is less than the amount
2 that would otherwise have been made under the
3 State plan if the individuals were not so enrolled.
4 The payment under this section shall be in addition
5 to any payment made under section 1894 for indi-
6 viduals who are enrolled in a PACE program under
7 such section.

8 “(2) TRANSITION DURING TRIAL PERIOD.—

9 “(A) IN GENERAL.—Consistent with regu-
10 lations, a PACE provider may elect to receive
11 payment for a portion of its allowable operating
12 losses (as defined in such regulation) during the
13 trial period. Such portion shall decrease over
14 the duration of the trial period.

15 “(B) PAYMENT UNDER PLAN.—Payment
16 under this paragraph shall represent only the
17 portion of such losses attributable to State
18 plans under this title.

19 “(C) USE OF PAYMENTS.—Payments
20 under this paragraph may only be used in a
21 manner specified in regulations.

22 “(d) WAIVERS OF REQUIREMENTS.—With respect to
23 carrying out a PACE program under this section, the fol-
24 lowing requirements of this title (and regulations relating
25 to such requirements) shall not apply:

1 “(1) Section 1902(a)(1), relating to any re-
2 quirement that PACE programs or PACE program
3 services be provided in all areas of a State.

4 “(2) Section 1902(a)(10), insofar as such sec-
5 tion relates to comparability of services among dif-
6 ferent population groups.

7 “(3) Sections 1902(a)(23) and 1915(b)(4), re-
8 lating to freedom of choice of providers under a
9 PACE program.

10 “(4) Section 1903(m)(2)(A), insofar as it re-
11 stricts a PACE provider receiving prepaid capitation
12 payments.”.

13 “(e) POST-ELIGIBILITY TREATMENT OF INCOME.—
14 A State may provide for post-eligibility treatment of in-
15 come for individuals enrolled in PACE programs under
16 this section in the same manner as a State treats post-
17 eligibility income for individuals receiving services under
18 a waiver under section 1915(e).”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 1902(j) of such Act (42 U.S.C.
21 1396a(j)) is amended by striking “(25)” and insert-
22 ing “(26)”.

23 (2) Section 1924(a)(5) of such Act (42 U.S.C.
24 1396r-5(a)(5)) is amended—

1 (A) in the heading, by striking “FROM OR-
2 GANIZATIONS RECEIVING CERTAIN WAIVERS”
3 and inserting “UNDER PACE PROGRAMS”, and

4 (B) by striking “from any organization”
5 and all that follows and inserting “under a
6 PACE demonstration waiver program (as de-
7 fined in subsection (a)(9) of section 1933) or
8 under a PACE program under such section.”.

9 (3) Section 1903(f)(4)(C) of such Act (42
10 U.S.C. 1396b(f)(4)(C)) is amended by inserting “or
11 who is a PACE program eligible individual enrolled
12 in a PACE program under section 1933” after “sec-
13 tion 1902(a)(10)(A)”.

14 **SEC. 4. EFFECTIVE DATE; TRANSITION.**

15 (a) **TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE**
16 **DATE.**—The Secretary of Health and Human Services
17 shall promulgate regulations to carry out this Act in a
18 timely manner. Such regulations shall be designed so that
19 entities may establish and operate PACE programs under
20 sections 1894 and 1933 for periods beginning not later
21 than 1 year after the date of the enactment of this Act.

22 (b) **EXPANSION AND TRANSITION FOR PACE DEM-**
23 **ONSTRATION PROJECT WAIVERS.**—

24 (1) **EXPANSION IN CURRENT NUMBER OF DEM-**
25 **ONSTRATION PROJECTS.**—Paragraph (1) of section

1 9412(b) of the Omnibus Budget Reconciliation Act
2 of 1986 is amended by inserting before the period at
3 the end the following: “, except that the Secretary
4 shall grant waivers of such requirements to up to
5 the applicable numerical limitation specified in sec-
6 tion 1894(e)(1)(B) of the Social Security Act”.

7 (2) EXTENSION.—Paragraph (2)(C) of such
8 section is amended by adding at the end the follow-
9 ing: “In granting further extensions, an organization
10 shall not be required to provide for reporting of in-
11 formation which is only required because of the dem-
12 onstration nature of the project.”.

13 (3) ELIMINATION OF REPLICATION REQUIRE-
14 MENT.—Subparagraph (B) of paragraph (2) of such
15 section shall not apply to waivers granted under
16 such section after the date of the enactment of this
17 Act.

18 (4) TIMELY CONSIDERATION OF APPLICA-
19 TIONS.—In considering completed an application for
20 waivers under such section before the effective date
21 of repeals under subsection (c), subject to the nu-
22 merical limitation under the amendment made by
23 paragraph (1), the application shall be deemed
24 granted unless the Secretary of Health and Human
25 Services, within 90 days after the date of its submis-

1 sion to the Secretary, either denies such request in
2 writing or informs the applicant in writing with re-
3 spect to any additional information which is needed
4 in order to make a final determination with respect
5 to the application. After the date the Secretary re-
6 ceives such additional information, the application
7 shall be deemed granted unless the Secretary, within
8 90 days of such date, denies such request.

9 (c) PRIORITY AND SPECIAL CONSIDERATION IN AP-
10 PPLICATION.—During the 3-year period beginning on the
11 date of the enactment of this Act—

12 (1) PROVIDER STATUS.—The Secretary of
13 Health and Human Services shall give priority, in
14 processing applications of entities to qualify as
15 PACE programs under section 1894 or 1933 of the
16 Social Security Act—

17 (A) first, to entities that are operating a
18 PACE demonstration waiver program (as de-
19 fined in section 1894(a)(7) of such Act), and

20 (B) then entities that have applied to oper-
21 ate such a program as of May 1, 1997.

22 (2) NEW WAIVERS.—The Secretary shall give
23 priority, in the awarding of additional waivers under
24 section 9412(b) of the Omnibus Budget Reconcili-
25 ation Act of 1986, to any entities that have applied

1 for such waivers under such section as of May 1,
2 1997.

3 (3) SPECIAL CONSIDERATION.—The Secretary
4 shall give special consideration, in the processing of
5 applications described in paragraph (1) and the
6 awarding of waivers described in paragraph (2), to
7 an entity which either, as of May 1, 1997—

8 (A) has formally contracted with a State to
9 provide services for which payment is made on
10 a capitated basis with an understanding that
11 entity was seeking to become a PACE provider,
12 or

13 (B) through formal activities (such as en-
14 tering into contracts for feasibility studies) has
15 indicated a specific intent to become a PACE
16 provider.

17 (d) REPEAL OF CURRENT PACE DEMONSTRATION
18 PROJECT WAIVER AUTHORITY.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 the following provisions of law are repealed:

21 (A) Section 603(c) of the Social Security
22 Amendments of 1983 (Public Law 98–21).

23 (B) Section 9220 of the Consolidated Om-
24 nibus Budget Reconciliation Act of 1985 (Pub-
25 lic Law 99–272).

1 (C) Section 9412(b) of the Omnibus Budg-
2 et Reconciliation Act of 1986 (Public Law 99-
3 509).

4 (2) DELAY IN APPLICATION.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), the repeals made by paragraph (1)
7 shall not apply to waivers granted before the
8 initial effective date of regulations described in
9 subsection (a).

10 (B) APPLICATION TO APPROVED WAIV-
11 ERS.—Such repeals shall apply to waivers
12 granted before such date only after allowing
13 such organizations a transition period (of up to
14 24 months) in order to permit sufficient time
15 for an orderly transition from demonstration
16 project authority to general authority provided
17 under the amendments made by this Act.

18 **SEC. 5. STUDY AND REPORTS.**

19 (a) STUDY.—

20 (1) IN GENERAL.—The Secretary of Health and
21 Human Services (in close consultation with State
22 administering agencies, as defined in section 1894 of
23 the Social Security Act) shall conduct a study of the
24 quality and cost of providing PACE program serv-

1 ices under the Medicare and Medicaid programs
2 under the amendments made by this Act

3 (2) STUDY OF PRIVATE, FOR-PROFIT PROVID-
4 ERS.— Such study shall specifically compare the
5 costs, quality, and access to services by entities that
6 are private, for-profit entities operating under dem-
7 onstration projects waivers granted under section
8 1894(h) of the Social Security Act with the costs,
9 quality, and access to services of other PACE pro-
10 viders.

11 (b) REPORT.—

12 (1) IN GENERAL.—Not later than 4 years after
13 the date of the enactment of this Act, the Secretary
14 shall provide for a report to Congress on the impact
15 of such amendments on quality and cost of services.
16 The Secretary shall include in such report such rec-
17 ommendations for changes in the operation of such
18 amendments as the Secretary deems appropriate.

19 (2) TREATMENT OF PRIVATE, FOR-PROFIT PRO-
20 VIDERS.—The report shall include specific findings
21 on whether any of the following findings is true:

22 (A) The number of covered lives enrolled
23 with entities operating under demonstration
24 project waivers under section 1894(h) of the
25 Social Security Act is fewer than 800 (or such

1 lesser number as the Secretary may find statis-
2 tically sufficient to make determinations re-
3 specting findings described in the succeeding
4 subparagraphs).

5 (B) The population enrolled with such en-
6 tities is less frail than the population enrolled
7 with other PACE providers.

8 (C) Access to or quality of care for individ-
9 uals enrolled with such entities is lower than
10 such access or quality for individuals enrolled
11 with other PACE providers.

12 (D) The application of such section has re-
13 sulted in an increase in expenditures under the
14 Medicare or Medicaid programs above the ex-
15 penditures that would have been made if such
16 section did not apply.

17 (e) INFORMATION INCLUDED IN ANNUAL REC-
18 OMMENDATIONS.—The Physician Payment Review Com-
19 mission shall include in its annual recommendations under
20 section 1845(b) of the Social Security Act, and the Pro-
21 spective Payment Review Commission shall include in its
22 annual recommendations reported under section
23 1886(e)(3)(A) of such Act, recommendations on the meth-
24 odology and level of payments made to PACE providers

- 1 under section 1894(d) of such Act and on the treatment
- 2 of private, for-profit entities as PACE providers.

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