

105TH CONGRESS  
1ST SESSION

# S. 720

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.

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IN THE SENATE OF THE UNITED STATES

MAY 8, 1997

Mr. GRASSLEY (for himself, Mr. INOUE, Mr. FRIST, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. COVERAGE OF PACE UNDER THE MEDICARE PRO-**  
2 **GRAM.**

3 (a) IN GENERAL.—Title XVIII of the Social Security  
4 Act (42 U.S.C. 1395 et seq.) is amended by adding at  
5 the end the following new section:

6 “PAYMENTS TO, AND COVERAGE OF BENEFITS UNDER,  
7 PROGRAMS OF ALL-INCLUSIVE CARE FOR THE EL-  
8 DERLY (PACE)

9 “SEC. 1894. (a) RECEIPT OF BENEFITS THROUGH  
10 ENROLLMENT IN PACE PROGRAM; DEFINITIONS FOR  
11 PACE PROGRAM RELATED TERMS.—

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

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

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

24 “(i) the individual shall receive bene-  
25 fits under this title solely through such  
26 program, and

1                   “(ii) the PACE provider is entitled to  
2                   payment under and in accordance with this  
3                   section and such agreement for provision  
4                   of such benefits.

5                   “(2) PACE PROGRAM DEFINED.—For purposes  
6                   of this section and section 1932, the term ‘PACE  
7                   program’ means a program of all-inclusive care for  
8                   the elderly that meets the following requirements:

9                   “(A) OPERATION.—The entity operating  
10                  the program is a PACE provider (as defined in  
11                  paragraph (3)).

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

17                  “(C) TRANSITION.—In the case of an indi-  
18                  vidual who is enrolled under the program under  
19                  this section and whose enrollment ceases for  
20                  any reason (including the individual no longer  
21                  qualifies as a PACE program eligible individual,  
22                  the termination of a PACE program agreement,  
23                  or otherwise), the program provides assistance  
24                  to the individual in obtaining necessary transi-  
25                  tional care through appropriate referrals and

1 making the individual's medical records avail-  
2 able to new providers.

3 “(3) PACE PROVIDER DEFINED.—

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

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

13 “(ii) has entered into a PACE pro-  
14 gram agreement with respect to its oper-  
15 ation of a PACE program.

16 “(B) TREATMENT OF PRIVATE, FOR-PROF-  
17 IT PROVIDERS.—Clause (i) of subparagraph (A)  
18 shall not apply—

19 “(i) to entities subject to a dem-  
20 onstration project waiver under subsection  
21 (h); and

22 “(ii) after the date the report under  
23 section 5(b) of the Programs of All-inclu-  
24 sive Care for the Elderly (PACE) Coverage  
25 Act of 1997 is submitted, unless the Sec-

1           retary determines that any of the findings  
2           described in subparagraph (A), (B), (C) or  
3           (D) of paragraph (2) of such section are  
4           true.

5           “(4) PACE PROGRAM AGREEMENT DEFINED.—  
6           For purposes of this section, the term ‘PACE pro-  
7           gram agreement’ means, with respect to a PACE  
8           provider, an agreement, consistent with this section,  
9           section 1932 (if applicable), and regulations promul-  
10          gated to carry out such sections, between the PACE  
11          provider and the Secretary, or an agreement between  
12          the PACE provider and a State administering agen-  
13          cy for the operation of a PACE program by the pro-  
14          vider under such sections.

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

19                 “(A) is 55 years of age or older;

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

24                 “(C) resides in the service area of the  
25                 PACE program; and

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

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

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

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

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

23           “(8) STATE ADMINISTERING AGENCY DE-  
24           FINED.—For purposes of this section, the term  
25           ‘State administering agency’ means, with respect to

1 the operation of a PACE program in a State, the  
 2 agency of that State (which may be the single agen-  
 3 cy responsible for administration of the State plan  
 4 under title XIX in the State) responsible for admin-  
 5 istering PACE program agreements under this sec-  
 6 tion and section 1932 in the State.

7 “(9) TRIAL PERIOD DEFINED.—

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

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

24 “(10) REGULATIONS.—For purposes of this  
 25 section, the term ‘regulations’ refers to interim final

1 or final regulations promulgated under subsection (f)  
2 to carry out this section and section 1932.

3 “(b) SCOPE OF BENEFITS; BENEFICIARY SAFE-  
4 GUARDS.—

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

7 “(A) provide to PACE program eligible in-  
8 dividuals, regardless of source of payment and  
9 directly or under contracts with other entities,  
10 at a minimum—

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

21 “(ii) all additional items and services  
22 specified in regulations, based upon those  
23 required under the PACE protocol;



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

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

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

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

18                 “(A) a written plan of quality assurance  
19                 and improvement, and procedures implementing  
20                 such plan, in accordance with regulations, and

21                 “(B) written safeguards of the rights of  
22                 enrolled participants (including a patient bill of  
23                 rights and procedures for grievances and ap-  
24                 peals) in accordance with regulations and with  
25                 other requirements of this title and Federal and

1 State law designed for the protection of pa-  
2 tients.

3 “(c) ELIGIBILITY DETERMINATIONS.—

4 “(1) IN GENERAL.—The determination of  
5 whether an individual is a PACE program eligible  
6 individual—

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

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

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

1 collected by PACE providers on potential eligible in-  
2 dividuals.

3 “(3) ANNUAL ELIGIBILITY RECERTIFI-  
4 CATIONS.—

5 “(A) IN GENERAL.—Subject to subpara-  
6 graph (B), the determination described in sub-  
7 section (a)(5)(B) for an individual shall be re-  
8 evaluated not more frequently than annually.

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

20 “(4) CONTINUATION OF ELIGIBILITY.—An indi-  
21 vidual who is a PACE program eligible individual  
22 may be deemed to continue to be such an individual  
23 notwithstanding a determination that the individual  
24 no longer meets the requirement of subsection  
25 (a)(5)(B) if, in accordance with regulations, in the

1 absence of continued coverage under a PACE pro-  
2 gram the individual reasonably would be expected to  
3 meet such requirement within the succeeding 6-  
4 month period.

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

11 “(d) PAYMENTS TO PACE PROVIDERS ON A  
12 CAPITATED BASIS.—

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

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

16           “(e) PACE PROGRAM AGREEMENT.—

17           “(1) REQUIREMENT.—

18           “(A) IN GENERAL.—The Secretary, in  
19 close cooperation with the State administering  
20 agency, shall establish procedures for entering  
21 into, extending, and terminating PACE pro-  
22 gram agreements for the operation of PACE  
23 programs by entities that meet the require-  
24 ments for a PACE provider under this section,  
25 section 1932, and regulations.

1 “(B) NUMERICAL LIMITATION.—

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

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

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

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

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

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

24 “(II) was operating under such a  
25 waiver and subsequently qualifies for

1 PACE provider status pursuant to  
2 subsection (a)(3)(B)(ii).

3 “(2) SERVICE AREA AND ELIGIBILITY.—

4 “(A) IN GENERAL.—A PACE program  
5 agreement for a PACE program—

6 “(i) shall designate the service area of  
7 the program;

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

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

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

22 “(v) shall have such additional terms  
23 and conditions as the parties may agree to  
24 consistent with this section and regula-  
25 tions.

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

11          “(3) DATA COLLECTION.—

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

14                   “(i) collect data,

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

20                   “(iii) make to the Secretary and the  
21                   State administering agency reports that  
22                   the Secretary finds (in consultation with  
23                   State administering agencies) necessary to  
24                   monitor the operation, cost, and effective-  
25                   ness of the PACE program under this Act.



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

9           “(4) OVERSIGHT.—

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

21                   “(i) an on-site visit to the program  
22                   site;

23                   “(ii) comprehensive assessment of a  
24                   provider’s fiscal soundness;

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

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

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

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

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

1           “(5) TERMINATION OF PACE PROVIDER AGREE-  
2           MENTS.—

3           “(A) IN GENERAL.—Under regulations—

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

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

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

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

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

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

1 for a program or provider under this  
2 section or section 1932; and

3 “(ii) the entity has failed to develop  
4 and successfully initiate, within 30 days of  
5 the receipt of written notice of such a de-  
6 termination, and continue implementation  
7 of 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 1932  
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                  1932, 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           “(8) TIMELY CONSIDERATION OF APPLICATIONS  
2           FOR PACE PROGRAM PROVIDER STATUS.—In consid-  
3           ering an application for PACE provider program  
4           status, the application shall be deemed approved un-  
5           less the Secretary, within 90 days after the date of  
6           the submission of the application to the Secretary,  
7           either denies such request in writing or informs the  
8           applicant in writing with respect to any additional  
9           information that is needed in order to make a final  
10          determination with respect to the application. After  
11          the date the Secretary receives such additional infor-  
12          mation, the application shall be deemed approved  
13          unless the Secretary, within 90 days of such date,  
14          denies such request.

15          “(f) REGULATIONS.—

16                 “(1) IN GENERAL.—The Secretary shall issue  
17                 interim final or final regulations to carry out this  
18                 section and section 1932.

19                 “(2) USE OF PACE PROTOCOL.—

20                         “(A) IN GENERAL.—In issuing such regu-  
21                         lations, the Secretary shall, to the extent con-  
22                         sistent with the provisions of this section, incor-  
23                         porate the requirements applied to PACE dem-  
24                         onstration waiver programs under the PACE  
25                         protocol.

1           “(B) FLEXIBILITY.—The Secretary (in  
2 close consultation with State administering  
3 agencies) may modify or waive such provisions  
4 of the PACE protocol in order to provide for  
5 reasonable flexibility in adapting the PACE  
6 service delivery model to the needs of particular  
7 organizations (such as those in rural areas or  
8 those that may determine it appropriate to use  
9 non-staff physicians accordingly to State licens-  
10 ing law requirements) under this section and  
11 section 1932 where such flexibility is not incon-  
12 sistent with and would not impair the essential  
13 elements, objectives, and requirements of the  
14 this section, including—

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

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

20                   “(iii) the interdisciplinary team ap-  
21 proach to care management and service de-  
22 livery;

23                   “(iv) capitated, integrated financing  
24 that allows the provider to pool payments

1 received from public and private programs  
2 and individuals; and

3 “(v) the assumption by the provider  
4 over time of full financial risk.

5 “(3) APPLICATION OF CERTAIN ADDITIONAL  
6 BENEFICIARY AND PROGRAM PROTECTIONS.—

7 “(A) IN GENERAL.—In issuing such regu-  
8 lations and subject to subparagraph (B), the  
9 Secretary may apply with respect to PACE pro-  
10 grams, providers, and agreements such require-  
11 ments of sections 1876 and 1903(m) relating to  
12 protection of beneficiaries and program integ-  
13 rity as would apply to eligible organizations  
14 under risk-sharing contracts under section 1876  
15 and to health maintenance organizations under  
16 prepaid capitation agreements under section  
17 1903(m).

18 “(B) CONSIDERATIONS.—In issuing such  
19 regulations, the Secretary shall—

20 “(i) take into account the differences  
21 between populations served and benefits  
22 provided under this section and under sec-  
23 tions 1876 and 1903(m);



1                   “(ii) not include any requirement that  
2                   conflicts with carrying out PACE pro-  
3                   grams under this section; and

4                   “(iii) not include any requirement re-  
5                   stricting the proportion of enrollees who  
6                   are eligible for benefits under this title or  
7                   title XIX

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

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

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

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

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

23                  “(5) Sections 1862(a)(1) and 1862(a)(9), inso-  
24                  far as they may prevent payment for PACE program

1 services to individuals enrolled under PACE pro-  
2 grams.

3 “(h) DEMONSTRATION PROJECT FOR FOR-PROFIT  
4 ENTITIES.—

5 “(1) IN GENERAL.—In order to demonstrate  
6 the operation of a PACE program by a private, for-  
7 profit entity, the Secretary (in close consultation  
8 with State administering agencies) shall grant waiv-  
9 ers from the requirement under subsection (a)(3)  
10 that a PACE provider may not be a for-profit, pri-  
11 vate entity.

12 “(2) SIMILAR TERMS AND CONDITIONS.—

13 “(A) IN GENERAL.—Except as provided  
14 under subparagraph (B), and paragraph (1),  
15 the terms and conditions for operation of a  
16 PACE program by a provider under this sub-  
17 section shall be the same as those for PACE  
18 providers that are nonprofit, private organiza-  
19 tions.

20 “(B) NUMERICAL LIMITATION.—The num-  
21 ber of programs for which waivers are granted  
22 under this subsection shall not exceed 10. Pro-  
23 grams with waivers granted under this sub-  
24 section shall not be counted against the numeri-  
25 cal limitation specified in subsection (e)(1)(B).



1           (3) by inserting after section 1931 the following  
2           new section:

3   **“SEC. 1932. PROGRAM OF ALL-INCLUSIVE CARE FOR THE**  
4                           **ELDERLY (PACE).**

5           “(a) OPTION.—

6                   “(1) IN GENERAL.—A State may elect to pro-  
7           vide medical assistance under this section with re-  
8           spect to PACE program services to PACE program  
9           eligible individuals who are eligible for medical as-  
10          sistance under the State plan and who are enrolled  
11          in a PACE program under a PACE program agree-  
12          ment. Such individuals need not be eligible for bene-  
13          fits under part A, or enrolled under part B, of title  
14          XVIII to be eligible to enroll under this section.

15                   “(2) BENEFITS THROUGH ENROLLMENT IN  
16          PACE PROGRAM.—In the case of an individual en-  
17          rolled with a PACE program pursuant to such an  
18          election—

19                           “(A) the individual shall receive benefits  
20                   under the plan solely through such program,  
21                   and

22                           “(B) the PACE provider shall receive pay-  
23                   ment in accordance with the PACE program  
24                   agreement for provision of such benefits.

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

5           “(b) APPLICATION OF MEDICARE TERMS AND CON-  
6           DITIONS.—Except as provided in this section, the terms  
7           and conditions for the operation and participation of  
8           PACE program eligible individuals in PACE programs of-  
9           fered by PACE providers under PACE program agree-  
10          ments under section 1894 shall apply for purposes of this  
11          section.

12          “(c) ADJUSTMENT IN PAYMENT AMOUNTS.—In the  
13          case of individuals enrolled in a PACE program under this  
14          section, the amount of payment under this section shall  
15          not be the amount calculated under section 1894(d), but  
16          shall be an amount, specified under the PACE agreement,  
17          which is less than the amount that would otherwise have  
18          been made under the State plan if the individuals were  
19          not so enrolled. The payment under this section shall be  
20          in addition to any payment made under section 1894 for  
21          individuals who are enrolled in a PACE program under  
22          such section.

23          “(d) WAIVERS OF REQUIREMENTS.—With respect to  
24          carrying out a PACE program under this section, the fol-

1 lowing requirements of this title (and regulations relating  
2 to such requirements) shall not apply:

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

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

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

12 “(4) Section 1903(m)(2)(A), insofar as it re-  
13 stricts a PACE provider from receiving prepaid capi-  
14 tation payments.

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

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 1902(j) of such Act (42 U.S.C.  
23 1396a(j)) is amended by striking “(25)” and insert-  
24 ing “(26)”.

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

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

6           (B) by striking “from any organization”  
7           and all that follows and inserting “under a  
8           PACE demonstration waiver program (as de-  
9           fined in subsection (a)(7) of section 1894) or  
10          under a PACE program under section 1932.”.

11          (3) Section 1903(f)(4)(C) of such Act (42  
12   U.S.C. 1396b(f)(4)(C)) is amended by inserting “or  
13   who is a PACE program eligible individual enrolled  
14   in a PACE program under section 1932,” after  
15   “section 1902(a)(10)(A),”.

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

17          (a) **TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE**  
18 **DATE.**—The Secretary of Health and Human Services  
19 shall promulgate regulations to carry out this Act in a  
20 timely manner. Such regulations shall be designed so that  
21 entities may establish and operate PACE programs under  
22 sections 1894 and 1932 for periods beginning not later  
23 than 1 year after the date of the enactment of this Act.

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

1           (1) EXPANSION IN CURRENT NUMBER OF DEM-  
2           ONSTRATION PROJECTS.—Section 9412(b) of the  
3           Omnibus Budget Reconciliation Act of 1986, as  
4           amended by section 4118(g) of the Omnibus Budget  
5           Reconciliation Act of 1987, is amended—

6                   (A) in paragraph (1), by inserting before  
7                   the period at the end the following: “, except  
8                   that the Secretary shall grant waivers of such  
9                   requirements to up to the applicable numerical  
10                  limitation specified in section 1894(e)(1)(B) of  
11                  the Social Security Act”; and

12                   (B) in paragraph (2)—

13                           (i) in subparagraph (A), by striking “,  
14                           including permitting the organization to  
15                           assume progressively (over the initial 3-  
16                           year period of the waiver) the full financial  
17                           risk”; and

18                           (ii) in subparagraph (C), by adding at  
19                           the end the following: “In granting further  
20                           extensions, an organization shall not be re-  
21                           quired to provide for reporting of informa-  
22                           tion which is only required because of the  
23                           demonstration nature of the project.”.

24           (3) ELIMINATION OF REPLICATION REQUIRE-  
25           MENT.—Subparagraph (B) of paragraph (2) of such



1 section shall not apply to waivers granted under  
2 such section after the date of the enactment of this  
3 Act.

4 (4) TIMELY CONSIDERATION OF APPLICA-  
5 TIONS.—In considering an application for waivers  
6 under such section before the effective date of re-  
7 peals under subsection (c), subject to the numerical  
8 limitation under the amendment made by paragraph  
9 (1), the application shall be deemed approved unless  
10 the Secretary of Health and Human Services, within  
11 90 days after the date of its submission to the Sec-  
12 retary, either denies such request in writing or in-  
13 forms the applicant in writing with respect to any  
14 additional information which is needed in order to  
15 make a final determination with respect to the appli-  
16 cation. After the date the Secretary receives such  
17 additional information, the application shall be  
18 deemed approved unless the Secretary, within 90  
19 days of such date, denies such request.

20 (c) PRIORITY AND SPECIAL CONSIDERATION IN AP-  
21 PPLICATION.—During the 3-year period beginning on the  
22 date of enactment of this Act:

23 (1) PROVIDER STATUS.—The Secretary of  
24 Health and Human Services shall give priority, in  
25 processing applications of entities to qualify as

1 PACE programs under section 1894 or 1932 of the  
2 Social Security Act—

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

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

8 (2) NEW WAIVERS.—The Secretary shall give  
9 priority, in the awarding of additional waivers under  
10 section 9412(b) of the Omnibus Budget Reconcili-  
11 ation Act of 1986—

12 (A) to any entities that have applied for  
13 such waivers under such section as of May 1,  
14 1997; and

15 (B) to any entity that, as of May 1, 1997,  
16 has formally contracted with a State to provide  
17 services for which payment is made on a  
18 capitated basis with an understanding that the  
19 entity was seeking to become a PACE provider.

20 (3) SPECIAL CONSIDERATION.—The Secretary  
21 shall give special consideration, in the processing of  
22 applications described in paragraph (1) and the  
23 awarding of waivers described in paragraph (2), to  
24 an entity which as of May 1, 1997 through formal  
25 activities (such as entering into contracts for fea-

1 sibility studies) has indicated a specific intent to be-  
2 come a PACE provider.

3 (d) REPEAL OF CURRENT PACE DEMONSTRATION  
4 PROJECT WAIVER AUTHORITY.—

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

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

9 (B) Section 9220 of the Consolidated Om-  
10 nibus Budget Reconciliation Act of 1985 (Pub-  
11 lic Law 99–272).

12 (C) Section 9412(b) of the Omnibus Budg-  
13 et Reconciliation Act of 1986 (Public Law 99–  
14 509).

15 (2) DELAY IN APPLICATION.—

16 (A) IN GENERAL.—Subject to subpara-  
17 graph (B), the repeals made by paragraph (1)  
18 shall not apply to waivers granted before the  
19 initial effective date of regulations described in  
20 subsection (a).

21 (B) APPLICATION TO APPROVED WAIV-  
22 ERS.—Such repeals shall apply to waivers  
23 granted before such date only after allowing  
24 such organizations a transition period (of up to  
25 24 months) in order to permit sufficient time

1           for an orderly transition from demonstration  
2           project authority to general authority provided  
3           under the amendments made by this Act.

4 **SEC. 5. STUDY AND REPORTS.**

5       (a) STUDY.—

6           (1) IN GENERAL.—The Secretary of Health and  
7       Human Services (in close consultation with State  
8       administering agencies, as defined in section  
9       1894(a)(8) of the Social Security Act) shall conduct  
10      a study of the quality and cost of providing PACE  
11      program services under the medicare and medicaid  
12      programs under the amendments made by this Act

13           (2) STUDY OF PRIVATE, FOR-PROFIT PROVID-  
14      ERS.—Such study shall specifically compare the  
15      costs, quality, and access to services by entities that  
16      are private, for-profit entities operating under dem-  
17      onstration projects waivers granted under section  
18      1894(h) of the Social Security Act with the costs,  
19      quality, and access to services of other PACE pro-  
20      viders.

21       (b) REPORT.—

22           (1) IN GENERAL.—Not later than 4 years after  
23      the date of enactment of this Act, the Secretary  
24      shall provide for a report to Congress on the impact  
25      of such amendments on quality and cost of services.

1 The Secretary shall include in such report such rec-  
2 ommendations for changes in the operation of such  
3 amendments as the Secretary deems appropriate.

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

7 (A) The number of covered lives enrolled  
8 with entities operating under demonstration  
9 project waivers under section 1894(h) of the  
10 Social Security Act is fewer than 800 (or such  
11 lesser number as the Secretary may find statis-  
12 tically sufficient to make determinations re-  
13 specting findings described in the succeeding  
14 subparagraphs).

15 (B) The population enrolled with such en-  
16 tities is less frail than the population enrolled  
17 with other PACE providers.

18 (C) Access to or quality of care for individ-  
19 uals enrolled with such entities is lower than  
20 such access or quality for individuals enrolled  
21 with other PACE providers.

22 (D) The application of such section has re-  
23 sulted in an increase in expenditures under the  
24 medicare or medicaid programs above the ex-

1           penditures that would have been made if such  
2           section did not apply.

3           (c) INFORMATION INCLUDED IN ANNUAL REC-  
4   COMMENDATIONS.—The Physician Payment Review Com-  
5   mission shall include in its annual recommendations under  
6   section 1845(b) of the Social Security Act (42 U.S.C.  
7   1395w–1), and the Prospective Payment Review Commis-  
8   sion shall include in its annual recommendations reported  
9   under section 1886(e)(3)(A) of such Act (42 U.S.C.  
10  1395ww(e)(3)(A)), recommendations on the methodology  
11  and level of payments made to PACE providers under sec-  
12  tion 1894(d) of such Act and on the treatment of private,  
13  for-profit entities as PACE providers.

○