AMENDED IN SENATE AUGUST 31, 2009

AMENDED IN SENATE JUNE 11, 2009

AMENDED IN SENATE MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 577

Introduced by Assembly Member Bonnie Lowenthal

February 25, 2009

An act to amend Sections 1580.1 and 100315 of the Health and Safety Code, and to amend Sections 14590, 14591, and 14598 of the Welfare and Institutions Code, relating to the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 577, as amended, Bonnie Lowenthal. Program of All-Inclusive Care for the Elderly.

Existing law establishes the federal Medicaid program, administered by each state, California's version of which is the Medi-Cal program. The Medi-Cal program, which is administered by the State Department of Health Care Services under the direction of the Director of Health Care Services, provides qualified low-income persons with health care services.

Existing federal law establishes the Program of All-Inclusive Care for the Elderly (PACE), which provides specified services for older individuals so that they may continue living in the community. Federal law permits states to implement the PACE program as a Medicaid state option.

Existing state law authorizes the director to establish the California Program of All-Inclusive Care for the Elderly and establishes PACE program services as a covered benefit of the Medi-Cal program.

Existing law authorizes the State Department of Health Care Services, and as applicable, the California Department of Aging and the State Department of Social Services, to grant exemptions to entities contracting with the department under the PACE program from certain provisions relating to clinics, community care facilities, residential care facilities for the elderly, home health agencies, and adult day health centers.

This bill would add the State Department of Public Health to the list of departments that may grant exemptions, as applicable.

~~This bill would authorize the State Department of Health Care Services, after consulting with specified departments, as appropriate, to apply approved exemption requests to all locations of a PACE organization or to all PACE organizations on a statewide basis.~~

This bill specifies that certain federal requirements of the PACE model not be waived or modified, including, among others, the interdisciplinary team approach to care management and service delivery and the provision of a PACE benefit package for all participants, regardless of source of payment, that includes all Medicare-covered items and services, all Medicaid-covered items and services, as specified in the state's Medicaid plan, and other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

This bill would also make technical, nonsubstantive changes to the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1580.1 of the Health and Safety Code is amended to read:

1580.1. The State Department of Health Care Services, and as applicable, *the State Department of Public Health and* the California Department of Aging, may grant to entities contracting with the State Department of Health Care Services under the PACE program, as defined in Chapter 8.75 (commencing with Section 14590) of Part 3 of Division 9 of the Welfare and Institutions Code,

exemptions from the provisions contained in this chapter in accordance with the requirements of Section 100315.

SEC. 2. Section 100315 of the Health and Safety Code is amended to read:

100315. (a) The department and as applicable, the California Department of Aging, the State Department of Public Health, and the State Department of Social Services, may grant to a PACE program, as defined in Chapter 8.75 (commencing with Section 14590) of Part 3 of Division 9 of the Welfare and Institutions Code, exemptions from duplicative, conflicting, or inconsistent requirements in Chapter 1 (commencing with Section 1200), Chapter 3 (commencing with Section 1500), Chapter 3.2 (commencing with Section 1569), Chapter 3.3 (commencing with Section 1570), and Chapter 8 (commencing with Section 1725) of Division 2, and Divisions 3 and 5 of Title 22 of the California Code of Regulations, including the use of alternate concepts, methods, procedures, techniques, space, equipment, personnel, personnel qualifications, or the conducting of pilot projects, provided that the exemptions are implemented in a manner that does not jeopardize the health and welfare of participants receiving services under PACE, or deprive beneficiaries of rights specified in federal or state laws or regulations. In determining whether to grant exemptions under this section, the departments shall consult with each other.

~~(b) The department, after consultation with the California Department of Aging, the State Department of Public Health, and the State Department of Social Services, as appropriate, may apply approved exemption requests to all locations of a PACE organization or to all PACE organizations on a statewide basis.~~

~~(c)~~

(b) A written request and substantiating evidence supporting the request for an exemption under subdivision (a) shall be submitted by the PACE program to the department. A PACE program may submit a single request for an exemption from the licensing requirements applicable to two or more licenses held by that organization, so long as the request lists the locations and license numbers held by that organization and the requested exemption is the same and appropriate for all licensed locations. The written request shall include, but shall not be limited to, all of the following:

(1) A description of how the applicable state requirement duplicates, conflicts with, or is inconsistent with state or federal requirements related to the PACE model.

(2) An analysis demonstrating why the duplication, conflict, or inconsistency cannot be resolved without an exemption.

(3) A description of how the PACE program plans to comply with the intent of the requirements described in paragraph (1).

(4) A description of how the PACE program will monitor its compliance with the terms and conditions under which the exemption is granted.

~~(d)~~

(c) The department shall approve or deny any request within 60 days of submission. An approval shall be in writing and shall provide for the terms and conditions under which the exemption is granted. A denial shall be in writing and shall specify the basis therefor. Any decision to deny a request shall be a final administrative decision.

~~(e)~~

(d) If, after investigation, the department determines that a PACE program that has been granted an exemption under this section is operating in a manner contrary to the terms and conditions of the exemption, the department shall immediately suspend or revoke the exemption. If the exemption is applicable to more than one location or more than one category of licensure, or both, the department may suspend or revoke an exemption as to one or more license categories or locations as deemed appropriate by the department.

SEC. 3. Section 14590 of the Welfare and Institutions Code is amended to read:

14590. The Legislature finds and declares that:

(a) Community-based services to the frail elderly are often uncoordinated, fragmented, inappropriate, or insufficient to meet the needs of frail elderly who are at risk of institutionalization, often resulting in unnecessary placement in nursing homes.

(b) Steadily increasing health care costs for the frail elderly provide incentive to develop programs providing quality services at reasonable costs.

(c) Capitated "risk-based" financing provides an alternative to the traditional fee-for-service payment system by providing a fixed, per capita monthly payment for a package of health care services

and requiring the provider to assume financial responsibility for cost overruns.

(d) On Lok Senior Health Services began as a federal and state demonstration program in 1973 to test whether comprehensive community-based services could be provided to the frail elderly at no greater cost than nursing home care.

(e) Since 1983, On Lok Senior Health Services of San Francisco has successfully provided a comprehensive package of services and operated within a cost-effective, capitated risk-based financing system.

(f) Recognizing On Lok's success, Congress passed Legislation in 1986 and 1987 encouraging the expansion of capitated long-term care programs by permitting federal Medicare and Medicaid waivers to be granted indefinitely to On Lok and authorizing the federal Centers for Medicare and Medicaid Services to grant waivers in up to 10 new sites throughout the nation in order to replicate the On Lok model.

(g) In California, numerous agencies have expressed interest in developing programs similar to On Lok and will need the cooperation of the State Department of Health Care Services to successfully obtain the necessary available federal waivers to develop risk-based capitated long-term care demonstration programs.

(h) Through the development of these demonstration programs, the viability of a cost-effective statewide program offering quality long-term care services can be evaluated.

(i) To achieve maximum cost effectiveness in demonstration projects under this chapter, an expedited contract process is necessary.

SEC. 4. Section 14591 of the Welfare and Institutions Code is amended to read:

14591. The State Director of Health Care Services may establish the California Program of All-Inclusive Care for the Elderly, to promote the development of community-based, risk-based capitated, long-term care programs.

SEC. 5. Section 14598 of the Welfare and Institutions Code is amended to read:

14598. (a) The Legislature finds and declares both of the following:

(1) The demonstration projects authorized by this article have proven to be successful at providing comprehensive, community-based services to frail elderly individuals at no greater cost than for providing nursing home care.

(2) Based upon that success, California now desires to provide community-based, risk-based, and capitated long-term care services under the Programs of All-Inclusive Care for the Elderly (PACE) as optional services under California's medicaid state plan and under contracts, entered into between the federal Centers for Medicare and Medicaid Services, the department, as the single state medicaid agency, and PACE organizations, meeting the requirements of the Balanced Budget Act of 1997 (Public Law 105-33) and Part 460 (commencing with Section 460.2) of Subchapter E of Title 42 of the Code of Federal Regulations.

(b) The department may enter into the contracts specified in subdivision (a) for implementation of the PACE program, and also may enter into separate contracts with the PACE organizations contracting under subdivision (a), to fully implement the single state agency responsibilities assumed by the department in those contracts, the provisions of Section 14132.94, and any other state requirement found necessary by the department to provide comprehensive community-based, risk-based, and capitated long-term care services to California's frail elderly. The department may enter into separate contracts specified in subdivision (a) with up to 10 PACE organizations. The department may not enter into any contracts specified in subdivision (a) unless a medicaid state plan amendment, electing PACE as a state medicaid option as provided for in Section 14132.94, has been approved by the federal Centers for Medicare and Medicaid Services.

(c) Notwithstanding subdivisions (a) and (b), any demonstration project contract entered into under this article prior to January 1, 2004, shall remain in full force and effect under its own terms, but shall not be renewed or amended beyond the termination date in effect on that date.

(d) The requirements of the PACE model, as provided for pursuant to Section 1894 (42 U.S.C. Sec. 1395eee) and Section 1934 (42 U.S.C. Sec. 1396u-4) of the federal Social Security Act, shall not be waived or modified. The requirements that shall not be waived or modified include all of the following:

(1) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(2) The delivery of comprehensive, integrated acute and long-term care services.

(3) The interdisciplinary team approach to care management and service delivery.

(4) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(5) The assumption by the provider of full financial risk.

(6) The provision of a PACE benefit package for all participants, regardless of source of payment, that shall include all of the following:

(A) All Medicare-covered items and services.

(B) All Medicaid-covered items and services, as specified in the state's Medicaid plan.

(C) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(e) For purposes of this section, "PACE organizations" means those entities as defined in 42 C.F.R. 460.6.

O