NEW YORK STATE | Department of Health

PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

Discussion of Structural Alternatives for PACE Expansion in New York

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Agenda

- Background on PACE
- Current Regulatory Framework for PACE in New York
- Recent Legislation (S.8903/A.9542)
- Structural Options for PACE Expansion
  - ***Alternative No. 1*** – Representative Governance
  - ***Alternative No. 2*** – Contracted Diagnostic & Treatment Center (D&TC) Model
  - ***Alternative No. 3*** – Contracted Physician Practice Model
- Other Pending PACE Reforms to Promote Expansion

Background on PACE

Background

What is PACE?

- PACE provides comprehensive medical and social services to certain elderly individuals, most of whom are dually eligible for Medicare and Medicaid benefits.
- The inception of PACE program began over 50 years ago in California, where a senior care provider, On Lok, developed a model that helped seniors age independently, not in a nursing home; integrating and coordinating every aspect of care for participants, including medical care, prescription drugs, transportation, home care, socialization, and meals, among other benefits.
- Core elements of the PACE Model of Care is as follows:
  - An **interdisciplinary team** of health professionals provides PACE participants with coordinated care;
  - A **comprehensive benefit package** that enables members to remain in the community rather than receive care in a nursing home;
  - Operation of a **PACE Center** where a member receives medical care, socialization, and other PACE services; and
  - **Capped financing**, which allows providers to deliver all services participants need rather than only those reimbursable under Medicare and Medicaid fee-for-service plans.
- PACE is a program under Medicare, and states can elect to provide PACE services to Medicaid members as an optional Medicaid benefit.
- Once a member joins PACE, the PACE program becomes the sole source of Medicaid and Medicare benefits for PACE participants.
- Federal statute requires that Medicaid payment rates for PACE must be lower than the amount that would otherwise be paid (AWOP) to provide needed service to PACE participants if the program did not exist.

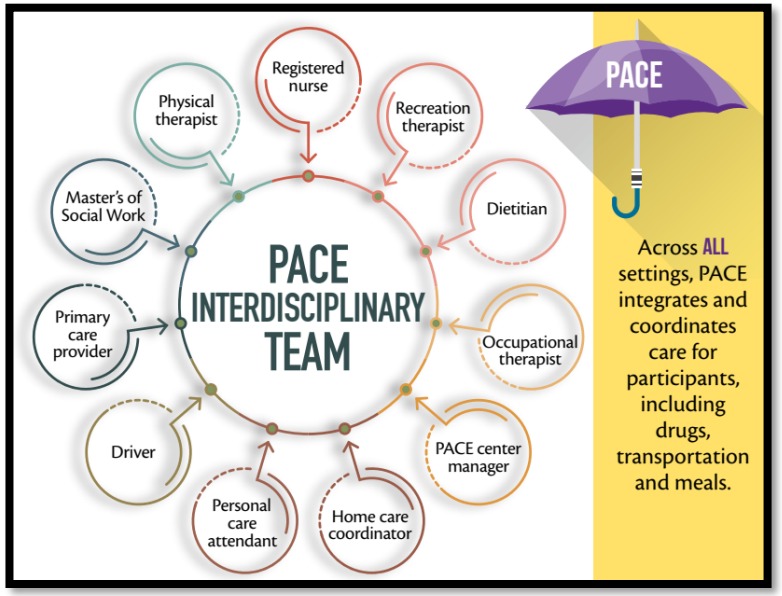
Background (Cont'd.)

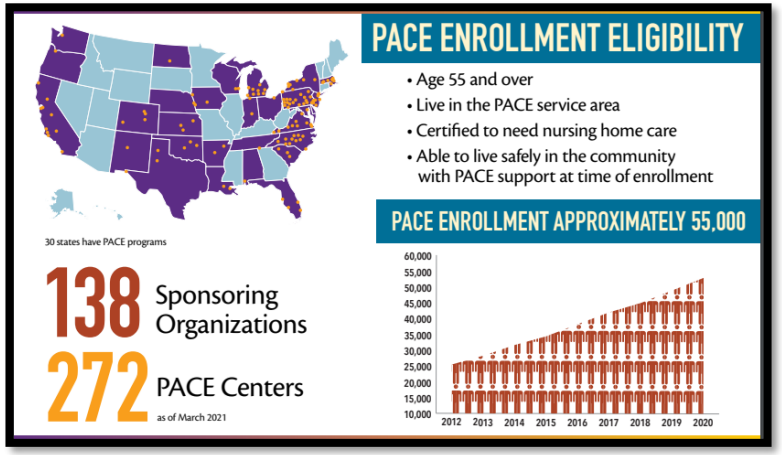
What are the benefits of PACE?

1. **Reduced hospital admissions:** PACE members have a 24% lower hospitalization rate than other dually-eligible beneficiaries who receive Medicaid nursing home services.
2. **Better preventative care:** PACE participants receive better preventive care, specifically with respect to hearing and vision screenings, flu shots and pneumococcal vaccines.
3. **High Rates of Community Residence:** 95% of PACE members live in the community instead of a nursing homes.
4. **High Caregiver Satisfaction**: 96% of family members are satisfied with PACE support. 97.5% of caregivers would recommend PACE.

How big is the PACE Program?

- Despite its many advantages and considerable support, PACE has been criticized for having limited growth potential.
- The program's comparatively high start-up costs and its "high touch" model of care are cited as mitigating against large scale enrollment.
- Congress and CMS continue to explore opportunities for increasing PACE enrollment.





Available: npaonline.org

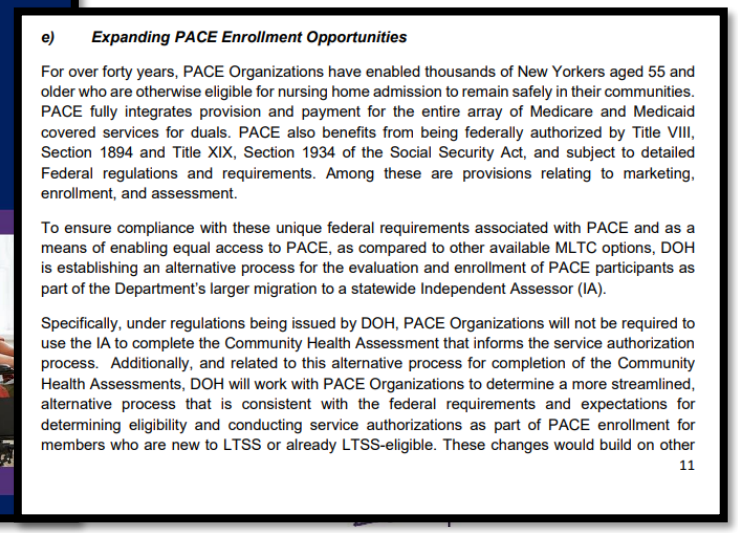
1. Segelman, M., Szydlowski, J., Kinosian, B., et al. (2014). Hospitalizations in the Program of All-Inclusive Care for the Elderly. Journal of the American Geriatrics Society, 62: 320-24
2. Leavitt, M., U.S. Department of Health and Human Services, Interim Report on the Quality and Cost of the Program of All-Inclusive Care for the Elderly, 2009, Mathematica Policy Research evaluation prepared for the Secretary of Health and Human Services for submission to Congress.
3. PACE3 data. https://www.npaonline.org/sites/default/files/images/NPA%20i nfographic%203%2020%20%281% 29.pdf, 7/30/2020
4. National PACE Association. (2018). PACE Reduces Burden of Family Caregivers, Aug. 30

Background (Cont'd.)

What is the status of PACE in New York?

- New York is one of 31 states that have elected to offer PACE services to dually eligible members with its first PACE programs beginning operations in the late 1980s as part of a Federally sponsored demonstration, which has since been codified as a permanent Federal program in regulations.
- New York reports on PACE enrollment as a type of Managed Long-Term Care (MLTC) plan and currently enrolls approximately 5,800 members, but with steady increases in the past several months.
- The NYS PACE Plans include the following nine not-for-profit plans:
  - ArchCare
  - CHS Buffalo - LIFE
  - Complete Senior Care
  - CenterLight Healthcare
  - Eddy Senior Care
  - Fallon Health Weinberg
  - Independent Living for Seniors
  - PACE CNY
  - Total Senior Care
- As the most integrated coverage option for MLTC-eligible members, PACE is a key component of the *New York State Dual Eligible Integrated Roadmap* (March 2022) that describes the strategies for increasing enrollment in fully or highly integrated care plans for Medicaid members who are also eligible for Medicare.

	Plans	Dec 21 Enrollment	FY23 Spending Est
Medicaid Managed Care (MMC) Plans		**5,420,300**	**$36.1B**
Mainstream	12	5,242,700	$30.2B
HARP	12	162,000	$4.8B
HIV-SNP**	3	15,600	$1.1B
Managed Long-Term Care (MLTC)		**284,725**	**$17.0B**
Partial Cap	26	247,425	$14.4B
~~**MAP**~~	~~9~~	~~31,500~~	~~$2.2B~~
PACE	9	5,800	$0.4B
Total (MMC/MLTC)		**5,705,052**	**$53.1B**



e) Expanding PACE Enrollment Opportunities

For over forty years, PACE Organizations have enabled thousands of New Yorkers aged 55 and older who are otherwise eligible for nursing home admission to remain safely in their communities. PACE fully integrates provision and payment for the entire array of Medicare and Medicaid covered services for duals. PACE also benefits from being federally authorized by Title VIII, Section 1894 and Title XIX, Section 1934 of the Social Security Act, and subject to detailed Federal regulations and requirements. Among these are provisions relating to marketing, enrollment, and assessment.

To ensure compliance with these unique federal requirements associated with PACE and as a means of enabling equal access to PACE, as compared to other available MLTC options, DOH is establishing an alternative process for the evaluation and enrollment of PACE participants as part of the Department's larger migration to a statewide Independent Assessor (IA).

Specifically, under regulations being issued by DOH, PACE Organizations will not be required to use the IA to complete the Community Health Assessment that informs the service authorization process. Additionally, and related to this alternative process for completion of the Community Health Assessments, DOH will work with PACE Organizations to determine a more streamlined, alternative process that is consistent with the federal requirements and expectations for determining eligibility and conducting service authorizations as part of PACE enrollment for members who are new to LTSS or already LTSS-eligible. These changes would build on other

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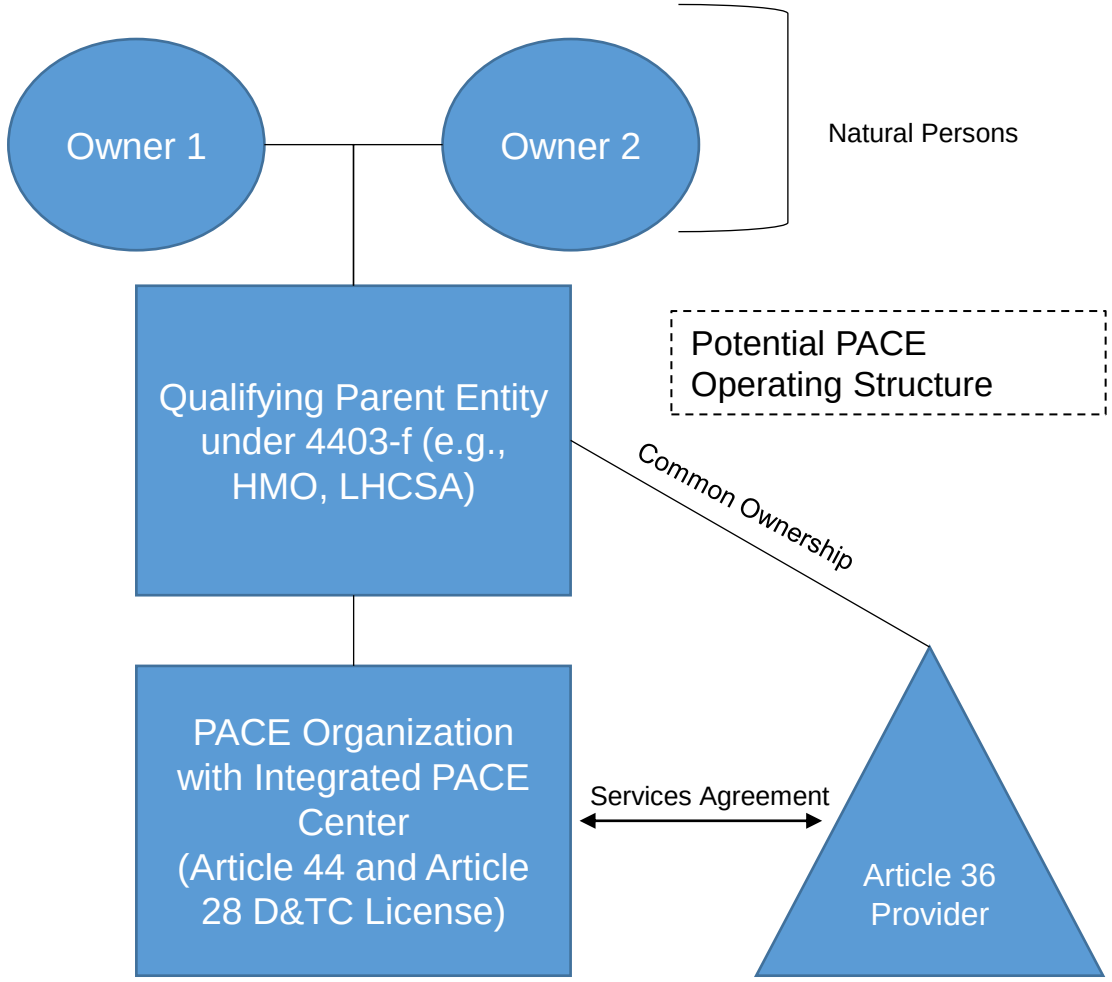
Current Regulatory Framework for PACE in New York

Regulatory Framework for PACE

- The historical application of New York State regulatory requirements for PACE Organizations is not a simple fit.
- The benefits and services offered and/or delivered by PACE Organizations implicate Article 44, Article 28 and Article 36 of the Public Health Law.
    - **Article 44** licensure is required because PACE Organizations receive capitated payments for services and remain financially responsible for a member's care. PACE Organizations are *currently* treated as a form of MLTC plan under Section 4403-f of the Public Health Law.
    - **Article 28** licensure is required because the PACE Center delivers medical care to members in a clinic setting.
    - **Article 36** licensure is required because the PACE Organization must deliver or coordinate services in the home of the members, including skilled nursing and personal care services.
- Due to federal requirements that a new PACE operator cannot "contract out" PACE Center services until competence and fiscal soundness has been demonstrated through CMS and State reviews *(see* Section 50 of Chapter 9 of the PACE Manual*)*, the Department of Health (the Department) has required that a *single* PACE entity hold both the Article 44 and Article 28 licenses to operate in New York State, but that a PACE Organization may contract with an affiliated Article 36 entity for home care services.
- Accordingly, different components of a PACE Organization's initial application is concurrently reviewed and/or approved by the Office of Health Insurance Programs (OHIP), the Office of Primary Care and Health Systems Management, and the Public Health and Health Planning Council (PHHPC).



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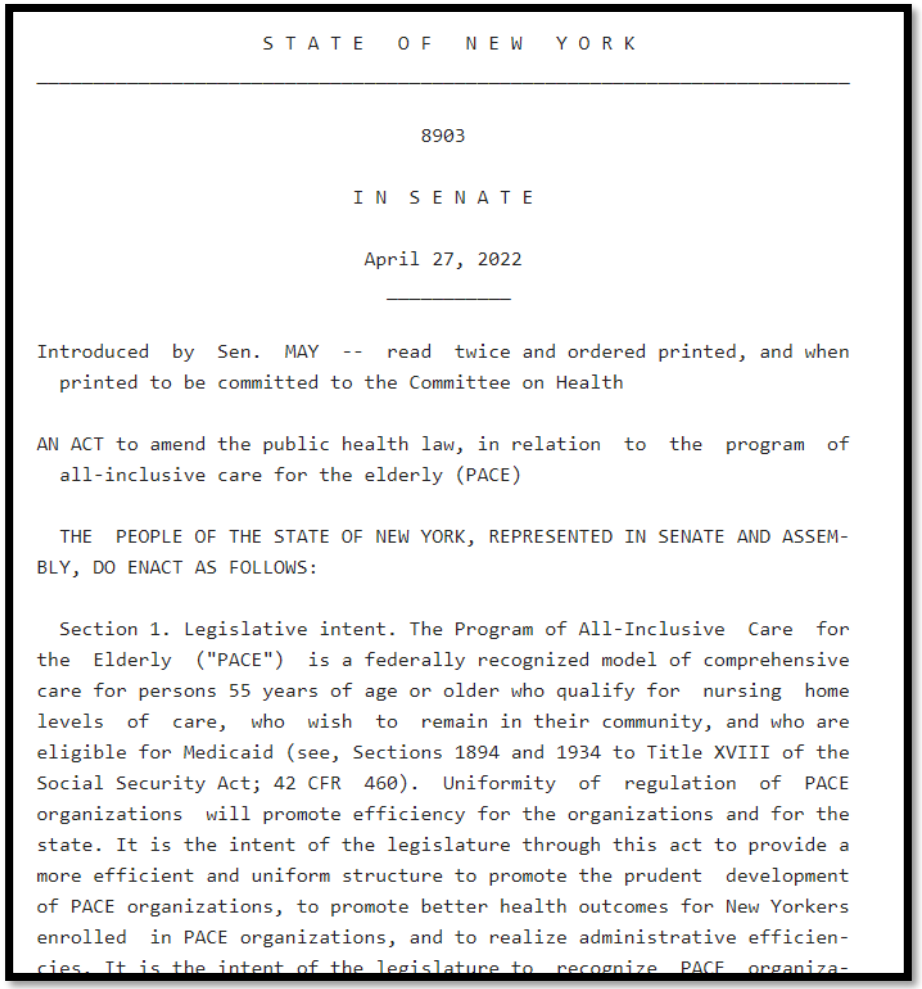
Regulatory Framework for PACE (Cont'd.)

- All nine current PACE Organizations in New York are incorporated as not-for-profit entities, which aligned with historical federal requirements for PACE Organizations.
- Beginning in 2009, and fully authorized in 2015, CMS has permitted for-profit organizations to operate as PACE Organizations, so long as such for-profit entities satisfies all requirements in the PACE regulations.
- CMS explicitly stated they would expect the for-profit PACE organization to retain all key administrative functions including marketing and enrollment, quality assurance and program improvement, and contracting for institutional providers and other key staff.
- Nothing in New York bars a for-profit entity from operating a PACE Organization, but the requirement that a PACE Organization must be dually licensed as a *single* Article 44 and Article 28 entity **effectively precludes** for-profit PACE Organizations in New York because investor-backed for-profit entities are usually not able to have "natural persons" sufficiently close to the PACE operating entity to meet Article 28 requirements for D&TC licensure.
- Accordingly, many for-profit operators in other markets have been challenged in entering New York, but existing PACE operators as not-for-profit entities have comparative challenges when accessing capital for PACE program expansion.

Recent Legislation (S.8903/A.9542)

Recent Legislation



STATE OF NEW YORK

8903

IN SENATE

April 27, 2022

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the program of all-inclusive care for the elderly (PACE)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The Program of All-Inclusive Care for the Elderly ("PACE") is a federally recognized model of comprehensive care for persons 55 years of age or older who qualify for nursing home levels of care, who wish to remain in their community, and who are eligible for Medicaid (see, Sections 1894 and 1934 to Title XVIII of the Social Security Act; 42 CFR 460). Uniformity of regulation of PACE organizations will promote efficiency for the organizations and for the state. It is the intent of the legislature through this act to provide a more efficient and uniform structure to promote the prudent development of PACE organizations, to promote better health outcomes for New Yorkers enrolled in PACE organizations, and to realize administrative efficiencies. It is the intent of the legislature to recognize PACE organiza-

- S.8903/A.9542 was passed by both houses on May 24, 2022, and formally codifies PACE licensure in NYS Law, separate and apart from 4403-f of the Public Health Law.
- The bill directs the Department to establish a “unified licensure process” for PACE Organizations that complies with Articles 44, 28, and 36 of the Public Health Law.
- Any unified licensure process would require the approval of PHHPC.
- Through regulation, the Department is directed to promulgate regulations to effectuate this unified licensure process, but the bill does not directly address the current challenges with for-profit PACE entry to New York and PACE expansion, more generally.
- The bill, if signed by the Governor, would offer the Department a chance to reconsider how it currently licenses PACE Organizations in order to achieve the statutory objectives of supporting the “prudent development” of PACE in New York.

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Structural Options for PACE Expansion

Option 1: Representative Governance

- **Description:** Amend the Public Health Law to allow for "representative governance" such that the stockholders or members need not be "natural persons" so long as the for-profit entities (a) have experience and expertise in operating a PACE organization in another market, and (b) such for-profit entity, and its controlling persons are evaluated and approved by PHHPC.

Pros	Cons
• Reflects a known structure familiar with PHHPC that requires PACE operators to undergo a thorough character and competence process before the D&TC that functions as the PACE Center is established in New York. • Preserves requirement that the PACE Center be fully integrated into the PACE Organization through a single legal entity, consistent with existing interpretation of federal requirements.	• Requires a new statutory enactment, as the current PACE bill that recently passed the houses does not amend the Public Health Law to allow for representative governance in the PACE context. • Creates a further expansion of representative governance in the Article 28 establishment process that may serve as precedent for other clinics or centers.

Option 2: Adopt a Contracted D&TC Model

- **Description:** Issue administrative guidance, subject to CMS review and approval, that would allow new PACE Organizations to contract for PACE Center services from an independently established, freestanding D&TC.

Pros	Cons
• Preserves the PACE Center as a D&TC under New York law, inclusive of licensure and surveillance. • Does not require new statutory or regulatory promulgation but may be done administratively. • Avoids a further expansion of representative governance. • Retains a Departmental approval right of the contract between the PACE Organization and the D&TC performing PACE Center services.	• Requires CMS approval, as currently licensure model is based on an interpretation that CMS rules preclude a PACE Organizations from contracting out PACE Centers until competence can be demonstrated. • Requires further assessment of programmatic impact of there not being full entity integration. • Requires further analysis of PHHPC review and approval of the PACE Organization, as the D&TC that functions as the PACE Center is established independently from the PACE Organization.

Option 3: Adopt a Contracted Physician Practice Model

- **Description:** Issue administrative guidance, subject to CMS review and approval, that would allow new PACE Organizations to contract for PACE Center services from a physician practice, which is permitted in other states with a substantial PACE presence.

Pros	Cons
• Reflects the simplest and most accessible option for PACE expansion because it increases the availabilty of clinicians who can perform PACE Center services. • Potentially reflects the nature of medical and clinical services required in the PACE model of care. • Reflects the approach taken in other states (e.g., California, Colorado) that view PACE as an effective pathway to duals integration.	• Obviates Departmental review and approval of the PACE Center because, without Article 28 D&TC establishment, there is no existing licensure or surveillance process. Accordingly, services oversight would fall mainly to professional oversight by the State Education Department, rather than oversight by the Department. • Contradicts the ability to publicly call it a PACE “Center,” as New York State regulations require D&TC establishment for usage of that term. 10 NYCRR § 600.8(b).

Other PACE Reforms to Promote Expansion

Other PACE Reforms

Reflective of the Department's support for PACE, it is undertaking other reforms to encourage PACE program growth, including:

- Subject to CMS approval, permitting PACE Organizations to engage in "direct enrollment" of potentially eligible PACE members without prospective review by the Conflict Free Evaluation and Enrollment Center, which is required for all other MLTC plan enrollments.
- Exclusion of PACE from the recently implemented Independent Assessor process, which delegates the completion of initial assessments and reassessments to an independent entity contracted by the State.
- Continued inclusion of non-emergency medical transportation benefits in the PACE model.
- Ongoing differential rate treatment from rate range reductions.
- Recent increases in AWOP calculations, especially downstate.

Questions and Discussion