

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 990

To expand the availability of qualified organizations for frail elderly community projects (Program of All-inclusive Care for the Elderly (PACE)), to allow such organizations, following a trial period, to become eligible to be providers under applicable titles of the Social Security Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 29 (legislative day, JUNE 19), 1995

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

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## A BILL

To expand the availability of qualified organizations for frail elderly community projects (Program of All-inclusive Care for the Elderly (PACE)), to allow such organizations, following a trial period, to become eligible to be providers under applicable titles of the Social Security Act, and for other purposes.

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 “PACE Provider Act  
5 of 1995”.

1 **SEC. 2. WAIVER AUTHORITY AND PROVIDER ELIGIBILITY**  
2 **FOR PACE PROJECTS.**

3 (a) TRIAL PERIODS.—

4 (1) IN GENERAL.—The Secretary of Health and  
5 Human Services (hereafter for purposes of this Act  
6 referred to as the ‘Secretary’) shall grant waivers of  
7 certain requirements of titles XVIII and XIX of the  
8 Social Security Act (42 U.S.C. 1395 et seq., 42  
9 U.S.C. 1396 et seq.), or of any other applicable title  
10 of such Act, to public or nonprofit community-based  
11 organizations for a trial period to enable such orga-  
12 nizations to demonstrate their capacity to provide  
13 comprehensive health care services of proper quality  
14 on a cost-effective capitated basis to frail elderly pa-  
15 tients at risk of institutionalization. An organization  
16 shall be eligible to be a provider under such titles if  
17 the organization successfully completes the trial pe-  
18 riod described in the preceding sentence.

19 (2) APPROVAL OF APPLICATIONS.—An appro-  
20 priately completed application for a waiver under  
21 this Act is deemed approved unless the Secretary  
22 specifically disapproves it in writing—

23 (A) not later than 90 days after the date  
24 the completed application is filed in proper  
25 form; or

1 (B) not later than 90 days after the date  
2 additional information is provided to the Sec-  
3 retary if the Secretary requests reasonable and  
4 substantial additional information during the  
5 90-day period described in subparagraph (A).

6 (3) SOLE AUTHORITY.—The Secretary shall  
7 have sole authority to approve or disapprove the eli-  
8 gibility of an organization for a waiver under this  
9 Act and shall make such determinations in a timely  
10 manner.

11 (4) CONSIDERATION OF EXISTING SITES.—In  
12 reviewing an application for a waiver under this Act,  
13 the Secretary shall—

14 (A) consider whether any existing organi-  
15 zation already operates under a waiver granted  
16 under this Act in the proposed service area  
17 identified in the application; and

18 (B) if the Secretary determines that such  
19 an organization exists, assure that the potential  
20 population of eligible individuals to be served  
21 under the proposed waiver is reasonably suffi-  
22 cient to sustain an additional organization with-  
23 out jeopardizing the economic or service viabil-  
24 ity of any other organization operating in that  
25 service area.

1 (b) TERMS AND CONDITIONS FOR WAIVERS.—

2 (1) IN GENERAL.—Except as otherwise pro-  
3 vided by law or regulation, the terms and conditions  
4 of a waiver granted pursuant to this Act shall be  
5 substantially equivalent to—

6 (A) the terms and conditions of the On  
7 Lok waiver (referred to in section 603(c) of the  
8 Social Security Amendments of 1983 and ex-  
9 tended by section 9220 of the Consolidated Om-  
10 nibus Budget Reconciliation Act of 1985), in-  
11 cluding permitting the organization to assume  
12 the full financial risk progressively over the ini-  
13 tial 3-year period of the waiver; and

14 (B) the terms and conditions provided  
15 under the Protocol for the Program of All-inclu-  
16 sive Care for the Elderly (PACE), as published  
17 by On Lok, Inc. as of April 14, 1995, and made  
18 generally available.

19 (2) NOT CONDITIONED ON INFORMATION.—

20 (A) IN GENERAL.—The Secretary's ap-  
21 proval of a waiver for a trial period shall not be  
22 conditioned upon an organization collecting in-  
23 formation for purposes other than operational  
24 purposes, including monitoring of cost and  
25 quality of care provided.

1 (B) RESEARCH.—The Secretary may re-  
2 quire information from an organization operat-  
3 ing under a waiver under this Act for purposes  
4 of general research or general evaluation, but  
5 only if an organization agrees to participate in  
6 such research or evaluation and is appropriately  
7 compensated for any expenses incurred, or  
8 where such research is undertaken entirely at  
9 the expense of the Secretary.

10 (3) 3-YEAR WAIVER LIMIT.—

11 (A) IN GENERAL.—Except as provided in  
12 subparagraph (B), a waiver granted under this  
13 Act shall be for a trial period not to exceed 3  
14 years.

15 (B) EXCEPTION.—The Secretary may ex-  
16 tend a waiver granted under this Act beyond  
17 the 3-year period during the consideration of an  
18 application from an organization under sub-  
19 section (c).

20 (4) NUMBER OF ORGANIZATIONS AUTHOR-  
21 IZED.—

22 (A) PRIOR TO JULY 1, 1998.—

23 (i) IN GENERAL.—The Secretary shall  
24 grant waivers under this Act to not more  
25 than—

1 (I) 30 organizations before July  
2 1, 1996;

3 (II) 40 organizations before July  
4 1, 1997, and after July 1, 1996; or

5 (III) 50 organizations before  
6 July 1, 1998, and after July 1, 1997.

7 (ii) SECTION 9412(b) AND ON LOK  
8 WAIVERS INCLUDED.—For purposes of  
9 clause (i), the number of organizations  
10 specified in such clause shall include any  
11 organization established and operating  
12 under a waiver granted under section  
13 603(c) of the Social Security Amendments  
14 of 1983 or any organization established  
15 and operating under a waiver granted  
16 under section 9412(b) of the Omnibus  
17 Budget Reconciliation Act of 1986 (as  
18 such sections were in effect on the day be-  
19 fore the date of the enactment of this Act).

20 (B) ON AND AFTER JULY 1, 1998.—On and  
21 after July 1, 1998, the number of organizations  
22 operating under a waiver under this Act shall  
23 no longer be limited.

24 (c) ELIGIBILITY TO BE A PROVIDER.—

1           (1) IN GENERAL.—Upon successful completion  
2 of the trial period established under this Act, an or-  
3 ganization which continues to meet the requirements  
4 of this Act shall be eligible to be a provider under  
5 any applicable title of the Social Security Act, in-  
6 cluding under titles XVIII and XIX of such Act (42  
7 U.S.C. 1395 et seq.; 42 U.S.C. 1396 et seq.), and  
8 may apply to be recognized as such in accordance  
9 with regulations promulgated by the Secretary.

10           (2) REQUIREMENTS.—No organization may be  
11 eligible to be a provider under any applicable title of  
12 the Social Security Act if—

13           (A) the Secretary specifically and formally  
14 finds that projected reimbursement for such or-  
15 ganization would not, without any reimburse-  
16 ment modifications specified in the Secretary’s  
17 finding, result in payments below the projected  
18 costs for a comparable population under the  
19 medicare program under title XVIII of the So-  
20 cial Security Act (42 U.S.C. 1395 et seq.) and  
21 the medicaid program under title XIX of such  
22 Act (42 U.S.C. 1396 et seq.), or under any  
23 other applicable title of such Act, or that the  
24 care provided by such organization is signifi-  
25 cantly deficient; and

1 (B) such projected reimbursement costs or  
2 significant deficiencies in quality of care are not  
3 appropriately adjusted or corrected on a timely  
4 basis (as determined by the Secretary) in ac-  
5 cordance with the specific recommendations for  
6 reimbursement adjustments or corrections in  
7 the quality of service included in the Secretary's  
8 formal finding under subparagraph (A).

9 (3) NOT CONDITIONED ON INFORMATION.—The  
10 provisions of subsection (b)(2) shall apply to an or-  
11 ganization eligible to be a provider under any appli-  
12 cable title of the Social Security Act after success-  
13 fully completing a trial period under this Act.

14 (d) REIMBURSEMENT.—

15 (1) IN GENERAL.—Notwithstanding any other  
16 provision of law, and except as provided in para-  
17 graph (2), an organization that is granted a waiver  
18 under this Act, or that is eligible to be a provider  
19 under any applicable title of the Social Security Act  
20 as a result of this Act, shall ordinarily be reimbursed  
21 on a capitation basis. Any such organization may  
22 provide additional services as deemed appropriate by  
23 the organization for qualified participants without  
24 regard to whether such services are specifically reim-  
25 bursable through capitation payments. To the extent

1 such services, in terms of type or frequency, are not  
2 reimbursable, no payments for such services may be  
3 required of participants.

4 (2) EXCEPTION.—In the case of an organiza-  
5 tion receiving an initial waiver under this Act on or  
6 after October 1, 1995, the Secretary (at the request  
7 of the organization) shall not require the organiza-  
8 tion to provide services under title XVIII of the So-  
9 cial Security Act (42 U.S.C. 1395 et seq.) on a  
10 capitated or other risk basis during the first or sec-  
11 ond year of the waiver, in order to allow such an or-  
12 ganization to progressively assume the financial risk  
13 and to acquire experience with such a payment  
14 method.

15 (e) APPLICATION TO ON LOK WAIVERS.—The provi-  
16 sions of this Act also shall apply to an organization operat-  
17 ing under the On Lok waiver described in subsection  
18 (b)(1)(A).

19 (f) APPLICATION OF INCOME AND RESOURCES  
20 STANDARDS FOR CERTAIN INSTITUTIONALIZED  
21 SPOUSES.—Section 1924 of the Social Security Act (42  
22 U.S.C. 1396r–5) (relating to the treatment of income and  
23 resources for certain institutionalized spouses) shall apply  
24 to any individual receiving services from an organization  
25 operating—

1 (1) under a waiver under this Act; or

2 (2) as a provider under title XIX of such Act,  
3 after a determination that the organization has suc-  
4 cessfully completed a trial period under this Act.

5 (g) PROMOTION OF ADDITIONAL APPLICATIONS.—

6 The Secretary shall institute an ongoing effort to promote  
7 the development of organizations to acquire eligibility,  
8 through participation in a trial period under this Act, to  
9 become providers under any applicable title of the Social  
10 Security Act.

11 (h) PROVISION OF SERVICES TO ADDITIONAL POPU-

12 LATIONS.—Nothing in this Act shall prevent any partici-  
13 pating organization from independently developing distinct  
14 programs to provide appropriate services to frail popu-  
15 lations other than the elderly under any provision of law  
16 other than this Act, except where the Secretary finds that  
17 the provision of such services impairs the ability of the  
18 organization to provide services required for the elderly.

19 (i) DEFINITION OF PROVIDER.—The term “provider”  
20 means a provider of services which—

21 (1) has filed an agreement with the Secretary  
22 under section 1866 of the Social Security Act (42  
23 U.S.C. 1395cc);

1           (2) is eligible to participate in a State plan ap-  
2           proved under title XIX of the Social Security Act  
3           (42 U.S.C. 1396 et seq.); or

4           (3) is eligible to receive payment for such serv-  
5           ices under any other applicable title of the Social Se-  
6           curity Act.

7   **SEC. 3. APPLICATION OF SPOUSAL IMPOVERISHMENT**  
8           **RULES.**

9           Section 1924(a)(5) of the Social Security Act (42  
10          U.S.C. 1396r-5(a)(5)) is amended to read as follows:

11           “(5) APPLICATION TO INDIVIDUALS RECEIVING  
12          SERVICES FROM CERTAIN ORGANIZATIONS.—This  
13          section applies to individuals receiving institutional  
14          or noninstitutional services from any organization—

15                   “(A) operating under a waiver under—

16                           “(i) section 603(c) of the Social Secu-  
17                           rity Amendments of 1983 (as in effect on  
18                           the day before the date of the enactment  
19                           of the PACE Provider Act of 1995);

20                           “(ii) section 9412(b) of the Omnibus  
21                           Budget Reconciliation Act of 1986 (as so  
22                           in effect); or

23                           “(iii) the PACE Provider Act of 1995;

24                           or

1           “(B) which has become a provider under  
2           this title after a determination that the organi-  
3           zation has successfully completed a trial period  
4           under the PACE Provider Act of 1995.”.

5 **SEC. 4. REPEALS; EFFECTIVE DATE AND APPLICATION TO**  
6 **EXISTING WAIVERS.**

7           (a) REPEALS.—Section 603(c) of the Social Security  
8 Amendments of 1983, section 9220 of the Consolidated  
9 Omnibus Budget Reconciliation Act of 1985, and section  
10 9412(b) of the Omnibus Budget Reconciliation Act of  
11 1986 are repealed.

12           (b) EFFECTIVE DATE.—

13               (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the provisions of subsection (a) shall be  
15 effective on the date of the enactment of this Act.

16               (2) APPLICATION TO EXISTING WAIVERS.—

17                   (A) IN GENERAL.—To the extent that any  
18 organization is operating on the date of the en-  
19 actment of this Act under the On Lok waiver  
20 (referred to in section 603(c) of the Social Se-  
21 curity Amendments of 1983 and extended by  
22 section 9220 of the Consolidated Omnibus  
23 Budget Reconciliation Act of 1985), or a waiver  
24 granted under section 9412(b) of the Omnibus  
25 Budget Reconciliation Act of 1986, the provi-

1 sions of such sections (as in effect before the  
2 date of the enactment of this Act) shall con-  
3 tinue to apply with respect to such waiver  
4 until—

5 (i) the organization is eligible to be a  
6 provider under this Act;

7 (ii) the Secretary issues and imple-  
8 ments the regulations referred to in section  
9 2(c)(1); and

10 (iii) the organization has had a rea-  
11 sonable opportunity to apply to be recog-  
12 nized as a provider, such application has  
13 been formally considered by the Secretary,  
14 and a final determination on the applica-  
15 tion has been made.

16 (B) CONTINUATION OF WAIVER UNTIL EF-  
17 FECTIVE DATE.—The waiver authority of any  
18 organization applying for recognition under  
19 subparagraph (A) shall continue until—

20 (i) the date that the Secretary deter-  
21 mines that such organization is eligible to  
22 be and can actually serve as a provider  
23 under this Act; or

24 (ii) if the Secretary determines that  
25 the organization is not eligible to be a pro-

1 vider under this Act, the expiration of the  
2 waiver.

3 (C) CONSIDERATION OF PERIODS OF OP-  
4 ERATION PRIOR TO THIS ACT.—In determining  
5 whether an organization is eligible to be a pro-  
6 vider under subparagraph (A), the Secretary—

7 (i) in determining whether the organi-  
8 zation has successfully completed a trial  
9 period under this Act, shall consider any  
10 period before the date of the enactment of  
11 this Act during which an organization was  
12 operating under a waiver described in sub-  
13 paragraph (A); and

14 (ii) shall treat the organization as eli-  
15 gible to be a provider under this Act for  
16 periods after the date of the enactment of  
17 this Act and before such determination if  
18 the organization meets the requirements of  
19 the regulations issued under section  
20 2(c)(1) during such periods.

○