

**Introduced by Committee on Health (Senators Pan (Chair),
Eggman, Gonzalez, Grove, Hurtado, Leyva, Limón, Melendez,
Roth, Rubio, and Wiener)**

March 10, 2021

An act to amend Section 14592 of the Welfare and Institutions Code, relating to the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as introduced, Committee on Health. Program of All-Inclusive Care for the Elderly: criminal record clearance.

Existing federal law establishes the Program of All-Inclusive Care for the Elderly (PACE), which provides specified services for older individuals at a PACE center so that they may continue living in the community. Federal law authorizes states to implement PACE as a Medicaid state option. Existing state law establishes the California Program of All-Inclusive Care for the Elderly (PACE program) to provide community-based, risk-based, and capitated long-term care services as optional services under the state's Medi-Cal State Plan. Existing law generally requires an adult day health care center or home health agency to be licensed by the State Department of Public Health, which is required to obtain a criminal record clearance for specified individuals who own or are employed by the adult day health care center or home health agency. Under existing law, an adult day health care center or a home health agency that has been approved by the State Department of Health Care Services to exclusively serve PACE participants is exempt from licensure by the State Department of Public Health.

Existing law requires the State Department of Health Care Services to obtain a criminal record clearance for the administrator, program

director, and fiscal officer of an adult day health care center before approving the center to exclusively serve PACE participants or individuals being assessed for the PACE program. Existing law requires each specified individual, in order to qualify for criminal record clearance, to submit electronic fingerprint images and related information required by the Department of Justice and to be responsible for any costs associated with transmitting the electronic fingerprint images. Existing law requires the fee to cover the department's processing costs, not including the costs associated with capturing or transmitting the fingerprint images and related information, not to exceed \$32 per submission to the department.

This bill would remove the \$32 limit on the processing fee and would instead require the Department of Justice to charge a fee that is sufficient to cover the department's cost of processing the criminal record check.

Under existing law, to qualify for approval as a home health agency that exclusively serves PACE participants or individuals being assessed for the PACE program, an owner or administrator of a home health agency is required to submit electronic fingerprint images, at the owner's or administrator's expense, to the Department of Justice for the furnishing of the owner's or administrator's criminal record to the State Department of Health Care Services. Existing law prohibits a facility from allowing a newly hired administrator, program director, or fiscal officer to have direct contact with clients or residents of the facility before completing the criminal record clearance process pursuant to these provisions. Existing law requires the Department of Justice to charge a fee that is sufficient to cover the department's cost of processing the criminal record check.

This bill would instead require the above-described persons who own or are employed by a home health agency to be responsible for any costs associated with transmitting the electronic fingerprint images. The bill would require the fee to cover the department's processing costs, not including the costs associated with capturing or transmitting the fingerprint images and related information, not to exceed \$32 per submission to the department.

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

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

1 SECTION 1. Section 14592 of the Welfare and Institutions
2 Code is amended to read:

3 14592. (a) For purposes of this chapter, “PACE organization”
4 means an entity as defined in Section 460.6 of Title 42 of the Code
5 of Federal Regulations.

6 (b) The director shall establish the California Program of
7 All-Inclusive Care for the Elderly (PACE program) to provide
8 community-based, risk-based, and capitated long-term care services
9 as optional services under the state’s Medi-Cal State Plan and
10 under contracts entered into between the federal Centers for
11 Medicare and Medicaid Services, the department, and PACE
12 organizations, meeting the requirements of the Balanced Budget
13 Act of 1997 (Public Law 105-33) and any other applicable law or
14 regulation.

15 (c) A primary care clinic, as defined in paragraph (1) of
16 subdivision (b) of Section 1200 of the Health and Safety Code, an
17 adult day health care center, as defined in subdivision (b) of Section
18 1570.7 of the Health and Safety Code, or a home health agency,
19 as defined in subdivision (a) of Section 1727 of the Health and
20 Safety Code, that exclusively serves PACE participants, as defined
21 in Section 460.6 of Title 42 of the Code of Federal Regulations,
22 is exempt from licensure by the State Department of Public Health.
23 A primary care clinic, an adult day health care center, or a home
24 health agency that exclusively serves PACE participants shall be
25 overseen and regulated by the department.

26 (1) A primary care clinic, adult day health care center, or home
27 health agency approved by the department pursuant to this section
28 to operate exclusively as part of a PACE organization may provide
29 services to individuals who are being assessed for eligibility to
30 enroll in the PACE program for not more than 60 calendar days
31 after an individual submits an application for enrollment.

32 (2) If the department determines that a primary care clinic, adult
33 day health care center, or home health agency approved to operate
34 exclusively as part of a PACE organization has provided services
35 to individuals other than those enrolled in the PACE program, or
36 who are being assessed for eligibility pursuant to paragraph (1),
37 the clinic, adult day health care center, or home health agency shall
38 apply for licensure with the State Department of Public Health. A

1 primary care clinic, adult day health care center, or home health
2 agency required to obtain licensure from the State Department of
3 Public Health pursuant to this paragraph shall apply for the license
4 not later than 60 calendar days following the determination by the
5 department described in this paragraph. The clinic, adult day health
6 care center, or home health agency shall not accept any new
7 participants in the PACE program until licensure is obtained.

8 (3) This subdivision shall become operative only if the director
9 determines, and communicates that determination in writing to the
10 State Department of Public Health, that operating standards
11 compliance programs consistent with subdivisions (d) and (e) have
12 been established for implementation of this section. A primary
13 care clinic, adult day health care center, or home health agency,
14 as defined in this subdivision, shall remain under the oversight
15 and regulatory authority of the State Department of Public Health
16 until the director communicates their written determination to the
17 State Department of Public Health.

18 (d) In order to provide services to PACE participants, PACE
19 organizations exempt from licensure pursuant to this section shall
20 be in compliance with all of the operating standards:

21 (1) A primary care clinic that exclusively serves PACE
22 participants, or that also serves individuals who are being assessed
23 for eligibility to enroll in a PACE program for not more than 60
24 calendar days after an individual submits an application for
25 enrollment, shall be in compliance with the clinic operating
26 standards set forth in Chapter 1 (commencing with Section 1200)
27 of Division 2 of the Health and Safety Code, except as modified
28 by the department, to meet the needs of PACE participants or those
29 individuals being assessed.

30 (2) An adult day health care center that exclusively serves PACE
31 participants, or that also serves individuals who are being assessed
32 for eligibility to enroll in a PACE program for not more than 60
33 calendar days after an individual submits an application for
34 enrollment, shall be in compliance with the center operating
35 standards set forth in Chapter 3.3 (commencing with Section 1570)
36 of Division 2 of the Health and Safety Code, except as modified
37 by the department, to meet the needs of PACE participants or those
38 individuals being assessed.

39 (3) A home health agency that exclusively serves PACE
40 participants, or that also serves individuals who are being assessed

1 for eligibility to enroll in a PACE program for not more than 60
2 calendar days after an individual submits an application for
3 enrollment, shall be in compliance with the agency operating
4 standards set forth in Chapter 8 (commencing with Section 1725)
5 of Division 2 of the Health and Safety Code, except as modified
6 by the department, to meet the needs of PACE participants or those
7 individuals being assessed.

8 (e) A PACE organization exempt from licensure pursuant to
9 this section shall cooperate with the department's evaluation,
10 oversight, and ongoing monitoring and shall comply with the
11 operating standards, as described in subdivision (d). The PACE
12 organization's cooperation shall include, but shall not be limited
13 to, all of the following:

14 (1) Permitting the department or its agent immediate access to
15 inspect any physical locations involved with the PACE
16 organization's services.

17 (2) Immediately providing the department or its agent with
18 copies of any requested records regarding the PACE organization
19 and services offered to PACE participants.

20 (3) Immediately providing the department or its agent with
21 requested information regarding the PACE organization's
22 operations.

23 (f) (1) Before approving an adult day health care center that
24 exclusively serves PACE participants, or that also serves
25 individuals who are being assessed for eligibility to enroll in a
26 PACE program for not more than 60 calendar days after an
27 individual submits an application for enrollment, the department
28 shall obtain a criminal record clearance for the administrator,
29 program director, and fiscal officer of the proposed adult day health
30 care center. The department shall obtain the criminal record
31 clearances each time these positions are to be filled. The adult day
32 health care center facility shall not allow a newly hired
33 administrator, program director, or fiscal officer to have direct
34 contact with clients or residents of the facility before completion
35 of the criminal record clearance set forth in this subdivision.

36 (2) The criminal record clearance shall require the administrator,
37 program director, and fiscal officer to submit electronic fingerprint
38 images and related information required by the Department of
39 Justice to the Department of Justice, for the purpose of obtaining
40 information as to the existence and content of a record of state or

1 federal convictions, state or federal arrests, and state or federal
2 arrests for which the Department of Justice establishes that the
3 person is free on bail or on their recognizance pending trial or
4 appeal.

5 (3) When received, the Department of Justice shall transmit
6 fingerprint images and related information received pursuant to
7 this section to the Federal Bureau of Investigation for the purpose
8 of obtaining a federal criminal history records check. The
9 Department of Justice shall review the information returned from
10 the Federal Bureau of Investigation and compile and disseminate
11 a response to the department.

12 (4) The Department of Justice shall provide a state-level or
13 federal-level criminal offender record information search response
14 to the department pursuant to paragraph (1) of subdivision (p) of
15 Section 11105 of the Penal Code.

16 (5) The department shall request from the Department of Justice
17 subsequent notification service, as provided pursuant to Section
18 11105.2 of the Penal Code, for persons described in paragraph (1).

19 (6) The persons described in paragraph (1) shall be responsible
20 for any costs associated with transmitting the electronic fingerprint
21 images. ~~The fee to cover the processing costs of the Department~~
22 ~~of Justice, not including the costs associated with capturing or~~
23 ~~transmitting the fingerprint images and related information, shall~~
24 ~~not exceed thirty-two dollars (\$32) per submission. *The Department*~~
25 ~~*of Justice shall charge a fee sufficient to cover the cost of*~~
26 ~~*processing the request described in this subdivision.*~~

27 (7) A criminal record clearance shall be complete when the
28 department has obtained the person's criminal offender record
29 information search response from the Department of Justice and
30 has determined that the person is not disqualified from engaging
31 in the activity for which clearance is required.

32 (8) Notwithstanding any other law, the department may provide
33 an individual with a copy of their state-level or federal-level
34 criminal offender record information search response as provided
35 to the department by the Department of Justice if the department
36 has denied a criminal background clearance based on that response
37 and the individual makes a written request to the department for
38 a copy specifying an address to which it is to be sent. The
39 state-level or federal-level criminal offender record information
40 search response shall not be modified or altered from its form or

1 content as provided by the Department of Justice and shall be
2 provided to the address specified by the individual in the written
3 request. The department shall retain a copy of the individual's
4 written request and the response and date provided.

5 (g) (1) To qualify for approval as a home health agency that
6 exclusively serves PACE participants, or that also serves
7 individuals who are being assessed for eligibility to enroll in a
8 PACE program for not more than 60 calendar days after an
9 individual submits an application for enrollment, the following
10 persons shall submit electronic fingerprint images and related
11 information required by the Department of Justice to the
12 Department of Justice for the furnishing of the person's criminal
13 record to the department, at the person's expense as provided in
14 paragraph (6), for the purpose of obtaining information as to the
15 existence and content of a record of state or federal convictions,
16 state or federal arrests, and state or federal arrests for which the
17 Department of Justice establishes that the person is free on bail or
18 on their recognizance pending trial or appeal:

19 (A) The owner or owners of a private agency if the owners are
20 individuals.

21 (B) If the owner of a private agency is a corporation, partnership,
22 or association, an individual with a 10 percent or greater interest
23 in that corporation, partnership, or association.

24 (C) The administrator.

25 (2) A facility shall not allow a newly hired administrator,
26 program director, or fiscal officer to have direct contact with clients
27 or residents of the facility before completion of the criminal record
28 clearance process set forth in this subdivision.

29 (3) When received, the Department of Justice shall transmit
30 fingerprint images and related information received pursuant to
31 this section to the Federal Bureau of Investigation for the purpose
32 of obtaining a federal criminal history records check. The
33 Department of Justice shall review the information returned from
34 the Federal Bureau of Investigation and compile and disseminate
35 a response to the department.

36 (4) The Department of Justice shall provide a state-level or
37 federal-level criminal offender record information search response
38 to the department pursuant to paragraph (1) of subdivision (p) of
39 Section 11105 of the Penal Code.

1 (5) The department shall request from the Department of Justice
2 subsequent notification service, as provided pursuant to Section
3 11105.2 of the Penal Code, for persons described in paragraph (1).

4 ~~(6) The Department of Justice shall charge a fee sufficient to~~
5 ~~cover the cost of processing the request described in this~~
6 ~~subdivision.~~

7 *(6) The persons described in paragraphs (1) and (2) shall be*
8 *responsible for any costs associated with transmitting the electronic*
9 *fingerprint images. The fee to cover the processing costs of the*
10 *Department of Justice, not including the costs associated with*
11 *capturing or transmitting the fingerprint images and related*
12 *information, shall not exceed thirty-two dollars (\$32) per*
13 *submission.*

14 (7) A criminal record clearance shall be complete when the
15 department has obtained the person's criminal offender record
16 information search response from the Department of Justice and
17 has determined that the person is not disqualified from engaging
18 in the activity for which clearance is required.

19 (h) The department may refuse to enter into, or may terminate,
20 a contract with a PACE organization exempt from licensure
21 pursuant to this section, based on the PACE organization's failure
22 to comply with the operating standards as described in subdivision
23 (d), or based on the PACE organization's failure to cooperate as
24 described in subdivision (e).

25 (i) If a PACE organization exempt from licensure pursuant to
26 this section fails to comply with subdivision (c), (d), (e), (f), or
27 (g), the department may require the PACE organization to submit
28 a corrective action plan to bring the PACE organization into
29 compliance with the requirements of those subdivisions. If the
30 department approves the corrective action plan, the PACE
31 organization shall complete the corrective action plan to the
32 satisfaction of the department. If the PACE organization fails to
33 satisfactorily complete the corrective action plan within the time
34 specified by the department, the department may take other action
35 as specified in the PACE organization's contract with the
36 department.

37 (j) For purposes of implementing this section, the department
38 may enter into exclusive or nonexclusive contracts, or may amend
39 existing contracts, on a bid or negotiated basis. Contracts entered
40 into or amended pursuant to this subdivision shall be exempt from

1 Chapter 6 (commencing with Section 14825) of Part 5.5 of Division
2 3 of Title 2 of the Government Code and Part 2 (commencing with
3 Section 10100) of Division 2 of the Public Contract Code, and
4 shall be exempt from the review or approval of any division of the
5 Department of General Services.

6 (k) Notwithstanding Chapter 3.5 (commencing with Section
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
8 the department may implement, interpret, or make specific this
9 section, in whole or in part, by means of letters, bulletins, or other
10 similar instructions, without taking regulatory action.

11 (l) This section shall be implemented only to the extent any
12 necessary federal approvals are obtained and federal financial
13 participation is available.

14 (m) The department shall implement the amendments made to
15 this section by the act that added this subdivision no later than
16 January 1, 2021, but only to the extent any necessary federal
17 approvals are obtained and federal financial participation is
18 available.

19 (n) (1) The department shall establish an administrative fee to
20 be paid by each PACE organization exempt from licensure upon
21 enrollment as a PACE provider, and annually thereafter, in an
22 amount necessary to pay for reasonable costs of implementing and
23 administering subdivisions (c) through (l), inclusive.

24 (2) (A) The fee described in this subdivision shall not be greater
25 than the corresponding fee or fees otherwise imposed on a primary
26 care clinic, home health agency, or adult day health care center
27 pursuant to laws and regulations relating to licensing and regulation
28 by the State Department of Public Health.

29 (B) It is the intent of the Legislature that the fee described in
30 this subdivision is not an additional cost to a PACE organization
31 because PACE organizations exempt from licensure are not subject
32 to fees otherwise imposed for purposes of licensing and regulation
33 by the State Department of Public Health.

34 (C) All fees paid to, and received by, the department pursuant
35 to this subdivision shall be deposited in the State Treasury and
36 shall be credited to a special fund that is hereby created as the
37 PACE Oversight Fund of the State Department of Health Care
38 Services. Moneys deposited in this fund shall be expended by the
39 department for the purposes of implementing and administering
40 subdivisions (c) through (l) inclusive, upon appropriation by the

1 Legislature. No surplus in the PACE Oversight Fund of the State
2 Department of Health Care Services shall be deposited in, or
3 transferred to, the General Fund or any other fund.

4 (o) The amendments made to this section by the act that added
5 this subdivision shall be supported entirely by federal funds and
6 special funds, unless otherwise specified in statute or unless
7 specifically appropriated from the General Fund in the annual
8 Budget Act or other enacted legislation.