

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-1241.01 Brita Darling x2241

SENATE BILL 16-199

SENATE SPONSORSHIP

Scott and Steadman,

HOUSE SPONSORSHIP

DelGrosso,

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY,**
102 **AND, IN CONNECTION THEREWITH, DETERMINING THE**
103 **CAPITATED RATE FOR SERVICES AND CREATING AN OMBUDSMAN**
104 **FOR PARTICIPANTS IN PROGRAMS OF ALL-INCLUSIVE CARE FOR**
105 **THE ELDERLY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires that contracts between the department of health care policy and financing (department) and an organization providing a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

program of all-inclusive care for the elderly (PACE) include the negotiated monthly capitated rate for services. The rate must be less than the amount that would have been paid under the medicaid state plan if the PACE participants were not enrolled in a PACE program.

The department shall participate with Colorado PACE organizations to develop an actuarially sound upper payment limit methodology that meets conditions stated in the bill. The department shall provide data relevant to computing the upper payment limit, and the computation shall be made with the assistance of an actuary.

Until the upper payment limit methodology is developed and adopted in medical services board rules, the percentage of the upper payment limit used to calculate the monthly capitated rate shall not be less than the percentage negotiated for the 2016-17 state fiscal year.

The bill creates the state PACE ombudsman (ombudsman) in the state long-term care ombudsman program. Each PACE program shall post a notice informing PACE participants of the existence of and contact information for the ombudsman. The ombudsman shall have immediate access to a PACE program or facility and to PACE participants for the purposes of carrying out the duties of the ombudsman.

The bill includes a civil penalty for willful interference with the ombudsman and for retaliation against a PACE participant or other person or entity contacting the ombudsman.

The bill sets forth the duties of the ombudsman, including, among others, establishing statewide policies and procedures to identify, investigate, and seek the resolution or referral of complaints made by or on behalf of a PACE participant related to any action, inaction, or decision of a PACE organization that may adversely affect the health, safety, welfare, or rights of the PACE participant.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 25.5-5-412, **amend**
3 (12); and **add** (7) (d) as follows:

4 **25.5-5-412. Program of all-inclusive care for the elderly -**
5 **legislative declaration - services - eligibility - rules - definitions -**
6 **repeal.** (7) For purposes of this section:

7 (d) "UPPER PAYMENT LIMIT" MEANS A FEDERAL UPPER PAYMENT
8 LIMIT ON THE AMOUNT OF THE MEDICAID PAYMENT FOR WHICH FEDERAL
9 FINANCIAL PARTICIPATION IS AVAILABLE FOR A CLASS OF SERVICES AND A

1 CLASS OF HEALTH CARE PROVIDERS, AS SPECIFIED IN 42 CFR 447.

2 (12) (a) The general assembly shall make appropriations to the
3 state department to fund services under this section provided at a monthly
4 capitated rate. The state department shall annually renegotiate a monthly
5 capitated rate for the contracted services.

6 (b) Repealed.

7 (c) THE MONTHLY CAPITATED RATE NEGOTIATED WITH THE STATE
8 DEPARTMENT SHALL BE INCLUDED IN THE CONTRACT WITH THE PACE
9 ORGANIZATION AND MUST BE BASED UPON A PROSPECTIVE MONTHLY
10 CAPITATION PAYMENT TO A PACE ORGANIZATION FOR A MEDICAID
11 PARTICIPANT ENROLLED IN A PACE PROGRAM THAT IS LESS THAN WHAT
12 WOULD OTHERWISE HAVE BEEN PAID UNDER THE STATE MEDICAID PLAN IF
13 THE PARTICIPANT WERE NOT ENROLLED IN THE PACE PROGRAM.

14 (d) (I) THE STATE DEPARTMENT, WITH THE PARTICIPATION OF
15 COLORADO PACE ORGANIZATIONS, SHALL DEVELOP AN ACTUARIALLY
16 SOUND UPPER PAYMENT LIMIT METHODOLOGY THAT COMPLIES WITH
17 FEDERAL LAW RELATING TO PACE ORGANIZATIONS AND ADDRESSES A
18 PACE-COMPARABLE POPULATION AND EMPLOYS FUNCTIONAL,
19 DIAGNOSTIC, AND OTHER INFORMATION ON THE PACE POPULATION AND
20 ITS SERVICE USE AND COST CHARACTERISTICS. THE STATE DEPARTMENT
21 SHALL CONTRACT WITH AN ACTUARY THAT HAS EXPERIENCE WITH THE
22 METHODS DESCRIBED IN THIS PARAGRAPH (d).

23 (II) FOR PURPOSES OF COMPUTING THE UPPER PAYMENT LIMIT, THE
24 STATE DEPARTMENT SHALL PROVIDE TO THE CONTRACTED ACTUARY
25 STATE LONG-TERM CARE OPTIONS DATA DESCRIBING THE HEALTH
26 CHARACTERISTICS, FUNCTIONAL ACUITY, AND LONG-TERM SERVICES AND
27 SUPPORTS NEEDS OF THE PACE-COMPARABLE POPULATION, AS WELL AS

1 RELEVANT MEDICARE AND MEDICAID CLAIMS, COST, UTILIZATION, AND
2 VITAL STATISTICS DATA NECESSARY FOR THE COMPUTATION. THE UPPER
3 PAYMENT LIMIT METHODOLOGY MUST APPLY GRADE OF MEMBERSHIP
4 METHODS TO CHARACTERIZE THE HEALTH DEFICIT STRUCTURE OF
5 LONG-TERM SERVICES AND SUPPORTS POPULATIONS, DEMONSTRATING AN
6 EMPIRICAL UPPER PAYMENT LIMIT.

7 (III) NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH (d)
8 TO THE CONTRARY, THE STATE DEPARTMENT SHALL NOT BE REQUIRED TO
9 DEVELOP AN UPPER PAYMENT LIMIT METHODOLOGY PURSUANT TO THIS
10 PARAGRAPH (d) OR COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPH
11 (I) OF PARAGRAPH (e) OF THIS SUBSECTION (12) IF THE STATE DEPARTMENT
12 DOES NOT RECEIVE SUFFICIENT GIFTS, GRANTS, AND DONATIONS TO FUND
13 THE CONTRACT FOR ACTUARIAL SERVICES PURSUANT TO SUBPARAGRAPH
14 (I) OF THIS PARAGRAPH (d).

15 (e) (I) CONTINGENT UPON ANY NECESSARY FEDERAL APPROVAL,
16 UNTIL THE UPPER PAYMENT LIMIT METHODOLOGY IS DEVELOPED
17 PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (12) AND ADOPTED IN
18 STATE BOARD RULES, THE PERCENTAGE OF THE UPPER PAYMENT LIMIT
19 USED TO CALCULATE THE MONTHLY CAPITATED RATE SHALL NOT BE LESS
20 THAN THE PERCENTAGE NEGOTIATED BY THE STATE DEPARTMENT WITH
21 THE PACE ORGANIZATIONS FOR THE 2016-17 STATE FISCAL YEAR.

22 (II) THIS PARAGRAPH (e) IS REPEALED, EFFECTIVE JULY 1 OF THE
23 YEAR FOLLOWING THE YEAR IN WHICH THE EXECUTIVE DIRECTOR NOTIFIES
24 THE REVISOR OF STATUTES THAT THE STATE BOARD HAS ADOPTED RULES
25 RELATING TO THE UPPER PAYMENT LIMIT METHODOLOGY DEVELOPED
26 PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (12).

27 **SECTION 2.** In Colorado Revised Statutes, 26-11.5-102, **amend**

1 (2) as follows:

2 **26-11.5-102. Legislative declaration.** (2) The general assembly
3 finds, determines, and declares that it is the public policy of this state to
4 encourage community contact and involvement with patients, residents,
5 and clients of long-term care facilities AND PACE PROGRAMS.

6 **SECTION 3.** In Colorado Revised Statutes, 26-11.5-103, **add**
7 (5.3), (5.5), and (8) as follows:

8 **26-11.5-103. Definitions.** As used in this article, unless the
9 context otherwise requires:

10 (5.3) "PACE" MEANS A NONPROFIT OR FOR-PROFIT PROGRAM OF
11 ALL-INCLUSIVE CARE FOR THE ELDERLY OPERATED PURSUANT TO SECTION
12 25.5-5-412, C.R.S.

13 (5.5) "PACE PARTICIPANT" MEANS ANY INDIVIDUAL WHO IS A
14 CURRENT OR PROSPECTIVE OR FORMER PATIENT OR CLIENT OF ANY PACE
15 PROGRAM IN THE STATE.

16 (8) "STATE PACE OMBUDSMAN" MEANS THE PERSON DESIGNATED
17 TO IMPLEMENT THE DUTIES AND FUNCTIONS REQUIRED PURSUANT TO
18 SECTION 26-11.5-113.

19 **SECTION 4.** In Colorado Revised Statutes, 26-11.5-104, **amend**
20 **(3); and add** (4) as follows:

21 **26-11.5-104. Creation of state long-term care ombudsman**
22 **program-state PACE ombudsman.** (3) Local ombudsman programs
23 THAT ARE PART OF THE OFFICE OF THE STATE LONG-TERM CARE
24 OMBUDSMAN shall be established statewide. Such programs shall be
25 operated by the state department under contract, grant, or agreement
26 between the state department and a public agency or an appropriate
27 private nonprofit organization. Personnel of local programs shall be

1 trained and designated as qualified representatives of the office in
2 accordance with section 26-11.5-105 (1) (b).

3 (4) A STATE PACE OMBUDSMAN IS ESTABLISHED IN THE STATE
4 LONG-TERM CARE OMBUDSMAN PROGRAM TO CARRY OUT THE DUTIES SET
5 FORTH IN SECTION 26-11.5-113.

6 **SECTION 5.** In Colorado Revised Statutes, 26-11.5-107, **add** (3)
7 as follows:

8 **26-11.5-107. Notice of ombudsman services.** (3) EVERY PACE
9 PROGRAM SHALL POST IN A CONSPICUOUS PLACE AT ALL PACE FACILITIES
10 AND PROVIDE TO ALL PACE PARTICIPANTS, IN WRITING, A NOTICE WITH
11 THE NAME, ADDRESS, AND PHONE NUMBER OF THE PACE OMBUDSMAN, OR
12 HIS OR HER DESIGNEE. THE STATE PACE OMBUDSMAN SHALL PROVIDE THE
13 NOTICE TO BE POSTED BY THE PACE PROGRAM.

14 **SECTION 6.** In Colorado Revised Statutes, 26-11.5-108, **amend**
15 (2); and **add** (2.5) as follows:

16 **26-11.5-108. Access to facility - residents - records -**
17 **confidentiality.** (2) In performing ombudsman duties and functions in
18 accordance with this article an ombudsman shall have access to review
19 the medical and social records of a resident OR PACE PARTICIPANT
20 eligible for ombudsman services pursuant to this article, provided the
21 resident OR PACE PARTICIPANT has consented to such review. In the
22 event consent to such review is not available because the resident OR
23 PACE PARTICIPANT is incapable of consenting and has no guardian to
24 provide such consent, ~~inspection of such~~ THE records may be made
25 INSPECTED by the state long-term care ombudsman OR THE STATE PACE
26 OMBUDSMAN.

27 (2.5) AN OMBUDSMAN, UPON PRESENTING A STATE PACE

1 OMBUDSMAN IDENTIFICATION CARD, SHALL HAVE IMMEDIATE ACCESS TO
2 A PACE PROGRAM OR FACILITY AND TO ITS PACE PARTICIPANTS FOR THE
3 PURPOSES OF EFFECTIVELY CARRYING OUT THE PROVISIONS OF THIS
4 ARTICLE.

5 **SECTION 7.** In Colorado Revised Statutes, 26-11.5-109, **amend**
6 (2) introductory portion and (4) (a); and **add** (2) (c) and (2) (d) as follows:

7 **26-11.5-109. Interference with ombudsmen prohibited - civil**
8 **penalty.** (2) No person shall take any discriminatory, disciplinary, or
9 retaliatory action against the following individuals for any communication
10 with an ombudsman or for any information provided in good faith to the
11 office OR TO THE STATE PACE OMBUDSMAN in carrying out its
12 OMBUDSMAN duties and responsibilities under this article:

- 13 (c) ANY PACE PARTICIPANT; OR
- 14 (d) ANY OFFICER OR EMPLOYEE OF A PROGRAM, ORGANIZATION,
15 FACILITY, OR GOVERNMENTAL AGENCY PROVIDING SERVICES TO PACE
16 PARTICIPANTS.

17 (4) (a) Any person listed in paragraphs (a), ~~and~~ (b), (c), AND (d)
18 of subsection (2) of this section, or any person acting on such person's
19 behalf, including the state or a local ombudsman, may file a complaint
20 with the department of human services against any person who violates
21 subsection (1) or (2) of this section. The said department shall investigate
22 such a complaint and, if there is sufficient evidence of a violation, shall
23 be authorized to assess, enforce, and collect the appropriate penalty set
24 forth in subsection (3) of this section.

25 **SECTION 8.** In Colorado Revised Statutes, 26-11.5-111, **amend**
26 (1) (a), (1) (b), and (1) (c) as follows:

27 **26-11.5-111. Duties of state department.** (1) In order to

1 implement the provisions of this article, the state department shall carry
2 out the following duties:

3 (a) Establish a statewide uniform reporting system to collect and
4 analyze data relating to complaints and conditions in long-term care
5 facilities OR PACE PROGRAMS for the purpose of identifying and resolving
6 significant problems, with specific provision for the submission of such
7 data on a regular basis to the state agency responsible for licensing or
8 certifying long-term care facilities AND PACE ORGANIZATIONS;

9 (b) Establish procedures to assure that information contained in
10 any files maintained in accordance with the state long-term care
11 ombudsman program shall be disclosed only at the discretion of the state
12 long-term care ombudsman OR THE STATE PACE OMBUDSMAN, AS
13 APPLICABLE, and that the identity of a complainant be disclosed only with
14 the written consent of such complainant or in accordance with a court
15 order;

16 (c) Ensure that ~~no individual~~ INDIVIDUALS involved in the
17 designation of the state long-term care ombudsman ~~nor~~ AND THE STATE
18 PACE OMBUDSMAN, AND any officer, employee, or volunteer of the
19 statewide program in performing ombudsman functions, ~~is subject to any~~
20 DO NOT HAVE A conflict of interest;

21 **SECTION 9.** In Colorado Revised Statutes, **add** 26-11.5-113 as
22 follows:

23 **26-11.5-113. Duties of state PACE ombudsman.** (1) THE STATE
24 PACE OMBUDSMAN HAS THE FOLLOWING DUTIES AND FUNCTIONS:

25 (a) ESTABLISH STATEWIDE POLICIES AND PROCEDURES TO
26 IDENTIFY, INVESTIGATE, AND SEEK THE RESOLUTION OR REFERRAL OF
27 COMPLAINTS MADE BY OR ON BEHALF OF A PACE PARTICIPANT RELATED

1 TO ANY ACTION, INACTION, OR DECISION OF ANY PACE ORGANIZATION OR
2 OF ANY PUBLIC AGENCY, INCLUDING THE STATE DEPARTMENT OF HUMAN
3 SERVICES AND COUNTY DEPARTMENTS OF SOCIAL SERVICES, THAT MAY
4 ADVERSELY AFFECT THE HEALTH, SAFETY, WELFARE, OR RIGHTS OF THE
5 PACE PARTICIPANT;

6
7 (b) ESTABLISH PROCEDURES TO ANALYZE AND MONITOR THE
8 DEVELOPMENT AND IMPLEMENTATION OF FEDERAL, STATE, AND LOCAL
9 LAWS, REGULATIONS, AND POLICIES WITH RESPECT TO PACE SERVICES
10 AND PROGRAMS OR FACILITIES. ON THE BASIS OF THE ANALYSIS AND
11 MONITORING, THE STATE PACE OMBUDSMAN SHALL RECOMMEND TO THE
12 APPROPRIATE GOVERNING BODY CHANGES TO LAWS, REGULATIONS, AND
13 POLICIES.

14 (c) PREPARE A NOTICE INFORMING PACE PARTICIPANTS OF THE
15 EXISTENCE OF A STATE PACE OMBUDSMAN AND THE DUTIES OF THE STATE
16 PACE OMBUDSMAN FOR POSTING AT ALL PACE PROGRAMS AND
17 FACILITIES.

18 (2) THE POLICIES AND PROCEDURES ADOPTED PURSUANT TO
19 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION MAY BE APPLIED TO
20 COMPLAINTS BY OR ON BEHALF OF PACE PARTICIPANTS WHERE THE
21 PROVISION OF OMBUDSMAN SERVICES WILL EITHER BENEFIT OTHER PACE
22 PARTICIPANTS ENROLLED IN THE SAME PACE PROGRAM THAT IS THE
23 SUBJECT OF THE COMPLAINT OR PACE PARTICIPANTS IN GENERAL, OR
24 WHERE OMBUDSMAN SERVICE IS THE ONLY VIABLE AVENUE OF ASSISTANCE
25 AVAILABLE TO THE PACE PARTICIPANT AND THE OMBUDSMAN SERVICE
26 WILL NOT SIGNIFICANTLY DIMINISH THE PACE ORGANIZATION'S EFFORTS
27 ON BEHALF OF THE PARTICIPANTS.

1 (3) IN ADDITION TO THE DUTIES AND FUNCTIONS SET FORTH IN
2 SUBSECTIONS (1) AND (2) OF THIS SECTION, THE STATE PACE OMBUDSMAN
3 AND HIS OR HER REPRESENTATIVES HAVE THE AUTHORITY TO PURSUE
4 ADMINISTRATIVE, LEGAL, OR OTHER APPROPRIATE REMEDIES ON BEHALF
5 OF PACE PARTICIPANTS FOR THE PURPOSES OF EFFECTIVELY CARRYING
6 OUT THE PROVISIONS OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS
7 SECTION AND SUBSECTION (2) OF THIS SECTION.

8 (4)(a) THE STATE DEPARTMENT MAY SEEK, ACCEPT, AND EXPEND
9 GIFTS, GRANTS, AND DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR
10 THE PURPOSES OF ESTABLISHING THE STATE PACE OMBUDSMAN AND
11 IMPLEMENTING THIS SECTION.

12 (b) THE PACE OMBUDSMAN FUND, REFERRED TO IN THIS
13 PARAGRAPH (b) AS THE "FUND" IS HEREBY CREATED IN THE STATE
14 TREASURY. THE FUND CONSISTS OF GIFTS, GRANTS, AND DONATIONS
15 CREDITED TO THE FUND PURSUANT TO THIS SUBSECTION (3) AND ANY
16 OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR
17 TRANSFER TO THE FUND. THE STATE TREASURER SHALL CREDIT ALL
18 INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF
19 MONEY IN THE FUND TO THE FUND. ANY UNEXPENDED AND
20 UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF A FISCAL
21 YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED TO
22 ANY OTHER FUND. SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
23 ASSEMBLY, THE STATE DEPARTMENT MAY EXPEND MONEY FROM THE FUND
24 FOR PURPOSES OF ESTABLISHING THE STATE PACE OMBUDSMAN
25 PURSUANT TO THIS ARTICLE.

26 (c) (I) NOTWITHSTANDING THE PROVISIONS OF THIS ARTICLE TO
27 THE CONTRARY, IF IN ANY OF STATE FISCAL YEARS 2016-17 THROUGH

1 2020-21 THE STATE DEPARTMENT DOES NOT RECEIVE SUFFICIENT GIFTS,
2 GRANTS, OR DONATIONS NECESSARY TO FUND A STATE PACE
3 OMBUDSMAN TO CARRY OUT THE DUTIES SET FORTH IN THIS SECTION, A
4 STATE PACE OMBUDSMAN SHALL NOT BE ESTABLISHED IN THE STATE
5 LONG-TERM CARE OMBUDSMAN PROGRAM.

6 (II) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE JULY 1, 2021.

7 SECTION 10. In Colorado Revised Statutes, add 26-11.5-114 as
8 follows:

9 **26-11.5-114. Stakeholder process - state PACE ombudsman -**
10 **reporting.**(1) THE STATE DEPARTMENT SHALL CONVENE A STAKEHOLDER
11 GROUP FOR PURPOSES OF DEVELOPING LEGISLATION TO BE INTRODUCED
12 DURING THE 2017 LEGISLATIVE SESSION CONCERNING A COMPREHENSIVE
13 STATEWIDE PACE OMBUDSMAN PROGRAM ESTABLISHED IN THE STATE
14 LONG-TERM CARE OMBUDSMAN PROGRAM THAT INCLUDES LOCAL PACE
15 OMBUDSMEN.

16 (2) THE STAKEHOLDER GROUP SHALL INCLUDE, AT A MINIMUM:

17 (a) THE STATE PACE OMBUDSMAN, ONCE ESTABLISHED;

18 (b) THE STATE LONG-TERM CARE OMBUDSMAN AND ONE OR MORE
19 LOCAL OMBUDSMEN;

20 (c) REPRESENTATIVES OF PACE ORGANIZATIONS;

21 (d) COMMUNITY ADVOCATES; AND

22 (e) ANY OTHER INTERESTED STAKEHOLDERS, INCLUDING
23 REPRESENTATIVES OF STATE AGENCIES, AS DETERMINED BY THE STATE
24 DEPARTMENT.

25 (3) THE STAKEHOLDER GROUP SHALL CONSIDER THE NUMBER AND
26 LOCATION OF ANY NECESSARY LOCAL PACE OMBUDSMEN AND PROJECTED
27 SERVICE LEVELS FOR THE COMPREHENSIVE STATEWIDE PACE

1 OMBUDSMAN PROGRAM.

2 (4) THE STATE DEPARTMENT SHALL REPORT ON THE WORK OF THE
3 STAKEHOLDER GROUP TO THE JOINT BUDGET COMMITTEE AND TO THE
4 STATE DEPARTMENT'S LEGISLATIVE COMMITTEE OF REFERENCE AS PART OF
5 THE AGENCY'S ANNUAL PRESENTATION PURSUANT TO SECTION 2-7-103,
6 C.R.S., MADE DURING THE INTERIM PRIOR TO THE START OF THE 2017
7 LEGISLATIVE SESSION.

8 **SECTION 11. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.