



# Legislative Council Staff

## Research Note

Version: Final

Date: 11/17/2016

### Bill Number

**Senate Bill 16-199**

### Sponsors

**Senators Scott & Steadman  
Representatives DelGrosso &  
Ginal**

### Short Title

***Program Of All-inclusive Care  
For The Elderly***

### Research Analyst

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### Status

This research note reflects the final version of the bill, which became effective on June 10, 2016.

### Summary

The bill requires that contracts between the Department of Health Care Policy and Financing (HCPF) and organizations providing a program of all-inclusive care for the elderly (PACE organizations) include the negotiated monthly capitated rate for services. The rate must be less than the amount that would have been paid for services to the PACE participant under the regular Medicaid state plan if the person were not enrolled in PACE. In addition, the bill requires HCPF, with the participation of PACE organizations, to develop an actuarially sound upper payment limit methodology that meets federal requirements and other standards. HCPF must contract with an actuary with relevant experience concerning Medicaid and PACE. Until the upper payment limit methodology is developed, the bill requires that the percentage of the upper payment limit used to determine the monthly capitated rate not be less than the percentage negotiated with providers for FY 2016-17. HCPF is not required to develop the new methodology if sufficient gifts, grants, or donations are not received for this purpose.

The bill also creates a state PACE Ombudsman Office in the Long-term Care Ombudsman Program in the Department of Human Services (DHS). PACE organizations are required to post information in their facilities and provide written notice to PACE participants about contacting the PACE ombudsman. The bill sets forth procedures for the state PACE ombudsman, including duties, access to PACE organization records, and penalties for retaliating against PACE participants or employees who communicate or share information with the state PACE ombudsman. For FY 2016-17 through FY 2020-21, the state PACE ombudsman will not operate if sufficient gifts, grants, and donations are not received to cover the costs of the ombudsman. The

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PACE Ombudsman Fund is created in the DHS to receive these gifts, grants, and donations.

The bill also establishes a stakeholder group to develop legislation for introduction at the 2017 legislative session concerning the creation of a system of local PACE ombudsmen to work in conjunction with the state PACE ombudsman.

## Background

PACE provides comprehensive long-term services and supports as an alternative to nursing facility care. The program is available to persons aged 55 or older who are enrolled in Medicare or Medicaid and deemed eligible for nursing facility care by a Single Entry Point (SEP) agency. Clients must live within a PACE provider service area and be able, with supportive services, to live in the community safely. Services are typically offered in an adult health center and supplemented with in-home and referral services. Health and service benefits include: primary and hospital care, prescription drugs, emergency services, physical therapy, home care, meals, dentistry, nutritional counseling, social services, and transportation, among others. Once enrolled, if a client requires nursing facility care, the PACE program will also pay for these costs.

Senate Bill 15-137 expanded the type of entities that may operate a PACE program to include private, for-profit organizations and specified a review process by the Attorney General to oversee the conversion of nonprofit organizations into for-profit entities. Following passage of SB 15-137, one PACE provider, InnovAge, converted to for-profit status. As a condition of this conversion, approximately \$200 million, based on the charitable benefit to the community from the nonprofit organization, was set aside in a foundation to continue to fund work associated with the original objectives of the nonprofit organization. In addition, the Attorney General specified that InnovAge establish an ombudsman for its program. InnovAge serves about 80 percent of the 2,800 participants in PACE statewide.

Capitated payments are per-person payments that cover all costs of care over a certain time period. An upper payment limit is the maximum amount of payment under Medicaid that is eligible for federal matching funds for a specific type of provider.

## Senate Action

**Senate Health and Human Services Committee (April 28, 2016).** At the hearing representatives of the Office of the Attorney General, InnovAge, DHS, the State Long Term Care Ombudsman, Denver Regional Council of Governments Area Agency on Aging, and Colorado Center on Law and Policy testified in support of the bill. Representatives of HCPF testified in a neutral capacity on the bill and responded to questions. The committee adopted amendments L.001, L.003, L.005, L.006, and L.007, and referred the bill, as amended, to the Senate Appropriations Committee.

Amendment L.001 was a technical amendment. Amendment L.003:

- required HCPF, with the participation of PACE organizations and a contract actuary, to develop an actuarially sound upper payment limit methodology that meets federal requirements and other standards;
- specified that until the upper payment limit methodology is developed, the percentage of the upper payment limit used to determine the monthly capitated rate may not be less than the percentage negotiated with providers for FY 2016-17; and
- established that HCPF is not required to develop the new methodology if sufficient gifts, grants, or donations are not received for this purpose.

Amendment L.005 required that all PACE programs provide written notices to PACE

participants containing contact information for the PACE ombudsman. The amendment set forth procedures for the state PACE ombudsman, including duties, access to PACE organization records, and penalties for retaliating against PACE participants or employees who communicate or share information with the state PACE ombudsman.

Amendment L.006 created the PACE ombudsman Fund to receive gifts, grants, and donations. For FY 2016-17 through FY 2020-21, the state PACE ombudsman will not operate if sufficient gifts, grants, and donations are not received to cover the costs of the ombudsman.

Amendment L.007 established a stakeholder group to develop legislation for introduction at the 2017 legislative session concerning the creation of a system of local PACE ombudsmen to work in conjunction with the state PACE ombudsman.

**Senate Appropriations Committee (May 3, 2016).** The committee adopted amendment J.001 and referred the bill, as amended, to the Senate Committee of the Whole. The amendment added an appropriations clause to the bill.

**Senate second reading (May 3, 2016).** The Senate adopted the Senate Health and Human Services Committee and the Appropriations Committee reports and Amendment No. 3, which was a technical amendment. The Senate passed the bill, as amended, on second reading.

**Senate third reading (May 4, 2016).** The Senate passed the bill on third reading with no amendments.

## House Action

**House Health, Insurance, and Environment Committee (May 5, 2016).** At the hearing, representatives of the Office of the Attorney General, InnovAge, Colorado Consumer Health Initiative, and Colorado Center on Law and Policy testified in favor of the bill. Representatives of HCPF and the State Long Term Care Ombudsman testified in a neutral capacity on the bill and responded to questions. The committee adopted amendment L.012 and referred the bill, as amended, to the House Finance Committee.

Amendment L.012 clarified that the state PACE Ombudsman office is independent of the state Long-term Care Ombudsman office.

**House Finance Committee (May 6, 2016).** The committee referred the bill, as amended by the House Health, Insurance, and Environment Committee, to the House Appropriations Committee.

**House Appropriations Committee (May 9, 2016).** The committee adopted amendment J.002, which amended the appropriations clause, and referred the bill to the House Committee of the Whole.

**House second reading (May 9, 2016).** The House adopted the House Health, Insurance, and Environment Committee report and Amendment No. 2, which was a technical amendment. The House Appropriations committee report was lost. The House passed the bill on second reading, as amended.

**House third reading (May 10, 2016).** The House passed the bill on third reading with no amendments.

## Consideration of Amendments

*Consideration of Amendments (May 11, 2016).* The Senate concurred with the House amendments and repassed the bill.