

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

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

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) THE STATE DEPARTMENT SHALL PARTICIPATE WITH COLORADO
15 PACE ORGANIZATIONS TO DEVELOP AN ACTUARIALLY SOUND UPPER
16 PAYMENT LIMIT METHODOLOGY THAT COMPLIES WITH FEDERAL
17 LEGISLATION 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.

21 (e) FOR PURPOSES OF COMPUTING THE UPPER PAYMENT LIMIT, THE
22 STATE DEPARTMENT SHALL PROVIDE STATE LONG-TERM CARE OPTIONS
23 DATA DESCRIBING THE HEALTH CHARACTERISTICS, FUNCTIONAL ACUITY,
24 AND LONG-TERM SERVICES AND SUPPORTS NEEDS OF THE
25 PACE-COMPARABLE POPULATION, AS WELL AS RELEVANT MEDICARE AND
26 MEDICAID CLAIMS, COST, UTILIZATION, AND VITAL STATISTICS DATA
27 NECESSARY FOR THE COMPUTATION. THE UPPER PAYMENT LIMIT

1 METHODOLOGY MUST APPLY GRADE OF MEMBERSHIP METHODS TO
2 CHARACTERIZE THE HEALTH DEFICIT STRUCTURE OF LONG-TERM SERVICES
3 AND SUPPORTS POPULATIONS, DEMONSTRATING AN EMPIRICAL UPPER
4 PAYMENT LIMIT. AN ACTUARY EXPERIENCED IN THESE METHODS SHALL
5 ASSIST WITH THE COMPUTATION.

6 (f) (I) UNTIL THE UPPER PAYMENT LIMIT METHODOLOGY IS
7 DEVELOPED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (12) AND
8 ADOPTED IN STATE BOARD RULES, THE PERCENTAGE OF THE UPPER
9 PAYMENT LIMIT USED TO CALCULATE THE MONTHLY CAPITATED RATE
10 SHALL NOT BE LESS THAN THE PERCENTAGE NEGOTIATED BY THE STATE
11 DEPARTMENT WITH THE PACE ORGANIZATIONS FOR THE 2016-17 STATE
12 FISCAL YEAR.

13 (II) THIS PARAGRAPH (f) IS REPEALED, EFFECTIVE JULY 1 OF THE
14 YEAR FOLLOWING THE YEAR IN WHICH THE STATE BOARD NOTIFIES THE
15 REVISOR OF STATUTES THAT THE STATE BOARD HAS ADOPTED RULES
16 RELATING TO THE UPPER PAYMENT LIMIT METHODOLOGY DEVELOPED
17 PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (12).

18 **SECTION 2.** In Colorado Revised Statutes, 26-11.5-102, **amend**
19 (2) as follows:

20 **26-11.5-102. Legislative declaration.** (2) The general assembly
21 finds, determines, and declares that it is the public policy of this state to
22 encourage community contact and involvement with patients, residents,
23 and clients of long-term care facilities AND PACE PROGRAMS.

24 **SECTION 3.** In Colorado Revised Statutes, 26-11.5-103, **add**
25 (5.3), (5.5), and (8) as follows:

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

1 (5.3) "PACE" MEANS A NONPROFIT OR FOR-PROFIT PROGRAM OF
2 ALL-INCLUSIVE CARE FOR THE ELDERLY OPERATED PURSUANT TO SECTION
3 25.5-5-412, C.R.S.

4 (5.5) "PACE PARTICIPANT" MEANS ANY INDIVIDUAL WHO IS A
5 CURRENT OR PROSPECTIVE OR FORMER PATIENT OR CLIENT OF ANY PACE
6 PROGRAM IN THE STATE.

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

10 **SECTION 4.** In Colorado Revised Statutes, 26-11.5-104, **add** (4)
11 as follows:

12 **26-11.5-104. Creation of state long-term care ombudsman**
13 **program - state PACE ombudsman.** (4) A STATE PACE OMBUDSMAN
14 IS ESTABLISHED IN THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM
15 TO CARRY OUT THE DUTIES SET FORTH IN SECTION 26-11.5-113.

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

18 **26-11.5-107. Notice of ombudsman services.** (3) EVERY PACE
19 PROGRAM SHALL POST IN A CONSPICUOUS PLACE AT ALL PACE FACILITIES
20 A NOTICE WITH THE NAME, ADDRESS, AND PHONE NUMBER OF THE PACE
21 OMBUDSMAN, OR HIS OR HER DESIGNEE. THE STATE PACE OMBUDSMAN
22 SHALL PROVIDE THE NOTICE TO BE POSTED BY THE PACE PROGRAM.

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

25 **26-11.5-108. Access to facility - residents - records -**
26 **confidentiality.** (2) In performing ombudsman duties and functions in
27 accordance with this article an ombudsman shall have access to review

1 the medical and social records of a resident eligible for ombudsman
2 services pursuant to this article, provided the resident has consented to
3 such review. In the event consent to such review is not available because
4 the resident is incapable of consenting and has no guardian to provide
5 such consent, ~~inspection of such~~ THE records may be ~~made~~ INSPECTED by
6 the state long-term care ombudsman OR THE STATE PACE OMBUDSMAN.

7 (2.5) AN OMBUDSMAN, UPON PRESENTING A STATE PACE
8 OMBUDSMAN IDENTIFICATION CARD, SHALL HAVE IMMEDIATE ACCESS TO
9 A PACE PROGRAM OR FACILITY AND TO ITS PACE PARTICIPANTS FOR THE
10 PURPOSES OF EFFECTIVELY CARRYING OUT THE PROVISIONS OF THIS
11 ARTICLE.

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

14 **26-11.5-109. Interference with ombudsmen prohibited - civil**
15 **penalty.** (2) No person shall take any discriminatory, disciplinary, or
16 retaliatory action against the following individuals for any communication
17 with an ombudsman or for any information provided in good faith to the
18 office in carrying out its duties and responsibilities under this article:

19 (c) ANY PACE PARTICIPANT; OR

20 (d) ANY OFFICER OR EMPLOYEE OF A PROGRAM, ORGANIZATION,
21 FACILITY, OR GOVERNMENTAL AGENCY PROVIDING SERVICES TO PACE
22 PARTICIPANTS.

23 (4) (a) Any person listed in paragraphs (a), ~~and~~ (b), (c), AND (d)
24 of subsection (2) of this section, or any person acting on such person's
25 behalf, including the state or a local ombudsman, may file a complaint
26 with the department of human services against any person who violates
27 subsection (1) or (2) of this section. The said department shall investigate

1 such a complaint and, if there is sufficient evidence of a violation, shall
2 be authorized to assess, enforce, and collect the appropriate penalty set
3 forth in subsection (3) of this section.

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

6 **26-11.5-111. Duties of state department.** (1) In order to
7 implement the provisions of this article, the state department shall carry
8 out the following duties:

9 (a) Establish a statewide uniform reporting system to collect and
10 analyze data relating to complaints and conditions in long-term care
11 facilities for the purpose of identifying and resolving significant
12 problems, with specific provision for the submission of such data on a
13 regular basis to the state agency responsible for licensing or certifying
14 long-term care facilities AND PACE ORGANIZATIONS;

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

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

22 **26-11.5-113. Duties of state PACE ombudsman.** (1) THE STATE
23 PACE OMBUDSMAN HAS THE FOLLOWING DUTIES AND FUNCTIONS:

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

1 THAT MAY ADVERSELY AFFECT THE HEALTH, SAFETY, WELFARE, OR RIGHTS
2 OF THE PACE PARTICIPANT;

3 (b) PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO PACE
4 ORGANIZATIONS AND THEIR EMPLOYEES;

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

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

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

26 (2) IN ADDITION TO THE DUTIES AND FUNCTIONS SET FORTH IN
27 SUBSECTIONS (1) AND (2) OF THIS SECTION, THE STATE PACE OMBUDSMAN

1 AND HIS OR HER REPRESENTATIVES HAVE THE AUTHORITY TO PURSUE
2 ADMINISTRATIVE, LEGAL, OR OTHER APPROPRIATE REMEDIES ON BEHALF
3 OF PACE PARTICIPANTS FOR THE PURPOSES OF EFFECTIVELY CARRYING
4 OUT THE PROVISIONS OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS
5 SECTION AND SUBSECTION (2) OF THIS SECTION.

6 (3) THE STATE DEPARTMENT MAY SEEK, ACCEPT, AND EXPEND
7 GIFTS, GRANTS, AND DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR
8 THE PURPOSES OF IMPLEMENTING THIS SECTION.

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