

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 17-0950.01 Brita Darling x2241

**HOUSE BILL 17-1264**

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**HOUSE SPONSORSHIP**

**Ginal and Lawrence, Kennedy**

**SENATE SPONSORSHIP**

**Martinez Humenik and Jahn,**

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**House Committees**

Health, Insurance, & Environment  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING EXPANDING THE OMBUDSMAN PROGRAM FOR PERSONS**  
102              **RECEIVING SERVICES PURSUANT TO THE PROGRAM OF**  
103              **ALL-INCLUSIVE CARE FOR THE ELDERLY TO INCLUDE LOCAL**  
104              **OMBUDSMEN, AND, IN CONNECTION THEREWITH, MAKING AN**  
105              **APPROPRIATION.**

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**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://leg.colorado.gov>.)*

The existing all-inclusive care for the elderly (PACE) program includes the state PACE ombudsman. The bill adds local PACE

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.*

HOUSE  
Amended 2nd Reading  
April 28, 2017

ombudsmen to the state ombudsman's office (office).

The bill contains provisions relating to local PACE ombudsmen, including training, designation as representatives of the office, access to PACE centers and participants, authority to file complaints on behalf of PACE participants, and immunity from liability.

The bill includes time frames for the state PACE ombudsman to complete duties and functions of the office, including establishing statewide policies and procedures for investigating and resolving complaints relating to PACE programs and training local PACE ombudsmen.

The department of human services shall report to the joint budget committee and to its legislative committee of reference concerning the long-term care ombudsman program and the state PACE ombudsman program, including program caseloads and the need, if any, for additional local ombudsmen.

The bill repeals statutory provisions relating to stakeholder recommendations and a report concerning the expansion of the PACE ombudsman program to include local PACE ombudsmen.

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

2 **SECTION 1.** In Colorado Revised Statutes, 26-11.5-103, **amend**  
3 (5.5); **repeal** (1); and **add** (2.5) as follows:

4 **26-11.5-103. Definitions.** As used in this ~~article~~ ARTICLE 11.5,  
5 unless the context otherwise requires:

6 (1) ~~"Elderly resident" means any individual who is sixty years of~~  
7 ~~age or older who is a current or prospective or former patient or client of~~  
8 ~~any long-term care facility.~~

9 (2.5) "LOCAL PACE OMBUDSMAN" MEANS THE PERSON OR  
10 PERSONS TRAINED AND DESIGNATED AS QUALIFIED BY THE STATE PACE  
11 OMBUDSMAN TO SERVE IN AREAS OF THE STATE WHERE PACE PROGRAMS  
12 ARE OPERATED AND TO ACT AS A REPRESENTATIVE OF THE OFFICE OF THE  
13 STATE PACE OMBUDSMAN.

14 (5.5) "PACE participant" means any individual who is a current  
15 or prospective or former ~~patient or client of~~ PARTICIPANT IN any PACE

1 program in the state.

2 **SECTION 2.** In Colorado Revised Statutes, 26-11.5-104, **amend**  
3 (3) as follows:

4 **26-11.5-104. Creation of state and local long-term care and**  
5 **PACE ombudsman programs.** (3) Local LONG-TERM CARE AND PACE  
6 ombudsman programs shall be established statewide. Such programs shall  
7 be operated by the state department under contract, grant, or agreement  
8 between the state department and a public agency or an appropriate  
9 private nonprofit organization. Personnel of local LONG-TERM CARE  
10 OMBUDSMAN programs ~~shall~~ MUST be trained and designated as qualified  
11 representatives of the office in accordance with section 26-11.5-105  
12 (1)(b). PERSONNEL OF LOCAL PACE OMBUDSMAN PROGRAMS MUST BE  
13 TRAINED AND DESIGNATED AS QUALIFIED REPRESENTATIVES OF THE OFFICE  
14 IN ACCORDANCE WITH SECTION 26-11.5-113 (1)(a.5).

15 **SECTION 3.** In Colorado Revised Statutes, 26-11.5-105, **amend**  
16 (1)(a) as follows:

17 **26-11.5-105. Duties of state long-term care ombudsman.** (1) In  
18 addition to such other duties and functions as the state department may  
19 allocate to the office, the state long-term care ombudsman shall have the  
20 following duties and functions in implementing a statewide long-term  
21 care ombudsman program:

22 (a) (I) Establish statewide policies and procedures for operating  
23 the state long-term care ombudsman program including procedures to  
24 identify, investigate, and seek the resolution or referral of complaints  
25 made by or on behalf of any ~~elderly~~ resident related to any action,  
26 inaction, or decision of any provider of long-term care services or of any  
27 public agency, including the state department of human services and

1 county departments of social services, that may adversely affect the  
2 health, safety, welfare, or rights of ~~such elderly~~ THE resident.

3 (II) The policies and procedures adopted pursuant to ~~subparagraph~~  
4 ~~(I) of this paragraph (a)~~ SUBSECTION (1)(a)(I) OF THIS SECTION may be  
5 applied to complaints by or on behalf of any resident of a long-term care  
6 facility where the provision of ombudsman services will either benefit  
7 ~~elderly~~ residents of the facility involved in the complaint or ~~elderly~~  
8 residents of long-term care facilities in general, or where ombudsman  
9 service is the only viable avenue of assistance available to the resident  
10 and such service will not significantly diminish the program's effort on  
11 behalf of ~~elderly~~ residents.

12 **SECTION 4.** In Colorado Revised Statutes, **amend** 26-11.5-106  
13 as follows:

14 **26-11.5-106. Local ombudsmen - representatives of office.**

15 (1) A local ombudsman OR A LOCAL PACE OMBUDSMAN, whether an  
16 employee or volunteer of a local ombudsman program, ~~shall be~~ IS  
17 considered a representative of the office for the purposes of carrying out  
18 policies and procedures adopted by the state long-term care ombudsman  
19 OR STATE PACE OMBUDSMAN in accordance with this ~~article~~ ARTICLE  
20 11.5, but only upon the completion of training and designation as a  
21 qualified representative by the state long-term care ombudsman OR STATE  
22 PACE OMBUDSMAN. As a representative of the office, a local ombudsman  
23 OR A LOCAL PACE OMBUDSMAN shall follow rules ~~and regulations~~ of the  
24 state department and policies and procedures established by the state  
25 long-term care ombudsman OR STATE PACE OMBUDSMAN.

26 (2) Each local ombudsman OR LOCAL PACE OMBUDSMAN shall  
27 carry an identification card issued annually and signed by the state

1 long-term care ombudsman OR STATE PACE OMBUDSMAN and shall, upon  
2 the request of a supervisory staff member of a facility, present such card  
3 in order to obtain access to residents and records of such facility.

4 **SECTION 5.** In Colorado Revised Statutes, 26-11.5-107, **amend**  
5 (3) as follows:

6 **26-11.5-107. Notice of ombudsman services.** (3) Every PACE  
7 program shall post in a conspicuous place at all PACE facilities and  
8 provide to all PACE participants, in writing, a notice with the name,  
9 address, and phone number of the STATE PACE ombudsman, or his or her  
10 designee, AND THE NAME, ADDRESS, AND PHONE NUMBER OF THE NEAREST  
11 LOCAL PACE OMBUDSMAN. The state PACE ombudsman shall provide  
12 the notice to be posted by the PACE program.

13 **SECTION 6.** In Colorado Revised Statutes, 26-11.5-108, **amend**  
14 (1); and **repeal** (2.5) as follows:

15 **26-11.5-108. Access to facility - residents - records -**  
16 **confidentiality.** (1) ~~An~~ A LONG-TERM CARE ombudsman OR PACE  
17 OMBUDSMAN, upon presenting a long-term care OR PACE ombudsman  
18 identification card, ~~shall~~ MUST have immediate access to a long-term care  
19 facility, PACE CENTER, OR PARTICIPANT'S RESIDENCE and to its residents  
20 OR PARTICIPANTS eligible for ombudsman services pursuant to this ~~article~~  
21 ARTICLE 11.5 for the purposes of effectively carrying out the provisions  
22 of this ~~article~~ ARTICLE 11.5.

23 (2.5) ~~An ombudsman, upon presenting a state PACE ombudsman~~  
24 ~~identification card, shall have immediate access to a PACE program or~~  
25 ~~facility and to its PACE participants for the purposes of effectively~~  
26 ~~carrying out the provisions of this article.~~

27 **SECTION 7.** In Colorado Revised Statutes, 26-11.5-109, **amend**

1 (4)(a) as follows:

2 **26-11.5-109. Interference with ombudsmen prohibited - civil**  
3 **penalty.** (4) (a) Any person listed in ~~paragraphs (a), (b), (c), and (d) of~~  
4 ~~subsection (2)~~ SUBSECTIONS (2)(a), (2)(b), (2)(c), AND (2)(d) of this  
5 section, or any person acting on such person's behalf, including the state  
6 or a local LONG-TERM CARE ombudsman OR THE STATE OR A LOCAL PACE  
7 OMBUDSMAN, may file a complaint with the department of human  
8 services against any person who violates subsection (1) or (2) of this  
9 section. The ~~said~~ department shall investigate such a complaint and, if  
10 there is sufficient evidence of a violation, ~~shall be~~ IS authorized to assess,  
11 enforce, and collect the appropriate penalty set forth in subsection (3) of  
12 this section.

13 **SECTION 8.** In Colorado Revised Statutes, **amend** 26-11.5-110  
14 as follows:

15 **26-11.5-110. Immunity from liability.** Any LONG-TERM CARE  
16 ombudsman OR PACE OMBUDSMAN who, in good faith, acts within the  
17 scope of the duties and functions of this ~~article~~ ARTICLE 11.5 ~~shall be~~ IS  
18 immune from civil or criminal liability. For the purposes of this section,  
19 there ~~shall be~~ IS a rebuttable presumption that, when acting within the  
20 scope of the duties and functions of this ~~article~~ ARTICLE 11.5, an  
21 ombudsman acts in good faith. Nothing in this section ~~shall be construed~~  
22 ~~to abrogate or limit~~ ABROGATES OR LIMITS the immunity or exemption  
23 from civil liability of any agency, entity, or person under any statute,  
24 including the "Colorado Governmental Immunity Act", article 10 of title  
25 24. C.R.S.

26 **SECTION 9.** In Colorado Revised Statutes, 26-11.5-111, **amend**  
27 (1) introductory portion, (1)(a), (1)(b), and (1)(e); and **add** (1)(f) as

1 follows:

2 **26-11.5-111. Duties of state department - report - rules.** (1) In  
3 order to implement the provisions of this ~~article~~ ARTICLE 11.5, the state  
4 department shall carry out the following duties:

5 (a) Establish a statewide uniform reporting system to collect and  
6 analyze data relating to complaints and conditions in long-term care  
7 facilities or PACE programs for the purpose of identifying and resolving  
8 significant problems, with specific provision for the submission of such  
9 data on a regular basis to the state agency responsible for licensing or  
10 certifying long-term care facilities and TO THE DEPARTMENT OF HEALTH  
11 CARE POLICY AND FINANCING FOR PACE organizations;

12 (b) Establish procedures to assure that information contained in  
13 any files maintained in accordance with the state long-term care  
14 ombudsman program AND STATE PACE OMBUDSMAN PROGRAM shall be  
15 disclosed only at the discretion of the state long-term care ombudsman or  
16 the state PACE ombudsman, as applicable, and that the identity of a  
17 complainant be disclosed only with the written consent of such  
18 complainant or in accordance with a court order;

19 (c) Promulgate rules ~~and regulations~~ necessary for the efficient  
20 administration and operation of the state long-term care ombudsman  
21 program AND STATE PACE OMBUDSMAN PROGRAM; AND

22 (f) (I) PRIOR TO THE START OF THE 2018 LEGISLATIVE SESSION AND  
23 ANNUALLY THEREAFTER, REPORT TO THE JOINT BUDGET COMMITTEE AND  
24 TO THE STATE DEPARTMENT'S LEGISLATIVE COMMITTEE OF REFERENCE  
25 PURSUANT TO SECTION 2-7-203 CONCERNING THE STATE LONG-TERM CARE  
26 OMBUDSMAN PROGRAM AND THE STATE PACE OMBUDSMAN PROGRAM,  
27 INCLUDING PROGRAM CASELOADS AND THE NEED, IF ANY, FOR ADDITIONAL

1 LOCAL OMBUDSMEN IN THE PROGRAMS.

2 (II) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136  
3 (11)(a)(I), THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS  
4 SUBSECTION (1)(f) CONTINUES FOR FIVE YEARS. THIS SUBSECTION (1)(f)  
5 IS REPEALED, EFFECTIVE JULY 1, 2022.

6 **SECTION 10.** In Colorado Revised Statutes, 26-11.5-113,  
7 **amend** (1)(a) and (1)(c); and **add** (1)(a.5) as follows:

8 **26-11.5-113. Duties of state PACE ombudsman - repeal.**

9 (1) The state PACE ombudsman has the following duties and functions:

10 (a) NO LATER THAN JULY 1, 2017, establish statewide policies and  
11 procedures to identify, investigate, and seek the resolution or referral of  
12 complaints made by or on behalf of a PACE participant related to any  
13 action, inaction, or decision of any PACE organization or PACE provider  
14 or of any public agency, including the state department of human services  
15 and county departments of social services, that may adversely affect the  
16 health, safety, welfare, or rights of the PACE participant. THE POLICIES  
17 AND PROCEDURES ESTABLISHED PURSUANT TO THIS SUBSECTION (1)(a)  
18 MUST ENSURE THAT, WHILE UPHOLDING THE PARTICIPANT-DIRECTED  
19 NATURE OF AN OMBUDSMAN'S ADVOCACY, THE ACTIONS OF THE STATE  
20 PACE OMBUDSMAN OR LOCAL PACE OMBUDSMEN ARE CONSISTENT WITH  
21 A PACE ORGANIZATION'S DUTIES AND RESPONSIBILITIES UNDER FEDERAL  
22 LAW;

23 (a.5) NO LATER THAN OCTOBER 1, 2017, PROVIDE TRAINING AND  
24 TECHNICAL ASSISTANCE TO PERSONNEL OF LOCAL PACE OMBUDSMAN  
25 PROGRAMS. THE TRAINING MUST BE DEVELOPED IN CONSULTATION WITH  
26 PACE ORGANIZATIONS AND OTHER PERSONS OR ENTITIES WITH PACE  
27 EXPERTISE, AS APPROPRIATE. UPON SUCCESSFUL COMPLETION OF

1 TRAINING, THE OFFICE MAY DESIGNATE PERSONNEL AS QUALIFIED  
2 REPRESENTATIVES OF THE OFFICE AND, IF DESIGNATED, SHALL ISSUE A  
3 PACE OMBUDSMAN IDENTIFICATION CARD TO THE PERSONNEL.

4 (c) NO LATER THAN JULY 1, 2017, prepare AND DISTRIBUTE a  
5 notice informing PACE participants of the existence of a state PACE  
6 ombudsman and the duties of the state PACE ombudsman for posting at  
7 all PACE programs and facilities, AND UPDATE THE NOTICE, AS  
8 NECESSARY, TO INCLUDE INFORMATION CONCERNING LOCAL PACE  
9 OMBUDSMEN.

10 **SECTION 11.** In Colorado Revised Statutes, **repeal** 26-11.5-114.

11 **SECTION 12. Appropriation.** For the 2017-18 state fiscal year,  
12 \$445,264 is appropriated to the department of human services. This  
13 appropriation is from the general fund. To implement this act, the  
14 department may use this appropriation for the state ombudsmen program.

15 **SECTION 13. Safety clause.** The general assembly hereby finds,  
16 determines, and declares that this act is necessary for the immediate  
17 preservation of the public peace, health, and safety.