

CHAPTER 363

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 17-1264

BY REPRESENTATIVE(S) Ginal and Lawrence, Kennedy, Carver, Esgar, Gray, Hamner, Jackson, Kraft-Tharp, Lebsock, Liston, Lontine, McKean, Pettersen, Rosenthal, Weissman, Young, Hansen;
 also SENATOR(S) Martinez Humenik and Jahn, Aguilar, Court, Fields, Guzman, Jones, Kagan, Kefalas, Kerr, Merrifield, Priola, Todd, Williams A., Zenzinger.

AN ACT

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

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

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

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

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

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

(5.5) "PACE participant" means any individual who is a current or prospective or former ~~patient or client of~~ PARTICIPANT IN any PACE program in the state.

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

26-11.5-104. Creation of state and local long-term care and PACE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

(a) (I) Establish statewide policies and procedures for operating the state long-term care ombudsman program including procedures to identify, investigate, and seek the resolution or referral of complaints made by or on behalf of any ~~elderly~~ resident related to any action, inaction, or decision of any provider of long-term care services or of any public agency, including the state department of human services and county departments of social services, that may adversely affect the health, safety, welfare, or rights of ~~such elderly~~ THE resident.

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

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

26-11.5-106. Local ombudsmen - representatives of office. (1) A local ombudsman OR A LOCAL PACE OMBUDSMAN, whether an employee or volunteer of a local ombudsman program, ~~shall be~~ IS considered a representative of the office for the purposes of carrying out policies and procedures adopted by the state long-term care ombudsman OR STATE PACE OMBUDSMAN in accordance with this ~~article~~ ARTICLE 11.5, but only upon the completion of training and designation as a qualified representative by the state long-term care ombudsman OR STATE PACE OMBUDSMAN. As a representative of the office, a local ombudsman OR A LOCAL PACE OMBUDSMAN shall follow rules ~~and regulations~~ of the state department and policies and procedures established by the state long-term care ombudsman OR STATE PACE OMBUDSMAN.

(2) Each local ombudsman OR LOCAL PACE OMBUDSMAN shall carry an identification card issued annually and signed by the state long-term care

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

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

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

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

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

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

SECTION 7. In Colorado Revised Statutes, 26-11.5-109, **amend** (4)(a) as follows:

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

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

26-11.5-110. Immunity from liability. Any LONG-TERM CARE ombudsman OR PACE OMBUDSMAN who, in good faith, acts within the scope of the duties and functions of this ~~article~~ ARTICLE 11.5 ~~shall be~~ IS immune from civil or criminal liability. For the purposes of this section, there ~~shall be~~ IS a rebuttable presumption that, when acting within the scope of the duties and functions of this ~~article~~ ARTICLE 11.5, an ombudsman acts in good faith. Nothing in this section ~~shall be construed to abrogate or limit~~ ABROGATES OR LIMITS the immunity or exemption from civil liability of any agency, entity, or person under any statute, including the "Colorado

Governmental Immunity Act", article 10 of title 24. ~~C.R.S.~~

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

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

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

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

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

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

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

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

26-11.5-113. Duties of state PACE ombudsman - repeal. (1) The state PACE ombudsman has the following duties and functions:

(a) NO LATER THAN JULY 1, 2017, establish 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 any PACE organization or PACE provider or of any public agency, including the state department of human services and county departments of social services, that may adversely affect the health, safety, welfare, or rights of the PACE participant. THE

POLICIES AND PROCEDURES ESTABLISHED PURSUANT TO THIS SUBSECTION (1)(a) MUST ENSURE THAT, WHILE UPHOLDING THE PARTICIPANT-DIRECTED NATURE OF AN OMBUDSMAN'S ADVOCACY, THE ACTIONS OF THE STATE PACE OMBUDSMAN OR LOCAL PACE OMBUDSMEN ARE CONSISTENT WITH A PACE ORGANIZATION'S DUTIES AND RESPONSIBILITIES UNDER FEDERAL LAW;

(a.5) NO LATER THAN OCTOBER 1, 2017, PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO PERSONNEL OF LOCAL PACE OMBUDSMAN PROGRAMS. THE TRAINING MUST BE DEVELOPED IN CONSULTATION WITH PACE ORGANIZATIONS AND OTHER PERSONS OR ENTITIES WITH PACE EXPERTISE, AS APPROPRIATE. UPON SUCCESSFUL COMPLETION OF TRAINING, THE OFFICE MAY DESIGNATE PERSONNEL AS QUALIFIED REPRESENTATIVES OF THE OFFICE AND, IF DESIGNATED, SHALL ISSUE A PACE OMBUDSMAN IDENTIFICATION CARD TO THE PERSONNEL.

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

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

SECTION 12. Appropriation. For the 2017-18 state fiscal year, \$75,000 is appropriated to the department of human services. This appropriation is from the general fund. To implement this act, the department may use this appropriation for the state ombudsmen program.

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

Approved: June 5, 2017