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

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

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

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

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

(d) "UPPER PAYMENT LIMIT" MEANS A FEDERAL UPPER PAYMENT LIMIT ON THE AMOUNT OF THE MEDICAID PAYMENT FOR WHICH FEDERAL FINANCIAL PARTICIPATION IS AVAILABLE FOR A CLASS OF SERVICES AND A
CLASS OF HEALTH CARE PROVIDERS, AS SPECIFIED IN 42 CFR 447.

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

(b) Repealed.

(c) The monthly capitated rate negotiated with the state department shall be included in the contract with the PACE organization and must be based upon a prospective monthly capitation payment to a PACE organization for a Medicaid participant enrolled in a PACE program that is less than what would otherwise have been paid under the state Medicaid plan if the participant were not enrolled in the PACE program.

(d) The state department shall participate with Colorado PACE organizations to develop an actuarially sound upper payment limit methodology that complies with federal legislation relating to PACE organizations and addresses a PACE-comparable population and employs functional, diagnostic, and other information on the PACE population and its service use and cost characteristics.

(e) For purposes of computing the upper payment limit, the state department shall provide state long-term care options data describing the health characteristics, functional acuity, and long-term services and supports needs of the PACE-comparable population, as well as relevant Medicare and Medicaid claims, cost, utilization, and vital statistics data necessary for the computation. The upper payment limit
METHODOLOGY MUST APPLY GRADE OF MEMBERSHIP METHODS TO
CHARACTERIZE THE HEALTH DEFICIT STRUCTURE OF LONG-TERM SERVICES
AND SUPPORTS POPULATIONS, DEMONSTRATING AN EMPIRICAL UPPER
PAYMENT LIMIT. AN ACTUARY EXPERIENCED IN THESE METHODS SHALL
ASSIST WITH THE COMPUTATION.

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

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

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

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

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

26-11.5-103. Definitions. As used in this article, unless the
context otherwise requires:
(5.3) "PACE" MEANS A NONPROFIT OR FOR-PROFIT PROGRAM OF
ALL-INCLUSIVE CARE FOR THE ELDERLY OPERATED PURSUANT TO SECTION
25.5-5-412, C.R.S.
(5.5) "PACE PARTICIPANT" MEANS ANY INDIVIDUAL WHO IS A
CURRENT OR PROSPECTIVE OR FORMER PATIENT OR CLIENT OF ANY PACE
PROGRAM IN THE STATE.
(8) "STATE PACE OMBUDSMAN" MEANS THE PERSON DESIGNATED
TO IMPLEMENT THE DUTIES AND FUNCTIONS REQUIRED PURSUANT TO
SECTION 26-11.5-113.
SECTION 4. In Colorado Revised Statutes, 26-11.5-104, add (4)
as follows:
26-11.5-104. Creation of state long-term care ombudsman
program - state PACE ombudsman. (4) A STATE PACE OMBUDSMAN
IS ESTABLISHED IN THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM
TO CARRY OUT THE DUTIES SET FORTH IN SECTION 26-11.5-113.
SECTION 5. In Colorado Revised Statutes, 26-11.5-107, add (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
A NOTICE WITH THE NAME, ADDRESS, AND PHONE NUMBER OF THE PACE
OMBUDSMAN, OR HIS OR HER DESIGNEE. 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
(2); and add (2.5) as follows:
26-11.5-108. Access to facility - residents - records -
confidentiality. (2) In performing ombudsman duties and functions in
accordance with this article an ombudsman shall have access to review
the medical and social records of a resident eligible for ombudsman services pursuant to this article, provided the resident has consented to such review. In the event consent to such review is not available because the resident is incapable of consenting and has no guardian to provide such consent, inspection of such records may be made by the state long-term care ombudsman or the state PACE ombudsman.

(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); and add (2) (c) and (2) (d) as follows:

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

(c) any PACE participant; or

(d) any officer or employee of a program, organization, facility, or governmental agency providing services to PACE participants.

(4) (a) Any person listed in paragraphs (a), and (b), (c), and (d) of subsection (2) of this section, or any person acting on such person's behalf, including the state or a local 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 authorized to assess, enforce, and collect the appropriate penalty set forth in subsection (3) of this section.

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

26-11.5-111. Duties of state department. (1) In order to implement the provisions of this article, 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 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 PACE ORGANIZATIONS;

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

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

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

(a) 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
THAT MAY ADVERSELY AFFECT THE HEALTH, SAFETY, WELFARE, OR RIGHTS OF THE PACE PARTICIPANT;

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

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

(d) PREPARE 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.

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

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

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

SECTION 10. 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.