SENATE BILL 16-199

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, AND MAKING AN APPROPRIATION.

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
The program of all-inclusive care for the elderly (PACE) includes 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.

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) (I) The state department, with the participation of Colorado PACE organizations, shall develop an actuarially sound upper payment limit methodology that complies with federal law 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. The state department shall contract with an actuary that has experience with the methods described in this paragraph (d).

(II) For purposes of computing the upper payment limit, the state department shall provide to the contracted actuary 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.

(III) NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH (d) TO THE CONTRARY, THE STATE DEPARTMENT SHALL NOT BE REQUIRED TO DEVELOP AN UPPER PAYMENT LIMIT METHODOLOGY PURSUANT TO THIS PARAGRAPH (d) OR COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPH (I) OF PARAGRAPH (e) OF THIS SUBSECTION (12) IF THE STATE DEPARTMENT DOES NOT RECEIVE SUFFICIENT GIFTS, GRANTS, AND DONATIONS TO FUND THE CONTRACT FOR ACTUARIAL SERVICES PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (d).

(e) (I) CONTINGENT UPON ANY NECESSARY FEDERAL APPROVAL, 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 (e) IS REPEALED, EFFECTIVE JULY 1 OF THE YEAR FOLLOWING THE YEAR IN WHICH THE EXECUTIVE DIRECTOR 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, amend (3); and add (4) as follows:

26-11.5-104. Creation of state long-term care ombudsman program-state PACE ombudsman. (3) Local ombudsman programs THAT ARE PART OF THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN 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 programs shall be
trained and designated as qualified representatives of the office in accordance with section 26-11.5-105 (1) (b).

(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 AND PROVIDE TO ALL PACE PARTICIPANTS, IN WRITING, 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 or PACE PARTICIPANT eligible for ombudsman services pursuant to this article, provided the resident or PACE PARTICIPANT has consented to such review. In the event consent to such review is not available because the resident or PACE PARTICIPANT is incapable of consenting and has no guardian to provide such consent, inspection of such the records may be made INSPECTED 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
(2) introductory portion and (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 or TO THE STATE PACE OMBUDSMAN in carrying out its
OMBUDSMAN 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), (1) (b), 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 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 PACE ORGANIZATIONS;

(b) Establish procedures to assure that information contained in any files maintained in accordance with the state long-term care 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;

(c) Ensure that no individual INDIVIDUALS 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 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;

(b) 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.

c) 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.
(3) 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.

(4) (a) The state department may seek, accept, and expend gifts, grants, and donations from private or public sources for the purposes of establishing the state PACE ombudsman and implementing this section.

(b) The PACE ombudsman fund, referred to in this paragraph (b) as the "fund", is hereby created in the state treasury. The fund consists of gifts, grants, and donations credited to the fund pursuant to this subsection (4) and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be transferred to any other fund, subject to annual appropriation by the general assembly, the state department may expend money from the fund for purposes of establishing the state PACE ombudsman pursuant to this article.

(c) (I) Notwithstanding the provisions of this article to the contrary, if in any of state fiscal years 2016-17 through
2020-21 THE STATE DEPARTMENT DOES NOT RECEIVE SUFFICIENT GIFTS, GRANTS, OR DONATIONS NECESSARY TO FUND A STATE PACE OMBUDSMAN TO CARRY OUT THE DUTIES SET FORTH IN THIS SECTION, A STATE PACE OMBUDSMAN SHALL NOT BE ESTABLISHED IN THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(II) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE JULY 1, 2021.

SECTION 10. In Colorado Revised Statutes, add 26-11.5-114 as follows:

26-11.5-114. Stakeholder process - state PACE ombudsman - reporting. (1) THE STATE DEPARTMENT SHALL CONVENE A STAKEHOLDER GROUP FOR PURPOSES OF DEVELOPING LEGISLATION TO BE INTRODUCED DURING THE 2017 LEGISLATIVE SESSION CONCERNING A COMPREHENSIVE STATEWIDE PACE OMBUDSMAN PROGRAM ESTABLISHED IN THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM THAT INCLUDES LOCAL PACE OMBUDSMEN.

(2) THE STAKEHOLDER GROUP SHALL INCLUDE, AT A MINIMUM:

(a) THE STATE PACE OMBUDSMAN, ONCE ESTABLISHED;
(b) THE STATE LONG-TERM CARE OMBUDSMAN AND ONE OR MORE LOCAL OMBUDSMEN;
(c) REPRESENTATIVES OF PACE ORGANIZATIONS;
(d) COMMUNITY ADVOCATES; AND
(e) ANY OTHER INTERESTED STAKEHOLDERS, INCLUDING REPRESENTATIVES OF STATE AGENCIES, AS DETERMINED BY THE STATE DEPARTMENT.

(3) THE STAKEHOLDER GROUP SHALL CONSIDER THE NUMBER AND LOCATION OF ANY NECESSARY LOCAL PACE OMBUDSMEN AND PROJECTED SERVICE LEVELS FOR THE COMPREHENSIVE STATEWIDE PACE
OMBUDSMAN PROGRAM.

(4) The State Department shall report on the work of the stakeholder group to the Joint Budget Committee and to the State Department’s Legislative Committee of Reference as part of the agency’s annual presentation pursuant to Section 2-7-103, C.R.S., made during the interim prior to the start of the 2017 legislative session.

SECTION 11. Appropriation. (1) For the 2016-17 state fiscal year, $225,000 is appropriated to the department of health care policy and financing for use by the executive director’s office. This appropriation is from the department of health care policy and financing cash fund created in section 25.5-1-109, C.R.S. To implement this act, the executive director’s office may use this appropriation for general professional services and special projects.

(2) For the 2016-17 state fiscal year, $81,675 is appropriated to the department of human services for use by the state ombudsman program. This appropriation is from the PACE ombudsman fund created in section 26-11.5-113 (4) (b), C.R.S., and is based on an assumption that the department will require an additional 1.0 FTE.

SECTION 12. 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.