

CHAPTER 270

HEALTH CARE POLICY AND FINANCING

SENATE BILL 16-199

BY SENATOR(S) Scott and Steadman, Crowder, Jahn, Martinez Humenik;
also REPRESENTATIVE(S) DelGrosso and Ginal, Coram, Hamner, Kraft-Tharp, Lawrence, Pettersen, Roupe, Ryden, Vigil,
Hullinghorst.

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, AND MAKING AN APPROPRIATION.

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(b) Repealed.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

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

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 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 OFFICE 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 OF THEIR RESPECTIVE OFFICES 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 RESIDENT'S RECORDS OR PACE PARTICIPANT'S records may be ~~made~~ INSPECTED by the state long-term care ombudsman OR THE STATE PACE OMBUDSMAN, RESPECTIVELY.

(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 STATE LONG-TERM CARE OMBUDSMAN OFFICE OR TO THE STATE PACE OMBUDSMAN OFFICE in carrying out ~~its~~ THEIR RESPECTIVE 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 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;

(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 OFFICE 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 OFFICE 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 OFFICE 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 WITHIN THE STATE PACE OMBUDSMAN OFFICE 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.

Approved: June 10, 2016