

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

INTRODUCED

LLS NO. 17-0950.01 Brita Darling x2241

HOUSE BILL 17-1264

HOUSE SPONSORSHIP

Ginal and Lawrence, Kennedy

SENATE SPONSORSHIP

Martinez Humenik and Jahn,

House Committees

Health, Insurance, & Environment

Senate Committees

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.**

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

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.

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.

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
16 program in the state.

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

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

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

16 **26-11.5-105. Duties of state long-term care ombudsman.** (1) In
17 addition to such other duties and functions as the state department may
18 allocate to the office, the state long-term care ombudsman shall have the
19 following duties and functions in implementing a statewide long-term
20 care ombudsman program:

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

1 health, safety, welfare, or rights of ~~such elderly~~ THE resident.

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

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

13 **26-11.5-106. Local ombudsmen - representatives of office.**

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

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

1 the request of a supervisory staff member of a facility, present such card
2 in order to obtain access to residents and records of such facility.

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

5 **26-11.5-107. Notice of ombudsman services.** (3) Every PACE
6 program shall post in a conspicuous place at all PACE facilities and
7 provide to all PACE participants, in writing, a notice with the name,
8 address, and phone number of the STATE PACE ombudsman, or his or her
9 designee, AND THE NAME, ADDRESS, AND PHONE NUMBER OF THE NEAREST
10 LOCAL PACE OMBUDSMAN. The state PACE ombudsman shall provide
11 the notice to be posted by the PACE program.

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

14 **26-11.5-108. Access to facility - residents - records -**
15 **confidentiality.** (1) ~~An~~ A LONG-TERM CARE ombudsman OR PACE
16 OMBUDSMAN, upon presenting a long-term care OR PACE ombudsman
17 identification card, ~~shall~~ MUST have immediate access to a long-term care
18 facility, PACE CENTER, OR PARTICIPANT'S RESIDENCE and to its residents
19 OR PARTICIPANTS eligible for ombudsman services pursuant to this ~~article~~
20 ARTICLE 11.5 for the purposes of effectively carrying out the provisions
21 of this ~~article~~ ARTICLE 11.5.

22 (2.5) ~~An ombudsman, upon presenting a state PACE ombudsman~~
23 ~~identification card, shall have immediate access to a PACE program or~~
24 ~~facility and to its PACE participants for the purposes of effectively~~
25 ~~carrying out the provisions of this article.~~

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

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

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

14 **26-11.5-110. Immunity from liability.** Any LONG-TERM CARE
15 ombudsman OR PACE OMBUDSMAN who, in good faith, acts within the
16 scope of the duties and functions of this ~~article~~ ARTICLE 11.5 ~~shall be~~ IS
17 immune from civil or criminal liability. For the purposes of this section,
18 there ~~shall be~~ IS a rebuttable presumption that, when acting within the
19 scope of the duties and functions of this ~~article~~ ARTICLE 11.5, an
20 ombudsman acts in good faith. Nothing in this section ~~shall be construed~~
21 ~~to abrogate or limit~~ ABROGATES OR LIMITS the immunity or exemption
22 from civil liability of any agency, entity, or person under any statute,
23 including the "Colorado Governmental Immunity Act", article 10 of title
24 24. C.R.S.

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

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

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

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

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

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

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

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

7 **26-11.5-113. Duties of state PACE ombudsman - repeal.**

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

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

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

1 REPRESENTATIVES OF THE OFFICE AND, IF DESIGNATED, SHALL ISSUE A
2 PACE OMBUDSMAN IDENTIFICATION CARD TO THE PERSONNEL.

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

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

10 **SECTION 12. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.