

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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
Appropriations

Senate Committees
Finance
Appropriations

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, AND, IN CONNECTION THEREWITH, MAKING AN**
105 **APPROPRIATION.**

SENATE
Amended 2nd Reading
May 9, 2017

HOUSE
3rd Reading Unamended
May 1, 2017

HOUSE
Amended 2nd Reading
April 28, 2017

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

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.

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

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

1 program in the state.

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

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

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

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

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

1 county departments of social services, that may adversely affect the
2 health, safety, welfare, or rights of ~~such elderly~~ THE resident.

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

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

14 **26-11.5-106. Local ombudsmen - representatives of office.**
15 (1) A local ombudsman OR A LOCAL PACE OMBUDSMAN, whether an
16 employee or volunteer of a local ombudsman program, ~~shall be~~ IS
17 considered a representative of the office for the purposes of carrying out
18 policies and procedures adopted by the state long-term care ombudsman
19 OR STATE PACE OMBUDSMAN in accordance with this ~~article~~ ARTICLE
20 11.5, but only upon the completion of training and designation as a
21 qualified representative by the state long-term care ombudsman OR STATE
22 PACE OMBUDSMAN. As a representative of the office, a local ombudsman
23 OR A LOCAL PACE OMBUDSMAN shall follow rules ~~and regulations~~ of the
24 state department and policies and procedures established by the state
25 long-term care ombudsman OR STATE PACE OMBUDSMAN.

26 (2) Each local ombudsman OR LOCAL PACE OMBUDSMAN shall
27 carry an identification card issued annually and signed by the state

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

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

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

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

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

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

27 **SECTION 7.** In Colorado Revised Statutes, 26-11.5-109, **amend**

1 (4)(a) as follows:

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

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

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

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

1 follows:

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

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

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

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

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

1 LOCAL OMBUDSMEN IN THE PROGRAMS.

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

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

8 **26-11.5-113. Duties of state PACE ombudsman - repeal.**

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

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

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

1 TRAINING, THE OFFICE MAY DESIGNATE PERSONNEL AS QUALIFIED
2 REPRESENTATIVES OF THE OFFICE AND, IF DESIGNATED, SHALL ISSUE A
3 PACE OMBUDSMAN IDENTIFICATION CARD TO THE PERSONNEL.

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

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

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

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