Colorado Legislative Council Staff

SB16-199

FINAL FISCAL NOTE

FISCAL IMPACT: ☒ State ☐ Local ☐ Statutory Public Entity ☒ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 16-1241	**Date:**	September 6, 2016
Prime Sponsor(s):	Sen. Scott; Steadman Rep. DelGrosso; Ginal	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Bill Zepernick (303-866-4777)

BILL TOPIC: PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	**at least $321,021**	**at least $91,614**
General Fund	potential increase.	potential increase.
Cash Funds	321,021	91,614
State Expenditures	**$321,021**	**at least $91,614**
Cash Funds	306,675	at least 76,972
Centrally Appropriated Costs	14,346	14,642
TABOR Impact		Potential increase.
FTE Position Change	1.0 FTE	1.0 FTE
Appropriation Required: $306,675 - Multiple agencies (FY 2016-17).		
Future Year Impacts: Ongoing expenditure increase and potential revenue increase.		

Summary of Legislation

The bill requires that contracts between the Department of Health Care Policy and Financing (HCPF) and organizations providing a program of all-inclusive care for the elderly (PACE organizations) include the negotiated monthly capitated rate for services. The rate must be less than the amount that would have been paid for services to the PACE participant under the regular Medicaid state plan if the person were not enrolled in PACE. In addition, the bill requires HCPF, with the participation of PACE organizations, to develop an actuarially sound upper payment limit methodology that meets federal requirements and other standards. HCPF must contract with an actuary with relevant experience concerning Medicaid and PACE. Until the upper payment limit methodology is developed, the bill requires that the percentage of the upper payment limit used to determine the monthly capitated rate not be less than the percentage negotiated with providers for FY 2016-17. HCPF is not required to develop the new methodology if sufficient gifts, grants, or donations are not received for this purpose.

The bill also creates a State PACE Ombudsman Office in the Long-term Care Ombudsman Program in the Department of Human Services (DHS). PACE organizations are required to post information in their facilities and provide written notice to PACE participants about contacting the PACE ombudsman. The bill sets forth procedures for the state PACE ombudsman, including duties, access to PACE organization records, and penalties for retaliating against PACE participants or employees who communicate or share information with the state PACE ombudsman. For FY 2016-17 through FY 2020-21, the state PACE ombudsman will not operate if sufficient gifts, grants, and donations are not received to cover the costs of the ombudsman. The PACE Ombudsman Fund is created in the DHS to receive these gifts, grants, and donations. Lastly, the bill establishes a stakeholder group to develop legislation for introduction at the 2017 legislative session concerning the creation of a system of local PACE ombudsmen to work in conjunction with the state PACE ombudsman.

Background

PACE provides comprehensive long-term services and supports as an alternative to nursing facility care. The program is available to persons age 55 or older who are enrolled in Medicare or Medicaid and deemed eligible for nursing facility care by a Single Entry Point (SEP) agency. Clients must live within a PACE provider service area and be able, with supportive services, to live in the community safely. Services are typically offered in an adult health center and supplemented with in-home and referral services. Health and service benefits include: primary and hospital care, prescription drugs, emergency services, physical therapy, home care, meals, dentistry, nutritional counseling, social services, and transportation, among others. Once enrolled, if a client requires nursing facility care, the PACE program will also pay for these costs.

Senate Bill 15-137 expanded the type of entities that may operate a PACE program to include private, for-profit organizations and specified a review process by the Attorney General to oversee the conversion of nonprofit organizations into for-profit entities. Following passage of SB 15-137, one PACE provider, InnovAge, converted to for-profit status. As a condition of this conversion, approximately $200 million, based on the charitable benefit to the community from the nonproft organization, was set aside in a foundation to continue to fund work associated with the original objectives of the nonprofit organization. In addition, the Attorney General specified that InnovAge establish an ombudsman for its program. InnovAge serves about 80 percent of the 2,800 participants in PACE statewide.

Capitated payments are per-person payments that cover all costs of care over a certain time period. An upper payment limit is the maximum amount of payment under Medicaid that is eligible for federal matching fund for a specific type of provider.

State Revenue

The bill increases state revenue by cash fund revenue to the DHS and HCPF by at least $321,021 in FY 2016-17 and to the DHS by at least $91,641 in FY 2017-18. It is assumed that this revenue will come from donations from the foundation formed through the InnovAge for-profit conversion and be used to pay for the actuarial costs in HCPF and the PACE ombudsman in DHS described in the State Expenditures section below. This revenue is exempt from TABOR.

In addition, a minimal amount of General Fund revenue may be generated from civil penalties on persons or organizations found by the DHS to have retaliated against a PACE participant or employee who cooperates with the PACE ombudsman. This offense may result in a civil penalty of up to $5,000 per violation. The fiscal note assumes such instances will be rare and that less than $5,000 per year in revenue will be generated per year beginning in FY 2016-17.

TABOR Impact

This bill may increase state General Fund revenue from fines, which may increase the amount of money required to be refunded under TABOR in FY 2017-18. TABOR refunds are paid out of the General Fund. Since the bill increases both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget in FY 2017-18. However, the bill will increase money available for the General Fund budget in the future during years the state does not collect money above the TABOR limit. TABOR refund obligations are not expected for FY 2016-17.

State Expenditures

The bill increases state expenditures by **$321,021 and 1.0 FTE in FY 2016-17 and at least $91,614 and 1.0 FTE in FY 2017-18** and future years. These costs in HCPF and DHS are summarized in Table 1 and discussed below. The fiscal note assumes all work and costs associated with this bill will begin on July 1, 2016.

Department of Health Care Policy and Financing. Conditional upon receipt of sufficient gifts, grants, and donations, HCPF will be required to employ an actuarial contractor to assist in the development of the upper payment limit methodology for payments to PACE services. Assuming an hourly rate of $250 per hour and up to 1,000 hours of contractor time, actuarial services are estimated to cost up to $225,000 in FY 2016-17 only. These costs are paid using gifts, grants, and donations to the Department of Health Care Policy and Financing Cash Fund. It is assumed expenditure of these gifts, grants, and donations does not qualify for federal matching funds through Medicaid. HCPF will also have increased workload to develop the new methodology and incorporate the capitated rate into contracts with PACE organizations. No new appropriations are required for this work.

Depending on the rate methodology developed by HCPF, costs for PACE services could increase. At this time, it is unknown how the rate methodology will impact costs. In addition, the temporary rate methodology in use while the new method is being developed could result in higher costs in FY 2017-18 compared with current law. By requiring the percentage of the upper payment limit to be at least equal to the amount negotiated in FY 2016-17, costs could increase if the upper payment limit for FY 2017-18 rises. It is assumed HCPF will request additional funding through the annual budget process if PACE costs are expected to increase under the temporary or new rate methodologies.

Department of Human Services. Conditional upon receipt of sufficient gifts, grants, and donations, the bill increases cash fund expenditures in the DHS by $96,021 and 1.0 FTE in FY 2016-17 and $91,614 and 1.0 FTE in FY 2017-18 and future years. These costs are for an additional staff person to serve as the PACE ombudsman. Travel costs of $2,700 per year are assumed to conduct site visits to PACE organizations outside the Denver metro area. These costs are paid from the newly created PACE Ombudsman Fund.

Table 1. Expenditures Under SB 16-199		
Cost Components	**FY 2016-17**	**FY 2017-18**
Department of Health Care Policy and Financing	**$225,000**	
Actuarial Contractor	225,000	
Department of Human Services	**$96,021**	**$91,614**
Personal Services	73,322	73,322
FTE	1.0 FTE	1.0 FTE
Operating Expenses and Capital Outlay Costs	5,653	950
Travel	2,700	2,700
Centrally Appropriated Costs*	14,346	14,642
TOTAL	**$321,021**	**$91,614**

** Centrally appropriated costs are not included in the bill's appropriation.*

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB 16-199		
Cost Components	**FY 2016-17**	**FY 2017-18**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$8,072	$8,072
Supplemental Employee Retirement Payments	6,274	6,570
TOTAL	**$14,346**	**$14,642**

Effective Date

The bill was signed into law by the Governor and took effect on June 10, 2016.

State Appropriations

For FY 2016-17, the bill requires and includes the following appropriations:

- $225,000 to HCPF from gifts, grants, and donations in the Department of Health Care Policy and Financing Cash Fund; and
- $81,675 to the DHS from the PACE Ombudsman Fund and an allocation of 1.0 FTE.

State and Local Government Contacts

Counties	Health Care Policy and Financing
Human Services	Information Technology
Judicial	Law
Personnel	