

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

INTRODUCED

LLS NO. 21-0787.01 Sarah Lozano x3858

SENATE BILL 21-128

SENATE SPONSORSHIP

Kolker,

HOUSE SPONSORSHIP

Lontine,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE ADMINISTRATION OF THE**
102 **NURSING HOME PENALTY CASH FUND.**

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 bill makes the following changes to the administration of the nursing home penalty cash fund (fund) and the nursing home innovations grant board (board):

- Transitions final authority over the administration of the fund from the Colorado department of health care policy and financing (HCPF) to the Colorado department of public

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- health and environment (CDPHE);
- Transitions rule making authority over the fund from HCPF to the executive director of CDPHE;
- Transitions the authority to create a minimum reserve amount for the fund from the medical services board to the state board of health;
- Transitions authority over the board from HCPF to CDPHE effective July 1, 2021;
- Transitions all appropriations, contracts, and property related to the fund from HCPF to CDPHE effective July 1, 2021;
- Removes the \$10,000 spending limitation to administer the fund and the board;
- Removes the provision allowing members of the board to be reimbursed for expenses;
- Removes the provision restricting any governmental entity from applying for a grant from the fund;
- Adds a requirement that HCPF and CDPHE develop an annual budget to administer the fund and support the board;
- Adds a requirement that HCPF and CDPHE collaborate annually on any emergency funding needs and specifies that HCPF will administer such funding;
- Adds projects that compliment statewide quality and safety goals as a consideration in making a distribution from the fund; and
- Lengthens the period for CDPHE to provide notice of a violation to a nursing facility from 5 days to 10 days after inspection.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 25-1-107.5, **amend**
3 (3)(c)(II) introductory portion, (4)(b), (4)(c)(II) introductory portion,
4 (4)(c)(II)(C), (4)(c)(II)(D), (4)(d)(II), (4)(d)(II.5)(A), (4)(d)(II.5)(B),
5 (4)(d)(II.5)(D), (4)(d)(II.7) introductory portion, (4)(d)(III), (4)(d)(IV),
6 (4)(e), (6)(a) introductory portion, and (6)(b); and **add** (4)(c)(II)(E) and
7 (8) as follows:

8 **25-1-107.5. Additional authority of department - rules -**
9 **remedies against nursing facilities - criteria for recommending**

1 **assessments for civil penalties - cooperation with department of**
2 **health care policy and financing - nursing home penalty cash fund -**
3 **nursing home innovations grant board - reports - transfer of**
4 **contracts to the department.** (3) (c) (II) Except as provided in
5 ~~subparagraph (I) of this paragraph (c)~~ SUBSECTION (3)(c)(I) OF THIS
6 SECTION, the department of health care policy and financing shall not
7 assess a penalty prior to the date a nursing facility receives written notice
8 from the department of its recommendation to assess civil money
9 penalties. The department shall provide the notice to the facility no later
10 than ~~five~~ TEN days after the last day of the inspection or survey during
11 which the deficiencies that constitute the violation were found. The notice
12 shall:

13 (4) (b) (I) The department of ~~public health and environment~~ and
14 the department of health care policy and financing have joint authority for
15 administering the nursing home penalty cash fund; except that final
16 authority regarding the administration of ~~moneys~~ MONEY in the fund is in
17 the department of ~~health care policy and financing~~.

18 (II) (A) The authority of both departments includes establishing
19 circumstances under which funds may be distributed in order to protect
20 the health or property of individuals residing in nursing facilities that the
21 department of health care policy and financing has found to be in
22 violation of federal regulations for participation in the medicaid program.

23 (B) THE DEPARTMENTS SHALL COLLABORATE AT LEAST
24 ANNUALLY, AND MORE OFTEN AS NEEDED, TO ASSESS AND REVIEW
25 EMERGENCY FUNDING NEEDS AND RESPONSE PLANS FOR POTENTIAL
26 NURSING FACILITY CLOSURES. THE DEPARTMENT OF HEALTH CARE POLICY
27 AND FINANCING SHALL ADMINISTER EMERGENCY FUNDING.

1 (III) The EXECUTIVE DIRECTOR OF THE department of ~~health care~~
2 ~~policy and financing~~ shall promulgate rules necessary to ensure proper
3 administration of the nursing home penalty cash fund.

4 (c) The departments shall consider, as a basis for distribution from
5 the nursing home penalty cash fund, the following:

6 (II) Grants to be approved for measures that will benefit residents
7 of nursing facilities by fostering innovation and improving the quality of
8 life and care at the facilities, including, BUT NOT LIMITED TO:

9 (C) Initiatives in nursing facilities related to the quality measures
10 promoted by the federal centers for medicare and medicaid services and
11 other national quality initiatives; ~~and~~

12 (D) Education and consultation for purposes of identifying and
13 implementing resident-centered care initiatives in nursing facilities; AND

14 (E) PROJECTS THAT SUPPORT OR COMPLIMENT STATEWIDE
15 QUALITY AND SAFETY GOALS OF THE DEPARTMENTS.

16 (d) (II) The department, ~~of health care policy and financing~~, after
17 receiving a recommendation from the board and approval from the federal
18 centers for medicare and medicaid services, shall consider grants issued
19 as sole source procurements that are not subject to the "Procurement
20 Code", articles 101 to 112 of title 24. ~~C.R.S.~~

21 (II.5) (A) The board shall make recommendations for the approval
22 of grants that benefit residents of nursing facilities for at least one year
23 and not more than three-year cycles. The projects awarded VIA grants
24 must be portable, sustainable, and replicable in other nursing facilities.

25 (B) The department ~~of health care policy and financing~~ and the
26 board shall develop processes for grant payments, which processes may
27 allow grant payments to be made in advance of the delivery of goods and

1 services to grantees. Grantees receiving advance payments shall report
2 progress to the board. No state agency, ~~nor any other governmental entity,~~
3 with the exception of a facility that is owned or operated by a
4 governmental agency and that is licensed as a nursing care facility under
5 section 25-1.5-103 (1)(a)(I)(A), may apply for or receive a grant under
6 this subsection (4).

7 (D) Other policies of the board must conform with practices of
8 other granting organizations. The work product from grants funded
9 through the nursing home penalty cash fund is the intellectual property of
10 the department and must be made available without charge to all nursing
11 homes in the state. The EXECUTIVE DIRECTOR OF THE department of ~~health~~
12 ~~care policy and financing~~ shall adopt rules as necessary to govern the
13 procedure for awarding grants under this section.

14 (II.7) The department of ~~health care policy and financing~~ shall
15 adhere to all state and federal requirements for the encumbrance and
16 payment of grants under this ~~paragraph (d)~~ SUBSECTION (4)(d). In
17 addition, the department shall:

18 (III) The ~~medical services~~ STATE board ~~created pursuant to section~~
19 ~~25.5-1-301~~ OF HEALTH shall establish a minimum reserve amount to be
20 maintained in the nursing home penalty cash fund to ensure that there is
21 sufficient money for the departments to distribute in accordance with
22 subsection (4)(b)(II) of this section, if needed. The departments shall not
23 expend money from the fund for the purposes described in subsection
24 (4)(c)(II) of this section if the expenditure would cause the fund balance
25 to fall below the minimum reserve amount.

26 (IV) In determining how to allocate the ~~moneys~~ MONEY authorized
27 to be distributed pursuant to this ~~paragraph (d)~~ SUBSECTION (4)(d), the

1 departments shall take into consideration the recommendations of the
2 board made pursuant to ~~paragraph (c) of subsection (6)~~ SUBSECTION (6)(c)
3 of this section. If the departments disagree with the recommendations of
4 the board, they shall meet with the board to explain their rationale and
5 shall seek to achieve a compromise with the board regarding the
6 allocation of the ~~moneys~~ MONEY. If a compromise cannot be achieved
7 with regard to all or a portion of the ~~moneys~~ MONEY to be distributed, the
8 ~~medical services~~ STATE board ~~created pursuant to section 25.5-1-301,~~
9 ~~C.R.S.~~ OF HEALTH shall have the final authority regarding the distribution
10 of ~~moneys~~ MONEY for which a compromise has not been reached.

11 (e) (I) The departments shall not utilize ~~moneys~~ MONEY from the
12 nursing home penalty cash fund for ~~the purpose of paying their cost for~~
13 ~~administering the fund or for costs of administration associated with any~~
14 ~~specific movement, association, or organization. except that up to ten~~
15 ~~thousand dollars of the moneys distributed pursuant to paragraph (d) of~~
16 ~~this subsection (4) may be used to pay the cost to administer and operate~~
17 ~~the board, including expense reimbursement for board members.~~

18 (II) FOR PURPOSES OF THIS SECTION, THE DEPARTMENTS SHALL
19 JOINTLY DEVELOP AN ANNUAL ADMINISTRATIVE BUDGET UTILIZING MONEY
20 FROM THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSES OF
21 ADMINISTERING THE FUND AND SUPPORTING THE BOARD. THESE PURPOSES
22 MAY INCLUDE, BUT ARE NOT LIMITED TO:

- 23 (A) ALL REQUIRED STATE AND FEDERAL REPORTING;
24 (B) PUBLIC WEBSITE MAINTENANCE;
25 (C) MARKETING THE NURSING HOME PENALTY CASH FUND AND
26 GRANTEE RECRUITMENT;
27 (D) GRANT DEVELOPMENT, MONITORING, AND PAYMENT

- 1 PROCESSING;
- 2 (E) OUTCOME MEASUREMENT UTILIZING STATE AND FEDERAL
- 3 DATA SOURCES;
- 4 (F) COORDINATION WITH QUALITY PROGRAMS ALREADY IN PLACE
- 5 BY THE DEPARTMENTS;
- 6 (G) GRANTEE MONITORING AND SUPPORT;
- 7 (H) COSTS ASSOCIATED WITH EMERGENCY CLOSURES AND
- 8 PAYMENT AUDITING; AND
- 9 (I) MAINTENANCE OF ACCESS TO COMPLETE PROJECTS, INCLUDING
- 10 TRAININGS, RECORDINGS, AND PROJECT DELIVERABLES.

11 (6) (a) No later than September 1, 2014, the department of health

12 care policy and financing shall establish the nursing home innovations

13 grant board under the department of health care policy and financing

14 either directly or by contract with or grant to any public agency or

15 appropriate private nonprofit organization. ~~The department of health care~~

16 ~~policy and financing;~~ ON AND AFTER JULY 1, 2021, THE POWERS, DUTIES,

17 AND FUNCTIONS RELATED TO THE BOARD ARE TRANSFERRED FROM THE

18 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO THE

19 DEPARTMENT BY A **TYPE 2** TRANSFER AS SUCH TRANSFER IS DEFINED IN

20 THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE

21 24. THE DEPARTMENT, in consultation with stakeholders, shall determine

22 the appropriate entity to administer the board. The board consists of ten

23 members as follows:

24 (b) The members of the board shall serve without compensation.

25 ~~but may be reimbursed for expenses incurred while serving on the board.~~

26 (8) ON AND AFTER JULY 1, 2021, WHENEVER THE DEPARTMENT OF

27 HEALTH CARE POLICY AND FINANCING IS REFERRED TO OR DESIGNATED BY

1 ANY CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE DUTIES
2 AND FUNCTIONS UNDER THIS SECTION, SUCH REFERENCE OR DESIGNATION
3 SHALL BE DEEMED TO APPLY TO THE DEPARTMENT. ALL CONTRACTS
4 ENTERED INTO BY THE DEPARTMENTS PRIOR TO JULY 1, 2021, IN
5 CONNECTION WITH THE DUTIES AND FUNCTIONS UNDER THIS SECTION ARE
6 HEREBY VALIDATED, WITH THE DEPARTMENT SUCCEEDING TO ALL RIGHTS
7 AND OBLIGATIONS UNDER SUCH CONTRACTS.

8 **SECTION 2.** In Colorado Revised Statutes, 25.5-6-205, **amend**
9 (3)(b)(I) as follows:

10 **25.5-6-205. Collection of penalties assessed against nursing**
11 **facilities - creation of cash fund.** (3) (b) (I) ~~The moneys~~ ON AND AFTER
12 JULY 1, 2021, THE MONEY in the fund ~~are~~ IS subject to annual
13 appropriation by the general assembly to the ~~state~~ department OF PUBLIC
14 HEALTH AND ENVIRONMENT for the purposes set forth in section
15 25-1-107.5. ~~C.R.S.~~ PURSUANT TO SECTION 25-1-107.5 (4)(b)(II)(B), THE
16 MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE STATE
17 DEPARTMENT FOR THE PURPOSE OF EMERGENCY FUNDING NEEDS.

18 **SECTION 3.** In Colorado Revised Statutes, 24-1-119, **add** (13)
19 as follows:

20 **24-1-119. Department of public health and environment -**
21 **creation.** (13) THE NURSING HOME INNOVATIONS GRANT BOARD,
22 CREATED IN SECTION 25-1-107.5 (6)(a), SHALL EXERCISE ITS POWERS AND
23 PERFORM ITS DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED BY A
24 **TYPE 2** TRANSFER TO THE DEPARTMENT OF PUBLIC HEALTH AND
25 ENVIRONMENT.

26 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.