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SENATE BILL 21-128

BY SENATOR(S) Kolker, Ginal;  
also REPRESENTATIVE(S) Lontine, Duran, Hooton, Michaelson Jenet,  
Mullica.

CONCERNING MODIFICATIONS TO THE ADMINISTRATION OF THE NURSING  
HOME PENALTY CASH FUND, AND, IN CONNECTION THEREWITH,  
MAKING AND REDUCING APPROPRIATIONS.

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

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

**25-1-107.5. Additional authority of department - rules - remedies against nursing facilities - criteria for recommending assessments for civil penalties - cooperation with department of health care policy and financing - nursing home penalty cash fund - nursing home innovations grant board - reports - transfer of contracts to the**

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

**department.** (3) (c) (II) Except as provided in ~~subparagraph (I) of this paragraph (c)~~ SUBSECTION (3)(c)(I) OF THIS SECTION, the department of health care policy and financing shall not assess a penalty prior to the date a nursing facility receives written notice from the department of its recommendation to assess civil money penalties. The department shall provide the notice to the facility no later than ~~five~~ TEN days after the last day of the inspection or survey during which the deficiencies that constitute the violation were found. The notice shall:

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

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

(B) THE DEPARTMENTS SHALL COLLABORATE AT LEAST ANNUALLY, AND MORE OFTEN AS NEEDED, TO ASSESS AND REVIEW EMERGENCY FUNDING NEEDS AND RESPONSE PLANS FOR POTENTIAL NURSING FACILITY CLOSURES. THE DEPARTMENTS SHALL JOINTLY ADMINISTER EMERGENCY FUNDING.

(III) The ~~department of health care policy and financing~~ shall STATE BOARD OF HEALTH MAY promulgate rules necessary to ensure proper administration of the nursing home penalty cash fund.

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

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

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

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

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

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

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

(B) The department ~~of health care policy and financing~~ and the board shall develop processes for grant payments, which processes may allow grant payments to be made in advance of the delivery of goods and services to grantees. Grantees receiving advance payments shall report progress to the board. No state agency, nor any other governmental entity, with the exception of a facility that is owned or operated by a governmental agency and that is licensed as a nursing care facility under section 25-1.5-103 (1)(a)(I)(A), may apply for or receive a grant under this subsection (4).

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

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

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

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

(e) (I) The departments shall not utilize ~~moneys~~ MONEY from the nursing home penalty cash fund for ~~the purpose of paying their cost for administering the fund or for costs of administration associated with any specific movement, association, or organization; except that up to ten thousand dollars of the moneys distributed pursuant to paragraph (d) of this subsection (4) may be used to pay the cost to administer and operate the board, including expense reimbursement for board members.~~ EXCEPT THAT THE APPROPRIATION FOR ADMINISTRATION OF THE GRANTS AUTHORIZED UNDER THIS SECTION SHALL NOT EXCEED TEN PERCENT OF THE APPROPRIATION FOR THE DISBURSED GRANTS. THE DEPARTMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL USE ANY SUCH APPROPRIATION FOR ADMINISTRATION TO ADMINISTER THE GRANT PROGRAM DESCRIBED IN THIS SECTION AND TO IMPROVE NURSING FACILITY INNOVATION AND QUALITY WITH THE GOAL OF REDUCING FUTURE PENALTIES.

(II) FOR PURPOSES OF THIS SECTION, THE DEPARTMENTS SHALL JOINTLY DEVELOP AN ANNUAL ADMINISTRATIVE BUDGET UTILIZING MONEY

FROM THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSES OF ADMINISTERING THE FUND AND SUPPORTING THE BOARD. THESE PURPOSES MAY INCLUDE, BUT ARE NOT LIMITED TO:

- (A) ALL REQUIRED STATE AND FEDERAL REPORTING;
- (B) PUBLIC WEBSITE MAINTENANCE;
- (C) MARKETING THE NURSING HOME PENALTY CASH FUND AND GRANTEE RECRUITMENT;
- (D) GRANT DEVELOPMENT, MONITORING, AND PAYMENT PROCESSING;
- (E) OUTCOME MEASUREMENT UTILIZING STATE AND FEDERAL DATA SOURCES;
- (F) COORDINATION WITH QUALITY PROGRAMS ALREADY IN PLACE BY THE DEPARTMENTS;
- (G) GRANTEE MONITORING AND SUPPORT;
- (H) COSTS ASSOCIATED WITH EMERGENCY CLOSURES AND PAYMENT AUDITING; AND
- (I) MAINTENANCE OF ACCESS TO COMPLETE PROJECTS, INCLUDING TRAININGS, RECORDINGS, AND PROJECT DELIVERABLES.

(6) (a) No later than September 1, 2014, the department of health care policy and financing shall establish the nursing home innovations grant board under the department of health care policy and financing either directly or by contract with or grant to any public agency or appropriate private nonprofit organization. ~~The department of health care policy and financing;~~ ON AND AFTER JULY 1, 2021, THE POWERS, DUTIES, AND FUNCTIONS RELATED TO THE BOARD ARE TRANSFERRED FROM THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO THE DEPARTMENT BY A **TYPE 2** TRANSFER AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24. THE DEPARTMENT, in consultation with stakeholders, shall determine the appropriate entity to administer the board. The board consists of ten

members as follows:

(b) The members of the board shall serve without compensation. ~~but may be reimbursed for expenses incurred while serving on the board.~~

(8) ON AND AFTER JULY 1, 2021, WHENEVER THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING IS REFERRED TO OR DESIGNATED BY ANY CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE DUTIES AND FUNCTIONS UNDER THIS SECTION, SUCH REFERENCE OR DESIGNATION SHALL BE DEEMED TO APPLY TO THE DEPARTMENT. ALL CONTRACTS ENTERED INTO BY THE DEPARTMENTS PRIOR TO JULY 1, 2021, IN CONNECTION WITH THE DUTIES AND FUNCTIONS UNDER THIS SECTION ARE HEREBY VALIDATED, WITH THE DEPARTMENT SUCCEEDING TO ALL RIGHTS AND OBLIGATIONS UNDER SUCH CONTRACTS.

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

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

**SECTION 3.** In Colorado Revised Statutes, 24-1-119, **add** (14) as follows:

**24-1-119. Department of public health and environment - creation.** (14) THE NURSING HOME INNOVATIONS GRANT BOARD, CREATED IN SECTION 25-1-107.5 (6)(a), SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED BY A **TYPE 2** TRANSFER TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

**SECTION 4. Appropriation - adjustments to 2021 long bill.**  
(1) To implement this act, the cash funds appropriation from the nursing home penalty cash fund created in section 25.5-6-205 (3)(a), C.R.S., made

in the annual general appropriation act for the 2021-22 state fiscal year to the department of health care policy and financing for general professional services and special projects is decreased by \$500,000.

(2) For the 2021-22 state fiscal year, \$2,053,254 is appropriated to the department of public health and environment for use by the health facilities and emergency medical services division. This appropriation is from the nursing home penalty cash fund created in section 25.5-6-205 (3)(a), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) \$53,254 for administration and operations, which amount is based on an assumption that the department will require an additional 0.8 FTE; and

(b) \$2,000,000 for nursing home grants.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

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Leroy M. Garcia  
PRESIDENT OF  
THE SENATE

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Alec Garnett  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

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Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_  
(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO