

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

REREVISED

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

LLS NO. 21-0787.01 Sarah Lozano x3858

SENATE BILL 21-128

SENATE SPONSORSHIP

Kolker, Ginal

HOUSE SPONSORSHIP

Lontine, Duran, Hooton, Michaelson Jenet, Mullica

Senate Committees

Health & Human Services
Appropriations

House Committees

Public & Behavioral Health & Human Services
Appropriations

A BILL FOR AN ACT

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

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

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.

HOUSE
3rd Reading Unamended
May 28, 2021

HOUSE
Amended 2nd Reading
May 25, 2021

SENATE
3rd Reading Unamended
April 5, 2021

SENATE
Amended 2nd Reading
April 1, 2021

and financing (HCPF) to the Colorado department of public 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 -**

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

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

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

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

1 ADMINISTER EMERGENCY FUNDING.

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

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

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

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

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

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

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

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

26 (B) The department ~~of health care policy and financing~~ and the
27 board shall develop processes for grant payments, which processes may

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

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

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

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

27 (IV) In determining how to allocate the ~~moneys~~ MONEY authorized

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

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

27 (II) FOR PURPOSES OF THIS SECTION, THE DEPARTMENTS SHALL

1 JOINTLY DEVELOP AN ANNUAL ADMINISTRATIVE BUDGET UTILIZING MONEY
2 FROM THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSES OF
3 ADMINISTERING THE FUND AND SUPPORTING THE BOARD. THESE PURPOSES
4 MAY INCLUDE, BUT ARE NOT LIMITED TO:

5 (A) ALL REQUIRED STATE AND FEDERAL REPORTING;

6 (B) PUBLIC WEBSITE MAINTENANCE;

7 (C) MARKETING THE NURSING HOME PENALTY CASH FUND AND
8 GRANTEE RECRUITMENT;

9 (D) GRANT DEVELOPMENT, MONITORING, AND PAYMENT
10 PROCESSING;

11 (E) OUTCOME MEASUREMENT UTILIZING STATE AND FEDERAL
12 DATA SOURCES;

13 (F) COORDINATION WITH QUALITY PROGRAMS ALREADY IN PLACE
14 BY THE DEPARTMENTS;

15 (G) GRANTEE MONITORING AND SUPPORT;

16 (H) COSTS ASSOCIATED WITH EMERGENCY CLOSURES AND
17 PAYMENT AUDITING; AND

18 (I) MAINTENANCE OF ACCESS TO COMPLETE PROJECTS, INCLUDING
19 TRAININGS, RECORDINGS, AND PROJECT DELIVERABLES.

20 (6) (a) No later than September 1, 2014, the department of health
21 care policy and financing shall establish the nursing home innovations
22 grant board under the department of health care policy and financing
23 either directly or by contract with or grant to any public agency or
24 appropriate private nonprofit organization. ~~The department of health care~~
25 ~~policy and financing;~~ ON AND AFTER JULY 1, 2021, THE POWERS, DUTIES,
26 AND FUNCTIONS RELATED TO THE BOARD ARE TRANSFERRED FROM THE
27 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO THE

1 DEPARTMENT BY A **TYPE 2** TRANSFER AS SUCH TRANSFER IS DEFINED IN
2 THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE
3 24. THE DEPARTMENT, in consultation with stakeholders, shall determine
4 the appropriate entity to administer the board. The board consists of ten
5 members as follows:

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

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

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

19 **25.5-6-205. Collection of penalties assessed against nursing**
20 **facilities - creation of cash fund.** (3) (b) (I) ~~The moneys~~ ON AND AFTER
21 JULY 1, 2021, THE MONEY in the fund ~~are~~ IS subject to annual
22 appropriation by the general assembly to the state department AND THE
23 DEPARTMENT OF OF PUBLIC HEALTH AND ENVIRONMENT for the purposes
24 set forth in section 25-1-107.5. ~~C.R.S.~~ PURSUANT TO SECTION 25-1-107.5
25 (4)(b)(II)(B), THE MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED
26 TO THE STATE DEPARTMENT AND THE DEPARTMENT OF PUBLIC HEALTH
27 AND ENVIRONMENT FOR THE PURPOSE OF EMERGENCY FUNDING NEEDS.

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

3 **24-1-119. Department of public health and environment -**
4 **creation.** (13) THE NURSING HOME INNOVATIONS GRANT BOARD,
5 CREATED IN SECTION 25-1-107.5 (6)(a), SHALL EXERCISE ITS POWERS AND
6 PERFORM ITS DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED BY A
7 **TYPE 2** TRANSFER TO THE DEPARTMENT OF PUBLIC HEALTH AND
8 ENVIRONMENT.

9 **SECTION 4. Appropriation - adjustments to 2021 long bill.**

10 (1) To implement this act, the cash funds appropriation from the nursing
11 home penalty cash fund created in section 25.5-6-205 (3)(a), C.R.S.,
12 made in the annual general appropriation act for the 2021-22 state fiscal
13 year to the department of health care policy and financing for general
14 professional services and special projects is decreased by \$500,000.

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

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

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

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