

CHAPTER 231

HEALTH

SENATE BILL 94-109

BY SENATORS Mares, Gallagher, and Mendez;
also REPRESENTATIVES Friednash, Armstrong, Blue, Greenwood, Hernandez, and Mattingly.

AN ACT**CONCERNING REMEDIES WHICH MAY BE ASSESSED AGAINST NURSING FACILITIES THAT VIOLATE NURSING FACILITY STANDARDS.**

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

SECTION 1. 25-1-107.5, Colorado Revised Statutes, 1989 Repl. Vol., is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

25-1-107.5. Additional authority of the department - remedies against nursing facilities - criteria for recommending assessments for civil penalties - cooperation with the department of social services - nursing home penalty cash fund - repeal. (1) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FEDERAL REGULATIONS FOR PARTICIPATION" MEANS THE REGULATIONS FOUND IN PART 442 OF TITLE 42 OF THE CODE OF FEDERAL REGULATIONS, AS AMENDED, FOR PARTICIPATION UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(b) "NURSING FACILITY" MEANS ANY SKILLED OR INTERMEDIATE NURSING CARE FACILITY WHICH RECEIVES FEDERAL AND STATE FUNDS UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(2) THE DEPARTMENT, AS THE STATE AGENCY RESPONSIBLE FOR CERTIFYING SKILLED AND INTERMEDIATE NURSING FACILITIES WHICH RECEIVE FEDERAL AND STATE FUNDS UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, IS HEREBY GIVEN THE AUTHORITY TO ADOPT RULES AND REGULATIONS NECESSARY TO ESTABLISH A SERIES OF REMEDIES IN ACCORDANCE WITH THIS SECTION AND THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

FEDERAL "OMNIBUS BUDGET RECONCILIATION ACT OF 1987" (P.L. 100-203), AS AMENDED, WHICH MAY BE IMPOSED BY THE DEPARTMENT OF SOCIAL SERVICES WHEN A NURSING FACILITY VIOLATES FEDERAL REGULATIONS FOR PARTICIPATION IN THE MEDICAID PROGRAM. THE REMEDIES WHICH ARE ESTABLISHED SHALL INCLUDE ANY REMEDIES REQUIRED UNDER FEDERAL LAW AND SHALL INCLUDE THE IMPOSITION OF CIVIL MONEY PENALTIES.

(3) (a) IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED UNDER THIS SECTION, THE DEPARTMENT IS AUTHORIZED TO RECOMMEND TO THE DEPARTMENT OF SOCIAL SERVICES AN APPROPRIATE CIVIL MONEY PENALTY BASED ON THE NATURE OF THE VIOLATION. ANY PENALTIES RECOMMENDED SHALL NOT BE LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH DAY THE FACILITY IS FOUND TO BE IN VIOLATION OF THE FEDERAL REGULATIONS. PENALTIES ASSESSED SHALL INCLUDE INTEREST AT THE STATUTORY RATE.

(b) THE DEPARTMENT SHALL ADOPT CRITERIA FOR DETERMINING THE AMOUNT OF THE PENALTY TO BE RECOMMENDED FOR ASSESSMENT. SUCH CRITERIA SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, CONSIDERATION OF THE FOLLOWING FACTORS:

(I) THE PERIOD OF TIME OVER WHICH THE VIOLATION OCCURRED;

(II) THE FREQUENCY OF THE VIOLATION;

(III) THE NURSING FACILITY'S HISTORY CONCERNING THE TYPE OF VIOLATION FOR WHICH THE PENALTY IS ASSESSED;

(IV) THE NURSING FACILITY'S INTENT OR REASON FOR THE VIOLATION;

(V) THE EFFECT, IF ANY, OF THE VIOLATION ON THE HEALTH, SAFETY, SECURITY, OR WELFARE OF THE RESIDENTS;

(VI) THE EXISTENCE OF OTHER VIOLATIONS, IN COMBINATION WITH THE VIOLATION FOR WHICH THE PENALTY IS ASSESSED, WHICH INCREASE THE THREAT TO THE HEALTH, SAFETY, SECURITY, OR WELFARE OF THE RESIDENTS;

(VII) THE ACCURACY, THOROUGHNESS, AND AVAILABILITY OF RECORDS REGARDING THE VIOLATION, WHICH THE NURSING FACILITY IS REQUIRED TO MAINTAIN; AND

(VIII) THE NUMBER OF ADDITIONAL RELATED VIOLATIONS OCCURRING WITHIN THE SAME TIME SPAN AS THE VIOLATION IN QUESTION.

(c) (I) IN THE EVENT THE DEPARTMENT FINDS THAT A VIOLATION IS LIFE THREATENING TO ONE OR MORE RESIDENTS OR CREATES A DIRECT THREAT OF SERIOUS ADVERSE HARM TO THE HEALTH, SAFETY, SECURITY, RIGHTS, OR WELFARE OF ONE OR MORE RESIDENTS, A PENALTY SHALL BE IMPOSED FOR EACH DAY THE DEFICIENCIES WHICH CONSTITUTE THE VIOLATION ARE FOUND TO EXIST.

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), NO PENALTY SHALL BE ASSESSED PRIOR TO THE DATE A NURSING FACILITY RECEIVES

WRITTEN NOTICE FROM THE DEPARTMENT OF ITS RECOMMENDATION TO ASSESS CIVIL MONEY PENALTIES. SUCH NOTICE SHALL BE PROVIDED TO THE FACILITY NO LATER THAN FIVE DAYS AFTER THE LAST DAY OF THE INSPECTION OR SURVEY DURING WHICH THE DEFICIENCIES WHICH CONSTITUTE THE VIOLATION WERE FOUND. THE NOTICE SHALL:

(A) SET FORTH THE DEFICIENCIES THAT ARE THE BASIS FOR THE RECOMMENDATION TO ASSESS A PENALTY;

(B) PROVIDE INSTRUCTIONS FOR RESPONDING TO THE NOTICE; AND

(C) PROVIDE FOR THE SUBMISSION OF A WRITTEN PLAN OF CORRECTION BY THE NURSING FACILITY. THE DEPARTMENT SHALL ADOPT CRITERIA FOR THE SUBMISSION AND APPROVAL OF WRITTEN PLANS OF CORRECTION. IF THE FACILITY ACTS IN A TIMELY AND DILIGENT MANNER TO CORRECT THE VIOLATION IN ACCORDANCE WITH AN APPROVED PLAN OF CORRECTION, THE DEPARTMENT MAY RECOMMEND TO THE DEPARTMENT OF SOCIAL SERVICES THAT THE PENALTY BE SUSPENDED OR REDUCED DURING THE PERIOD OF CORRECTION SPECIFIED IN THE APPROVED PLAN OF CORRECTION.

(d) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (II) OF PARAGRAPH (c) OF THIS SUBSECTION (3), ANY PENALTY RECOMMENDED UNDER THIS SECTION SHALL CONTINUE TO BE ASSESSED UNTIL THE DEPARTMENT VERIFIES TO THE DEPARTMENT OF SOCIAL SERVICES THAT THE VIOLATION IS CORRECTED OR UNTIL THE NURSING FACILITY NOTIFIES THE DEPARTMENT THAT CORRECTION HAS OCCURRED, WHICHEVER IS EARLIER. IN THE EVENT THE NURSING FACILITY HAS NOT CORRECTED THE VIOLATION, THE PENALTY SHALL BE REINSTATED AT AN INCREASED AMOUNT AND SHALL BE RETROACTIVELY ASSESSED TO THE DATE THE PENALTY WAS SUSPENDED.

(4) (a) THE DEPARTMENT OF SOCIAL SERVICES, AFTER RECEIVING A RECOMMENDATION FROM THE DEPARTMENT, IS AUTHORIZED TO ASSESS, ENFORCE, AND COLLECT THE CIVIL MONEY PENALTY PURSUANT TO SECTION 26-4-505, C.R.S., FOR CREDIT TO THE NURSING HOME PENALTY CASH FUND, CREATED PURSUANT TO SECTION 26-4-505 (3) (a), C.R.S.

(b) (I) THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF SOCIAL SERVICES SHALL HAVE JOINT AUTHORITY FOR ADMINISTERING THE NURSING HOME PENALTY CASH FUND; EXCEPT THAT FINAL AUTHORITY REGARDING THE ADMINISTRATION OF MONEYS IN THE FUND SHALL BE IN THE DEPARTMENT OF SOCIAL SERVICES.

(II) 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 WHICH THE DEPARTMENT OF SOCIAL SERVICES HAS FOUND TO BE IN VIOLATION OF FEDERAL REGULATIONS FOR PARTICIPATION IN THE MEDICAID PROGRAM.

(III) THE DEPARTMENT OF SOCIAL SERVICES SHALL PROMULGATE RULES AND REGULATIONS NECESSARY TO ENSURE PROPER ADMINISTRATION OF THE NURSING HOME PENALTY CASH FUND.

(c) CIRCUMSTANCES WHICH SHALL BE CONSIDERED AS A BASIS FOR DISTRIBUTION

FROM THE NURSING HOME PENALTY CASH FUND INCLUDE PAYING COSTS TO:

(I) RELOCATE RESIDENTS TO OTHER FACILITIES;

(II) MAINTAIN THE OPERATION OF A NURSING FACILITY PENDING CORRECTION OF VIOLATIONS;

(III) CLOSE A NURSING FACILITY;

(IV) REIMBURSE RESIDENTS FOR PERSONAL FUNDS LOST.

(d) NEITHER DEPARTMENT IS AUTHORIZED UNDER PARAGRAPH (b) OF THIS SUBSECTION (4) TO UTILIZE MONEYS FROM THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSE OF PAYING ITS COST FOR ADMINISTERING SUCH FUND.

(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1997. PRIOR TO SUCH REPEAL, THIS SECTION SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

SECTION 2. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (26.2) THE FOLLOWING FUNCTION OF THE SPECIFIED AGENCIES SHALL TERMINATE ON JULY 1, 1997: THE IMPOSITION OF SANCTIONS, INCLUDING CIVIL MONEY PENALTIES, UPON A NURSING FACILITY WHEN SUCH A FACILITY VIOLATES A FEDERAL REGULATION FOR PARTICIPATION IN THE MEDICAID PROGRAM BY THE DEPARTMENT OF HEALTH IN ACCORDANCE WITH SECTION 25-1-107.5, C.R.S., AND THE DEPARTMENT OF SOCIAL SERVICES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 26, C.R.S.

SECTION 3. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1994