

CHAPTER 339

HEALTH AND ENVIRONMENT

SENATE BILL 14-151

BY SENATOR(S) Tochtrop, Aguilar, Crowder, Guzman, Jones, Kefalas, Kerr, King, Newell, Nicholson, Roberts, Todd, Ulibarri;
also REPRESENTATIVE(S) Young, Fields, Gerou, Ginal, Hullinghorst, Kraft-Tharp, Pettersen, Ryden, Schafer, Singer.

AN ACT

CONCERNING THE USE OF MONEYS DERIVED FROM CIVIL PENALTIES IMPOSED ON NURSING FACILITIES TO FUND INNOVATIONS IN NURSING HOME CARE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 25-1-107.5, **amend** (4) (c) (II), (4) (d), (4) (e), (6), and (7); **repeal** (1) (a); and **add** (1) (b.5) and (1) (b.7) 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 - repeal. (1) For the purposes of this section, unless the context otherwise requires:

(a) ~~"Accountability board" means the nursing facility culture change accountability board, authorized by subsection (6) of this section.~~

(b.5) "BENEFIT RESIDENTS OF NURSING FACILITIES" MEANS THAT A GRANT HAS A DIRECT IMPACT ON THE RESIDENTS OF NURSING FACILITIES OR HAS AN INDIRECT IMPACT ON THE RESIDENTS THROUGH EDUCATION OF NURSING FACILITY STAFF.

(b.7) "BOARD" MEANS THE NURSING HOME INNOVATIONS GRANT BOARD, AUTHORIZED BY SUBSECTION (6) OF THIS SECTION.

(4)(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

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

facilities by FOSTERING INNOVATION AND improving ~~their~~ THE quality of life AND CARE at the facilities, including:

(A) Consumer education to promote resident-centered care in nursing facilities;

~~(B) Training for state surveyors, supervisors, and the state and local long-term care ombudsman, established pursuant to article 11.5 of title 26, C.R.S., regarding resident-centered care in nursing facilities;~~

~~(C) Development of a newsletter and web site detailing information on resident-centered care in nursing facilities and related information~~ 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.

(d) (I) The departments shall distribute the following amounts of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of this subsection (4):

~~(A) For the 2009-10~~ ANY fiscal year, two hundred FIFTY thousand dollars IF THE FUND BALANCE IS GREATER THAN TWO MILLION DOLLARS ON JULY 1 OF THAT FISCAL YEAR;

~~(B) For the 2010-11 fiscal year and each fiscal year thereafter, an amount equal to the lesser of the amount specified in a budget approved by the accountability board or twenty-five percent of the moneys deposited into the nursing home penalty cash fund in the immediately preceding fiscal year~~ IF THE FUND BALANCE ON JULY 1 OF ANY FISCAL YEAR IS LESS THAN TWO MILLION DOLLARS, THE DEPARTMENT SHALL DISTRIBUTE TWENTY-FIVE PERCENT OF THE MONEYS DEPOSITED IN THE FUND IN THE IMMEDIATELY PRECEDING FISCAL YEAR, NOT TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS IN TOTAL FUND DISTRIBUTION PER FISCAL YEAR.

~~(II) The departments may allocate the moneys specified in this paragraph (d) on a quarterly basis, but in no case shall the total amount distributed in any given fiscal year exceed the amount specified in subparagraph (I) of this paragraph (d)~~ 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 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 GRANTEEES. GRANTEEES 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).

(C) ANY MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR MAY BE HELD OVER AND USED BY THE BOARD IN THE NEXT FISCAL YEAR. UNEXPENDED AND UNENCUMBERED MONEYS FROM AN APPROPRIATION IN THE ANNUAL GENERAL APPROPRIATION ACT TO THE DEPARTMENTS FOR THE PURPOSE OF CARRYING OUT THE NURSING HOME INNOVATION GRANT PROGRAM UNDER THIS SECTION REMAIN AVAILABLE FOR EXPENDITURE BY THE DEPARTMENTS IN THE NEXT FISCAL YEAR WITHOUT FURTHER APPROPRIATION. THIS SUB-SUBPARAGRAPH (C) APPLIES TO APPROPRIATIONS MADE BY THE GENERAL ASSEMBLY FOR FISCAL YEARS ENDING ON AND AFTER JUNE 30, 2014, ON OR BEFORE JUNE 30, 2014, AND ON OR BEFORE JUNE 30 OF EACH YEAR THEREAFTER, THE DEPARTMENTS SHALL NOTIFY THE STATE CONTROLLER OF THE AMOUNT OF THE APPROPRIATION FROM THE ANNUAL GENERAL APPROPRIATION ACT FOR THE CURRENT FISCAL YEAR THE DEPARTMENTS NEED TO REMAIN AVAILABLE FOR EXPENDITURE IN THE NEXT FISCAL YEAR. THE DEPARTMENTS MAY NOT EXPEND MORE THAN THE AMOUNT STATED IN THE NOTICE UNDER THIS SUB-SUBPARAGRAPH (C).

(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 ADOPT RULES AS NECESSARY TO GOVERN THE PROCEDURE FOR AWARDED 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). IN ADDITION, THE DEPARTMENT SHALL:

(A) DOCUMENT NECESSARY FEDERAL PERMISSIONS FOR THE USE OF MONEYS FROM THE NURSING HOME PENALTY CASH FUND, CREATED UNDER SECTION 25.5-6-205, C.R.S., PRIOR TO MAKING ANY PAYMENT OR ENCUMBRANCE; AND

(B) ADHERE TO THE WRITTEN DETERMINATION OF THE BOARD UNDER SUBSECTION (6) OF THIS SECTION IN RELEASING STATE MONEYS FOR PAYMENT TO GRANTEEES UNDER THIS SECTION. THE DEPARTMENT'S ADHERENCE TO THE WRITTEN DETERMINATION OF THE BOARD IS SUFFICIENT EVIDENCE TO ENSURE THAT WORK WAS COMPLETED FULLY AND ADEQUATELY.

(III) Notwithstanding subparagraph (I) of this paragraph (d), the departments shall ensure that the balance of the nursing home penalty cash fund does not fall below one million dollars as a result of expenditures for the purposes described in subparagraph (II) of paragraph (c) of this subsection (4) and shall not distribute moneys pursuant to this paragraph (d) for such purposes if making a distribution

would cause the fund balance to fall below the minimum balance required by this subparagraph (III).

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

(e) The departments shall not utilize moneys from the nursing home penalty cash fund for the purpose of paying their cost for administering ~~such~~ THE fund or for ~~any~~ COSTS OF administration ~~costs~~ associated with any specific movement, association, or organization; except that up to ~~ten percent~~ 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 ~~accountability~~ board, including expense reimbursement for ~~accountability~~ board members.

(6) (a) No later than September 1, ~~2009~~ 2014, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL ESTABLISH the nursing ~~facility culture change~~ ~~accountability~~ HOME INNOVATIONS GRANT board ~~shall be established and operated~~ 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, in consultation with stakeholders, shall determine the appropriate entity to administer the ~~accountability~~ board. The ~~accountability~~ board ~~shall be composed~~ CONSISTS of ten members as follows:

- (I) The state long-term care ombudsman or his or her designee;
- (II) The executive director of the department of health care policy and financing or the executive director's designee;
- (III) The executive director of the department of public health and environment or the executive director's designee;
- (IV) Seven members appointed by the governor as follows:
 - (A) ~~Three~~ FOUR members currently employed in long-term care nursing facilities;
 - (B) One member who is or represents a consumer of long-term care;
 - (C) One member representing the disability community who is either a resident of a nursing facility or a family member of a nursing facility resident; AND
 - (D) One member representing the business community. ~~and~~

(E) ~~One member representing the Colorado culture change coalition, or its successor organization.~~

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

(c) The ~~accountability~~ board shall review ~~and make recommendations to the departments regarding the use of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of subsection (4) of this section~~ ALL GRANT PROJECTS, DETERMINE WHETHER THE GRANTEE COMPLETED THEIR GRANT PROJECTS AND GRANT OBJECTIVES, AND SHALL PROVIDE WRITTEN RECOMMENDATIONS TO THE DEPARTMENT TO MAKE OR WITHHOLD PAYMENT TO GRANTEE.

(d) By October 1 ~~2010, and by~~ OF each ~~October 1 thereafter,~~ YEAR the departments, with the assistance of the ~~accountability~~ board, shall jointly submit a report to the governor and the health and human services ~~committees~~ COMMITTEE of the senate and THE PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEE OF THE house of representatives of the general assembly, or their successor committees, regarding the expenditure of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of subsection (4) of this section. The report ~~shall~~ MUST detail the amount of moneys expended for such purposes, the recipients of the funds, the effectiveness of the use of the funds, and any other information deemed pertinent by the departments or requested by the governor or the committees. NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (1), C.R.S., THE REPORT REQUIRED IN THIS PARAGRAPH (d) CONTINUES INDEFINITELY.

(7) (a) Subparagraph (II) of paragraph (c) of subsection (4) of this section, subsection (6) of this section, and this subsection (7) are repealed, effective September 1, ~~2016~~ 2021.

(b) Prior to ~~such~~ THE repeal, the nursing ~~facility culture change accountability~~ HOME INNOVATIONS GRANT board and its functions, and the use of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of subsection (4) of this section, shall be reviewed pursuant to section 24-34-104, C.R.S.

SECTION 2. In Colorado Revised Statutes, 24-34-104, **repeal** (47.5) (a); and **add** (52.5) (c) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

(a) ~~The nursing facility culture change accountability board created in section 25-1-107.5 (6), C.R.S., and the use of moneys in the nursing home penalty cash fund for the purposes described in section 25-1-107.5 (4) (c) (II), C.R.S.;~~

(52.5) The following agencies, functions, or both, terminate on September 1,

2021:

(c) THE NURSING HOME INNOVATIONS GRANT BOARD CREATED IN SECTION 25-1-107.5 (6), C.R.S., AND THE USE OF MONEYS IN THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSES DESCRIBED IN SECTION 25-1-107.5 (4) (c) (II), C.R.S.;

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the nursing home penalty cash fund created in section 25.5-6-205, Colorado Revised Statutes, not otherwise appropriated, to the department of health care policy and financing, for the fiscal year beginning July 1, 2014, the sum of \$165,000 cash funds, or so much thereof as may be necessary, for allocation to medical services premiums for the implementation of this act.

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: June 5, 2014