

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 14-0906.01 Bart Miller x2173

SENATE BILL 14-151

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Young,

Senate Committees

Health & Human Services
Finance
Appropriations

House Committees

A BILL FOR AN ACT

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

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://www.leg.state.co.us/billsummaries>.)

The bill makes the following changes to the law governing the use of moneys derived from civil penalties imposed on nursing facilities and

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

SENATE
Amended 2nd Reading
April 14, 2014

used to fund innovations in nursing home care:

- ! Changes the name of the nursing facility culture change accountability board to the nursing home innovations grant board and changes the membership of the board;
- ! Adds a definition of "benefit residents of nursing facilities" to specify that grants have a direct impact on the residents of nursing facilities or an indirect impact through education of nursing facility staff;
- ! Deletes language permitting use of grant money to educate state surveyors, supervisors, and the state or local ombudsman;
- ! Deletes language permitting use of grant money for organization newsletters or web sites;
- ! Specifies that programs approved for grants must be portable and not proprietary to the grantee so that programs can be shared without cost to other providers for the benefit of nursing home residents statewide;
- ! Increases the amount available for grants from 25% of the moneys deposited in the nursing home penalty cash fund (fund) to \$250,000 annually if the balance in the fund is above \$2,000,000. If the balance in the fund falls below \$2,000,000, 25% of the moneys deposited in the fund in the immediately preceding fiscal year may be used for grants;
- ! Directs the department of health care policy and financing to adopt rules implementing procedures for grants; and
- ! Prohibits governmental agencies from applying for or receiving grants.

For the fiscal year beginning July 1, 2014, the bill appropriates \$250,000 from the fund for implementation of the bill.

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 (4) (c) (II), (4) (d), (4) (e), (6), and (7); **repeal** (1) (a); and **add** (1) (b.5)
4 and (1) (b.7) as follows:

5 **25-1-107.5. Additional authority of department - rules -**
6 **remedies against nursing facilities - criteria for recommending**
7 **assessments for civil penalties - cooperation with department of**
8 **health care policy and financing - nursing home penalty cash fund -**

1 **nursing home innovations grant board - reports - repeal.** (1) For the
2 purposes of this section, unless the context otherwise requires:

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

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

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

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

13 (II) GRANTS TO BE APPROVED FOR measures that will benefit
14 residents of nursing facilities by FOSTERING INNOVATION AND improving
15 ~~their~~ THE quality of life AND CARE at the facilities, including:

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

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

21 (C) ~~Development of a newsletter and web site detailing~~
22 ~~information on resident-centered care in nursing facilities and related~~
23 ~~information~~ INITIATIVES IN NURSING FACILITIES RELATED TO THE QUALITY
24 MEASURES PROMOTED BY THE FEDERAL CENTERS FOR MEDICARE AND
25 MEDICAID SERVICES AND OTHER NATIONAL QUALITY INITIATIVES; and

26 (D) Education and consultation for purposes of identifying and
27 implementing resident-centered care initiatives in nursing facilities.

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

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

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

17 (II) ~~The departments may allocate the moneys specified in this~~
18 ~~paragraph (d) on a quarterly basis, but in no case shall the total amount~~
19 ~~distributed in any given fiscal year exceed the amount specified in~~
20 ~~subparagraph (I) of this paragraph (d)~~ DEPARTMENT OF HEALTH CARE
21 POLICY AND FINANCING, AFTER RECEIVING A RECOMMENDATION FROM THE
22 BOARD AND APPROVAL FROM THE FEDERAL CENTERS FOR MEDICARE AND
23 MEDICAID SERVICES, SHALL CONSIDER GRANTS ISSUED AS SOLE SOURCE
24 PROCUREMENTS THAT ARE NOT SUBJECT TO THE "PROCUREMENT CODE",
25 ARTICLES 101 TO 112 OF TITLE 24, C.R.S.

26 (II.5) (A) THE BOARD SHALL MAKE RECOMMENDATIONS FOR THE
27 APPROVAL OF GRANTS THAT BENEFIT RESIDENTS OF NURSING FACILITIES

1 FOR AT LEAST ONE YEAR AND NOT MORE THAN THREE-YEAR CYCLES. THE
2 PROJECTS AWARDED GRANTS MUST BE PORTABLE, SUSTAINABLE, AND
3 REPLICABLE IN OTHER NURSING FACILITIES.

4 (B) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
5 AND THE BOARD SHALL DEVELOP PROCESSES FOR GRANT PAYMENTS,
6 WHICH PROCESSES MAY ALLOW GRANT PAYMENTS TO BE MADE IN
7 ADVANCE OF THE DELIVERY OF GOODS AND SERVICES TO GRANTEEES.
8 GRANTEEES RECEIVING ADVANCE PAYMENTS SHALL REPORT PROGRESS TO
9 THE BOARD. NO STATE AGENCY NOR ANY OTHER GOVERNMENTAL ENTITY,
10 WITH THE EXCEPTION OF A FACILITY THAT IS OWNED OR OPERATED BY A
11 GOVERNMENTAL AGENCY AND THAT IS LICENSED AS A NURSING CARE
12 FACILITY UNDER SECTION 25-1.5-103 (1) (a) (I) (A), C.R.S., MAY APPLY
13 FOR OR RECEIVE A GRANT UNDER THIS SUBSECTION (4).

14 (C) ANY MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL
15 YEAR MAY BE HELD OVER AND USED BY THE BOARD IN THE NEXT FISCAL
16 YEAR. UNEXPENDED AND UNENCUMBERED MONEYS FROM AN
17 APPROPRIATION IN THE ANNUAL GENERAL APPROPRIATION ACT TO THE
18 DEPARTMENTS FOR THE PURPOSE OF CARRYING OUT THE NURSING HOME
19 INNOVATION GRANT PROGRAM UNDER THIS SECTION REMAIN AVAILABLE
20 FOR EXPENDITURE BY THE DEPARTMENTS IN THE NEXT FISCAL YEAR
21 WITHOUT FURTHER APPROPRIATION. THIS SUB-SUBPARAGRAPH (C) APPLIES
22 TO APPROPRIATIONS MADE BY THE GENERAL ASSEMBLY FOR FISCAL YEARS
23 ENDING ON AND AFTER JUNE 30, 2014. ON OR BEFORE JUNE 30, 2014, AND
24 ON OR BEFORE JUNE 30 OF EACH YEAR THEREAFTER, THE DEPARTMENTS
25 SHALL NOTIFY THE STATE CONTROLLER OF THE AMOUNT OF THE
26 APPROPRIATION FROM THE ANNUAL GENERAL APPROPRIATION ACT FOR THE
27 CURRENT FISCAL YEAR THE DEPARTMENTS NEED TO REMAIN AVAILABLE

1 FOR EXPENDITURE IN THE NEXT FISCAL YEAR. THE DEPARTMENTS MAY NOT
2 EXPEND MORE THAN THE AMOUNT STATED IN THE NOTICE UNDER THIS
3 SUB-SUBPARAGRAPH (C).

4 (D) OTHER POLICIES OF THE BOARD MUST CONFORM WITH
5 PRACTICES OF OTHER GRANTING ORGANIZATIONS. THE WORK PRODUCT
6 FROM GRANTS FUNDED THROUGH THE NURSING HOME PENALTY CASH FUND
7 IS THE INTELLECTUAL PROPERTY OF THE DEPARTMENT AND MUST BE MADE
8 AVAILABLE WITHOUT CHARGE TO ALL NURSING HOMES IN THE STATE. THE
9 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL ADOPT
10 RULES AS NECESSARY TO GOVERN THE PROCEDURE FOR AWARDING
11 GRANTS UNDER THIS SECTION.

12 (II.7) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
13 SHALL ADHERE TO ALL STATE AND FEDERAL REQUIREMENTS FOR THE
14 ENCUMBRANCE AND PAYMENT OF GRANTS UNDER THIS PARAGRAPH (d). IN
15 ADDITION, THE DEPARTMENT SHALL:

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

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

26 (III) Notwithstanding subparagraph (I) of this paragraph (d), the
27 departments shall ensure that the balance of the nursing home penalty

1 cash fund does not fall below one million dollars as a result of
2 expenditures for the purposes described in subparagraph (II) of paragraph
3 (c) of this subsection (4) and shall not distribute moneys pursuant to this
4 paragraph (d) for such purposes if making a distribution would cause the
5 fund balance to fall below the minimum balance required by this
6 subparagraph (III).

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

19 (e) The departments shall not utilize moneys from the nursing
20 home penalty cash fund for the purpose of paying their cost for
21 administering ~~such~~ THE fund or for ~~any~~ COSTS OF administration ~~costs~~
22 associated with any specific movement, association, or organization;
23 except that up to ~~ten percent~~ TEN THOUSAND DOLLARS of the moneys
24 distributed pursuant to paragraph (d) of this subsection (4) may be used
25 to pay the cost to administer and operate the ~~accountability~~ board,
26 including expense reimbursement for ~~accountability~~ board members.

27 (6) (a) No later than September 1, ~~2009~~ 2014, THE DEPARTMENT

1 OF HEALTH CARE POLICY AND FINANCING SHALL ESTABLISH the nursing
2 ~~facility culture change accountability~~ HOME INNOVATIONS GRANT board
3 ~~shall be established and operated~~ under the department of health care
4 policy and financing either directly or by contract with or grant to any
5 public agency or appropriate private nonprofit organization. The
6 department of health care policy and financing, in consultation with
7 stakeholders, shall determine the appropriate entity to administer the
8 ~~accountability~~ board. The ~~accountability~~ board ~~shall be composed~~
9 CONSISTS of ten members as follows:

- 10 (I) The state long-term care ombudsman or his or her designee;
11 (II) The executive director of the department of health care policy
12 and financing or the executive director's designee;
13 (III) The executive director of the department of public health and
14 environment or the executive director's designee;
15 (IV) Seven members appointed by the governor as follows:
16 (A) ~~Three~~ FOUR members currently employed in long-term care
17 nursing facilities;
18 (B) One member who is or represents a consumer of long-term
19 care;
20 (C) One member representing the disability community who is
21 either a resident of a nursing facility or a family member of a nursing
22 facility resident; AND
23 (D) One member representing the business community. ~~and~~
24 (E) ~~One member representing the Colorado culture change~~
25 ~~coalition, or its successor organization.~~
26 (b) The members of the ~~accountability~~ board shall serve without
27 compensation but may be reimbursed for expenses incurred while serving

1 on the ~~accountability~~ board.

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

10 (d) By October 1 2010, ~~and by~~ OF each October 1 thereafter, YEAR
11 the departments, with the assistance of the ~~accountability~~ board, shall
12 jointly submit a report to the governor and the health and human services
13 ~~committees~~ COMMITTEE of the senate and THE PUBLIC HEALTH CARE AND
14 HUMAN SERVICES COMMITTEE OF THE house of representatives of the
15 general assembly, or their successor committees, regarding the
16 expenditure of moneys in the nursing home penalty cash fund for the
17 purposes described in subparagraph (II) of paragraph (c) of subsection (4)
18 of this section. The report ~~shall~~ MUST detail the amount of moneys
19 expended for such purposes, the recipients of the funds, the effectiveness
20 of the use of the funds, and any other information deemed pertinent by the
21 departments or requested by the governor or the committees.
22 NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136(11), C.R.S.,
23 THE REPORT REQUIRED IN THIS PARAGRAPH (d) CONTINUES INDEFINITELY.

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

27 (b) Prior to ~~such~~ THE repeal, the nursing ~~facility culture change~~

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

5 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**
6 (47.5) (a); and **add** (52.5) (c) as follows:

7 **24-34-104. General assembly review of regulatory agencies**
8 **and functions for termination, continuation, or reestablishment.**

9 (47.5) The following agencies, functions, or both, shall terminate on
10 September 1, 2016:

11 (a) ~~The nursing facility culture change accountability board~~
12 ~~created in section 25-1-107.5 (6), C.R.S., and the use of moneys in the~~
13 ~~nursing home penalty cash fund for the purposes described in section~~
14 ~~25-1-107.5 (4) (c) (II), C.R.S.;~~

15 (52.5) The following agencies, functions, or both, terminate on
16 September 1, 2021:

17 (c) THE NURSING HOME INNOVATIONS GRANT BOARD CREATED IN
18 SECTION 25-1-107.5 (6), C.R.S., AND THE USE OF MONEYS IN THE NURSING
19 HOME PENALTY CASH FUND FOR THE PURPOSES DESCRIBED IN SECTION
20 25-1-107.5 (4) (c) (II), C.R.S.;

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

1 act.

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