

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 09-0703.01 Christy Chase

**HOUSE BILL 09-1196**

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**HOUSE SPONSORSHIP**

**Gerou,** Kerr J., Kerr A., McNulty, Schafer S., Summers

**SENATE SPONSORSHIP**

**Boyd,**

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**House Committees**

Health and Human Services  
Finance

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE USE OF MONEYS DERIVED FROM CIVIL MONEY**  
102             **PENALTIES IMPOSED ON NURSING FACILITIES TO FUND**  
103             **INNOVATION IN NURSING HOME CARE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Expands the authorized uses for moneys in the nursing home penalty cash fund to measures that will improve the quality of life of residents of nursing facilities in the state. Caps the amount of moneys that may be used for quality of life improvement measures and ensures retention of a minimum balance in the fund. Establishes the nursing facility culture change accountability board (accountability board) to

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.*

provide recommendations to the departments of health care policy and financing and public health and environment regarding expenditures from the fund for purposes of improving resident quality of life. Requires the departments, with assistance from the accountability board, to report to the governor and health and human services committees of the house of representatives and senate regarding expenditures from the cash fund for such purposes. Sunsets the accountability board and the expanded uses of the moneys in the cash fund on September 1, 2016.

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

2 **SECTION 1.** 25-1-107.5, Colorado Revised Statutes, is amended  
3 to read:

4 **25-1-107.5. Additional authority of department - rules -**  
5 **remedies against nursing facilities - criteria for recommending**  
6 **assessments for civil penalties - cooperation with department of**  
7 **health care policy and financing - nursing home penalty cash fund -**  
8 **accountability board - reports - repeal.** (1) For the purposes of this  
9 section, unless the context otherwise requires:

10 (a) "ACCOUNTABILITY BOARD" MEANS THE NURSING FACILITY  
11 CULTURE CHANGE ACCOUNTABILITY BOARD, CREATED IN SUBSECTION (6)  
12 OF THIS SECTION.

13 (a) (b) "Federal regulations for participation" means the  
14 regulations found in part 442 of title 42 of the code of federal regulations,  
15 as amended, for participation under Title XIX of the federal "Social  
16 Security Act", as amended.

17 (b) (c) "Nursing facility" means any skilled or intermediate  
18 nursing care facility ~~which~~ THAT receives federal and state funds under  
19 Title XIX of the federal "Social Security Act", as amended.

20 (2) The department, as the state agency responsible for certifying  
21 ~~skilled and intermediate nursing facilities, which receive federal and state~~

1 funds under Title XIX of the federal "Social Security Act", as amended,  
2 is hereby given the authority AUTHORIZED to adopt rules and regulations  
3 necessary to establish a series of remedies in accordance with this section  
4 and the federal "Omnibus Budget Reconciliation Act of 1987", Pub.L.  
5 100-203, as amended, which THAT may be imposed by the department of  
6 health care policy and financing when a nursing facility violates federal  
7 regulations for participation in the medicaid program. The remedies  
8 which are established shall include any remedies required under federal  
9 law and shall include the imposition of civil money penalties.

10 (3) (a) In accordance with rules and regulations promulgated  
11 under this section, the department is authorized to recommend to the  
12 department of health care policy and financing an appropriate civil money  
13 penalty based on the nature of the violation. Any penalties recommended  
14 shall not be less than one hundred dollars nor more than ten thousand  
15 dollars for each day the facility is found to be in violation of the federal  
16 regulations. Penalties assessed shall include interest at the statutory rate.

17 (b) The department shall adopt criteria for determining the amount  
18 of the penalty to be recommended for assessment. Such THE criteria shall  
19 include, but need not be limited to, consideration of the following factors:

- 20 (I) The period of time over DURING which the violation occurred;  
21 (II) The frequency of the violation;  
22 (III) The nursing facility's history concerning the type of violation  
23 for which the penalty is assessed;  
24 (IV) The nursing facility's intent or reason for the violation;  
25 (V) The effect, if any, of the violation on the health, safety,  
26 security, or welfare of the residents OF THE NURSING FACILITY;  
27 (VI) The existence of other violations, in combination with the

1 violation for which the penalty is assessed, ~~which~~ THAT increase the threat  
2 to the health, safety, security, or welfare of the residents OF THE NURSING  
3 FACILITY;

4 (VII) The accuracy, thoroughness, and availability of records  
5 regarding the violation ~~which~~ THAT the nursing facility is required to  
6 maintain; and

7 (VIII) The number of additional related violations occurring  
8 within the same ~~time span~~ PERIOD as the violation in question.

9 (c) (I) ~~In the event~~ IF the department finds that a violation is life  
10 threatening to one or more residents or creates a direct threat of serious  
11 adverse harm to the health, safety, security, rights, or welfare of one or  
12 more residents, THE DEPARTMENT OF HEALTH CARE POLICY AND  
13 FINANCING SHALL IMPOSE a penalty ~~shall be imposed~~ for each day the  
14 deficiencies ~~which~~ THAT constitute the violation are found to exist.

15 (II) Except as provided in subparagraph (I) of this paragraph (c),  
16 ~~no~~ THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL NOT  
17 ASSESS A penalty ~~shall be assessed~~ prior to the date a nursing facility  
18 receives written notice from the department of its recommendation to  
19 assess civil money penalties. ~~Such~~ THE DEPARTMENT SHALL PROVIDE THE  
20 notice ~~shall be provided~~ to the facility no later than five days after the last  
21 day of the inspection or survey during which the deficiencies ~~which~~ THAT  
22 constitute the violation were found. The notice shall:

23 (A) Set forth the deficiencies that are the basis for the  
24 recommendation to assess a penalty;

25 (B) Provide instructions for responding to the notice; and

26 (C) ~~Provide for the submission of~~ REQUIRE THE NURSING FACILITY  
27 TO SUBMIT a written plan of correction. ~~by the nursing facility.~~ The

1 department shall adopt criteria for the submission and approval of written  
2 plans of correction BY NURSING FACILITIES AND APPROVAL OF THE PLANS  
3 BY THE DEPARTMENT. If the facility acts in a timely and diligent manner  
4 to correct the violation in accordance with an approved plan of correction,  
5 the department may recommend to the department of health care policy  
6 and financing that IT SUSPEND OR REDUCE the penalty ~~be suspended or~~  
7 ~~reduced~~ during the period of correction specified in the approved plan of  
8 correction.

9 (d) Except as provided in sub-subparagraph (C) of subparagraph  
10 (II) of paragraph (c) of this subsection (3), THE DEPARTMENT OF HEALTH  
11 CARE POLICY AND FINANCING SHALL CONTINUE TO ASSESS any penalty  
12 recommended under this section ~~shall continue to be assessed~~ until the  
13 department verifies to the department of health care policy and financing  
14 that the violation is corrected or until the nursing facility notifies the  
15 department that correction has occurred, whichever is earlier. ~~In the~~  
16 ~~event~~ IF THE PENALTY HAS BEEN SUSPENDED OR REDUCED PURSUANT TO  
17 SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (II) OF PARAGRAPH (c) OF  
18 THIS SUBSECTION (3) AND the nursing facility has not corrected the  
19 violation, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING  
20 SHALL REINSTATE the penalty ~~shall be reinstated~~ at an increased amount  
21 and shall ~~be~~ retroactively ~~assessed~~ ASSESS THE PENALTY to the date the  
22 penalty was suspended.

23 (4) (a) The department of health care policy and financing, after  
24 receiving a recommendation from the department, is authorized to assess,  
25 enforce, and collect the civil money penalty pursuant to section  
26 25.5-6-205, C.R.S., for credit to the nursing home penalty cash fund,  
27 created pursuant to section 25.5-6-205 (3) (a), C.R.S.

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

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

12 (III) The department of health care policy and financing shall  
13 promulgate rules ~~and regulations~~ necessary to ensure proper  
14 administration of the nursing home penalty cash fund.

15 (c) ~~Circumstances which shall be considered~~ THE DEPARTMENTS  
16 SHALL CONSIDER, as a basis for distribution from the nursing home  
17 penalty cash fund, ~~include paying~~ THE FOLLOWING:

- 18 (I) THE NEED TO PAY costs to:
  - 19 ~~(H)~~ (A) Relocate residents to other facilities WHEN A NURSING  
20 FACILITY CLOSES;
  - 21 ~~(H)~~ (B) Maintain the operation of a nursing facility pending  
22 correction of violations;
  - 23 ~~(H)~~ (C) Close a nursing facility;
  - 24 ~~(V)~~ (D) Reimburse residents for personal funds lost.

25 (II) MEASURES THAT WILL BENEFIT RESIDENTS OF NURSING  
26 FACILITIES BY IMPROVING THEIR QUALITY OF LIFE AT THE FACILITIES,  
27 INCLUDING:

1 (A) CONSUMER EDUCATION TO PROMOTE RESIDENT-CENTERED  
2 CARE IN NURSING FACILITIES;

3 (B) TRAINING FOR STATE SURVEYORS, SUPERVISORS, AND THE  
4 STATE AND LOCAL LONG-TERM CARE OMBUDSMAN, ESTABLISHED  
5 PURSUANT TO ARTICLE 11.5 OF TITLE 26, C.R.S., REGARDING  
6 RESIDENT-CENTERED CARE IN NURSING FACILITIES;

7 (C) DEVELOPMENT OF A NEWSLETTER AND WEB SITE DETAILING  
8 INFORMATION ON RESIDENT-CENTERED CARE IN NURSING FACILITIES AND  
9 RELATED INFORMATION; AND

10 (D) EDUCATION AND CONSULTATION FOR PURPOSES OF  
11 IDENTIFYING AND IMPLEMENTING RESIDENT-CENTERED CARE INITIATIVES  
12 IN NURSING FACILITIES.

13 (d) (I) THE DEPARTMENTS SHALL DISTRIBUTE THE FOLLOWING  
14 AMOUNTS OF MONEYS IN THE NURSING HOME PENALTY CASH FUND FOR  
15 THE PURPOSES DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF  
16 THIS SUBSECTION (4), PURSUANT TO THE RECOMMENDATIONS OF THE  
17 ACCOUNTABILITY BOARD:

18 (A) FOR THE 2009-2010 FISCAL YEAR, TWO HUNDRED THOUSAND  
19 DOLLARS;

20 (B) FOR THE 2010-2011 FISCAL YEAR AND EACH FISCAL YEAR  
21 THEREAFTER, AN AMOUNT EQUAL TO THE LESSER OF THE AMOUNT  
22 SPECIFIED IN A BUDGET APPROVED BY THE ACCOUNTABILITY BOARD OR  
23 TWENTY-FIVE PERCENT OF THE MONEYS DEPOSITED INTO THE NURSING  
24 HOME PENALTY CASH FUND IN THE IMMEDIATELY PRECEDING FISCAL YEAR.

25 (II) THE DEPARTMENTS MAY ALLOCATE THE MONEYS SPECIFIED IN  
26 THIS PARAGRAPH (d) ON A QUARTERLY BASIS, BUT IN NO CASE SHALL THE  
27 TOTAL AMOUNT DISTRIBUTED IN ANY GIVEN FISCAL YEAR EXCEED THE

1 AMOUNT SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d).  
2 (III) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH  
3 (d), THE DEPARTMENTS SHALL ENSURE THAT THE BALANCE OF THE  
4 NURSING HOME PENALTY CASH FUND DOES NOT FALL BELOW ONE MILLION  
5 DOLLARS AS A RESULT OF EXPENDITURES FOR THE PURPOSES DESCRIBED  
6 IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF THIS SUBSECTION (4) AND  
7 SHALL NOT DISTRIBUTE MONEYS PURSUANT TO THIS PARAGRAPH (d) FOR  
8 SUCH PURPOSES IF MAKING A DISTRIBUTION WOULD CAUSE THE FUND  
9 BALANCE TO FALL BELOW THE MINIMUM BALANCE REQUIRED BY THIS  
10 SUBPARAGRAPH (III).

11 ~~(d) (e) Neither department is authorized under paragraph (b) of~~  
12 ~~this subsection (4) to~~ THE DEPARTMENTS SHALL NOT utilize moneys from  
13 the nursing home penalty cash fund for the purpose of paying ~~its~~ THEIR  
14 cost for administering such fund OR FOR ANY ADMINISTRATION COSTS  
15 ASSOCIATED WITH ANY SPECIFIC MOVEMENT, ASSOCIATION, OR  
16 ORGANIZATION.

17 (5) Repealed.

18 (6) (a) THERE IS HEREBY CREATED IN THE DEPARTMENT OF HEALTH  
19 CARE POLICY AND FINANCING THE NURSING FACILITY CULTURE CHANGE  
20 ACCOUNTABILITY BOARD, WHICH SHALL BE COMPOSED OF NINE MEMBERS  
21 AS FOLLOWS:

22 (I) THE STATE AND LOCAL LONG-TERM CARE OMBUDSMAN OR HIS  
23 OR HER DESIGNEE;

24 (II) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH  
25 CARE POLICY AND FINANCING OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

26 (III) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC  
27 HEALTH AND ENVIRONMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

1 (IV) SIX MEMBERS APPOINTED BY THE GOVERNOR AS FOLLOWS:

2 (A) THREE MEMBERS CURRENTLY EMPLOYED IN LONG-TERM CARE  
3 NURSING FACILITIES;

4 (B) ONE MEMBER WHO IS OR REPRESENTS A CONSUMER OF  
5 LONG-TERM CARE;

6 (C) ONE MEMBER REPRESENTING THE BUSINESS COMMUNITY; AND

7 (D) ONE MEMBER REPRESENTING THE COLORADO CULTURE  
8 CHANGE COALITION, OR ITS SUCCESSOR ORGANIZATION.

9 (b) THE MEMBERS OF THE ACCOUNTABILITY BOARD SHALL SERVE  
10 WITHOUT COMPENSATION AND SHALL NOT BE REIMBURSED FOR EXPENSES  
11 INCURRED WHILE SERVING ON THE ACCOUNTABILITY BOARD.

12 (c) THE ACCOUNTABILITY BOARD SHALL REVIEW AND MAKE  
13 RECOMMENDATIONS TO THE DEPARTMENTS REGARDING THE USE OF  
14 MONEYS IN THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSES  
15 DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (4)  
16 OF THIS SECTION.

17 (d) BY OCTOBER 1, 2010, AND BY EACH OCTOBER 1 THEREAFTER,  
18 THE DEPARTMENTS, WITH THE ASSISTANCE OF THE ACCOUNTABILITY  
19 BOARD, SHALL JOINTLY SUBMIT A REPORT TO THE GOVERNOR AND THE  
20 HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE  
21 OF REPRESENTATIVES OF THE GENERAL ASSEMBLY, OR THEIR SUCCESSOR  
22 COMMITTEES, REGARDING THE EXPENDITURE OF MONEYS IN THE NURSING  
23 HOME PENALTY CASH FUND FOR THE PURPOSES DESCRIBED IN  
24 SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (4) OF THIS  
25 SECTION. THE REPORT SHALL DETAIL THE AMOUNT OF MONEYS EXPENDED  
26 FOR SUCH PURPOSES, THE RECIPIENTS OF THE FUNDS, THE EFFECTIVENESS  
27 OF THE USE OF THE FUNDS, AND ANY OTHER INFORMATION DEEMED

1 PERTINENT BY THE DEPARTMENTS OR REQUESTED BY THE GOVERNOR OR  
2 THE COMMITTEES.

3 (7) (a) SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (4)  
4 OF THIS SECTION, SUBSECTION (6) OF THIS SECTION, AND THIS SUBSECTION  
5 (7) ARE REPEALED, EFFECTIVE SEPTEMBER 1, 2016.

6 (b) PRIOR TO SUCH REPEAL, THE NURSING FACILITY CULTURE  
7 CHANGE ACCOUNTABILITY BOARD AND ITS FUNCTIONS, AND THE USE OF  
8 MONEYS IN THE NURSING HOME PENALTY CASH FUND FOR THE PURPOSES  
9 DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (4)  
10 OF THIS SECTION, SHALL BE REVIEWED PURSUANT TO SECTION 24-34-104,  
11 C.R.S.

12 **SECTION 2.** 24-34-104, Colorado Revised Statutes, is amended  
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 **24-34-104. General assembly review of regulatory agencies**  
15 **and functions for termination, continuation, or reestablishment.**

16 (47.5) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL  
17 TERMINATE ON SEPTEMBER 1, 2016: THE NURSING FACILITY CULTURE  
18 CHANGE ACCOUNTABILITY BOARD CREATED IN SECTION 25-1-107.5 (6),  
19 C.R.S., AND THE USE OF MONEYS IN THE NURSING HOME PENALTY CASH  
20 FUND FOR THE PURPOSES DESCRIBED IN SECTION 25-1-107.5 (4) (c) (II),  
21 C.R.S.

22 **SECTION 3. Act subject to petition - effective date.** This act  
23 shall take effect at 12:01 a.m. on the day following the expiration of the  
24 ninety-day period after final adjournment of the general assembly that is  
25 allowed for submitting a referendum petition pursuant to article V,  
26 section 1 (3) of the state constitution, (August 4, 2009, if adjournment  
27 sine die is on May 6, 2009); except that, if a referendum petition is filed

1     against this act or an item, section, or part of this act within such period,  
2     then the act, item, section, or part, if approved by the people, shall take  
3     effect on the date of the official declaration of the vote thereon by  
4     proclamation of the governor.