

## LEGISLATIVE BILL 22

Approved by the Governor March 12, 2019

Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to nursing facilities; to amend sections 71-2097, 71-2098, and 71-20,100, Reissue Revised Statutes of Nebraska; to redefine a term; to change provisions relating to distribution of the Nursing Facility Penalty Cash Fund; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-2097, Reissue Revised Statutes of Nebraska, is amended to read:

71-2097 For purposes of sections 71-2097 to 71-20,101:

(1) Civil penalty includes penalties ~~include~~ any remedy ~~remedies~~ required under federal law and includes ~~include~~ the imposition of a civil money penalty ~~monetary penalties~~;

(2) Department means the Department of Health and Human Services;

(3) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. parts 442 and 483, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(4) Nursing facility means any intermediate care facility or nursing facility, as defined in sections 71-420 and 71-424, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

Sec. 2. Section 71-2098, Reissue Revised Statutes of Nebraska, is amended to read:

71-2098 (1) The department may assess, enforce, and collect civil penalties against a nursing facility which the department has found in violation of federal regulations for participation in the medicaid program pursuant to the authority granted to the department under section 81-604.03.

(2) If the department finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to one or more residents, a civil penalty shall be imposed for each day the deficiencies which constitute the violation exist. The department may assess an appropriate civil penalty for other violations based on the nature of the violation. Any civil money ~~monetary~~ penalty assessed shall not be less than fifty dollars nor more than ten thousand dollars for each day the facility is found to be in violation of such federal regulations. Any civil money penalty ~~Monetary penalties~~ assessed shall include interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Sec. 3. Section 71-20,100, Reissue Revised Statutes of Nebraska, is amended to read:

71-20,100 (1) The Nursing Facility Penalty Cash Fund is created. Any civil money penalty ~~Monetary penalties~~ collected by the department as part of any civil penalty imposed pursuant to section 71-2098 or in accordance with the federal Social Security Act, as amended, and imposed by the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 488.431 and disbursed to the department in accordance with 42 C.F.R. 488.433 or imposed by the department pursuant to 42 C.F.R. 488.432 shall be remitted to the State Treasurer for credit to such fund. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall adopt and promulgate rules and regulations which establish circumstances under which the department may distribute funds from the Nursing Facility Penalty Cash Fund. Funds collected as part of a civil money penalty imposed by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as described in subsection (1) of this section shall be distributed in accordance with the federal Social Security Act, as amended, and the to protect the health or property of individuals residing in nursing facilities which the department has found in violation of federal regulations for participation in the medicaid program, to support activities that benefit nursing home residents as provided in 42 C.F.R. 488.433. ~~Circumstances considered as a basis for distribution from the fund include paying costs to:~~

~~(a) Relocate residents to other facilities;~~

~~(b) Maintain the operation of a nursing facility pending correction of violations;~~

~~(c) Close a nursing facility; and~~

~~(d) Reimburse residents for personal funds lost.~~

Sec. 4. Original sections 71-2097, 71-2098, and 71-20,100, Reissue Revised Statutes of Nebraska, are repealed.