

COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING; FY 08-09 BUDGET REQUEST CYCLE

Schedule 13											
1331 Emergency Change Request for FY 08-09 Budget Request Cycle											
Decision Item FY 08-09 <input type="checkbox"/>		Base Reduction Item FY 08-09 <input type="checkbox"/>		Supplemental FY 07-08 <input checked="" type="checkbox"/>		Budget Request Amendment FY 08-09 <input type="checkbox"/>					
Request Title:		Use Nursing Home Penalty Cash Fund for Closure of Grand Oaks Care Center						Date:		June 23, 2008	
Department:		Health Care Policy and Financing		Dept. Approval by:		John Bartholomew <i>[Signature]</i>		Date:		6/19/08	
Priority Number:		N/A		OSPBA Approval:				Date:		6/19/08	
		1	2	3	4	5	6	8	9	10	
		Prior-Year Actual	Appropriation	1331 Supplemental Request	Total Revised Request	Appropriation	Decision/ Base Reduction	November 1 Request	Budget Amendment	Total Revised Request	Change from Base
	Fund	FY 06-07	FY 07-08	FY 07-08	FY 07-08	FY 08-09	FY 08-09	FY 08-09	FY 08-09	FY 08-09	FY 09-10
Total of All Line Items	Total	2,061,396,808	2,199,430,240	466,523	2,199,896,763	2,317,412,942	0	2,317,412,942	0	2,317,412,942	0
	FTE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	GF	633,377,714	693,147,345	0	693,147,345	705,026,741	0	705,026,741	0	705,026,741	0
	GFE	343,100,000	327,500,000	0	327,500,000	369,000,000	0	369,000,000	0	369,000,000	0
	CF	0	0	466,523	466,523	83,134,734	0	83,134,734	0	83,134,734	0
	RF/CFE	48,860,206	76,548,470	0	76,548,470	767,998	0	767,998	0	767,998	0
	FF	1,036,058,888	1,102,234,425	0	1,102,234,425	1,159,483,469	0	1,159,483,469	0	1,159,483,469	0
(2) Medical Services Premiums	Total	2,061,396,808	2,199,430,240	466,523	2,199,896,763	2,317,412,942	0	2,317,412,942	0	2,317,412,942	0
	FTE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	GF	633,377,714	693,147,345	0	693,147,345	705,026,741	0	705,026,741	0	705,026,741	0
	GFE	343,100,000	327,500,000	0	327,500,000	369,000,000	0	369,000,000	0	369,000,000	0
	CF	0	0	466,523	466,523	83,134,734	0	83,134,734	0	83,134,734	0
	RF/CFE	48,860,206	76,548,470	0	76,548,470	767,998	0	767,998	0	767,998	0
	FF	1,036,058,888	1,102,234,425	0	1,102,234,425	1,159,483,469	0	1,159,483,469	0	1,159,483,469	0
Letternote revised text:											
Cash Fund name/number, Federal Fund Grant name:				Nursing Home Penalty Cash Fund / 284							
IT Request: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No											
Request Affects Other Departments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				If Yes, List Other Departments Here:							

**1331 CHANGE REQUEST for FY 08-09 BUDGET REQUEST CYCLE**

Department:	Health Care Policy and Financing
Priority Number:	N/A
Change Request Title:	Use Nursing Home Penalty Cash Fund for Closure of Grand Oaks Care Center

**SELECT ONE (click on box):**

- Decision Item FY 08-09
- Base Reduction Item FY 08-09
- Supplemental Request FY 07-08
- Budget Request Amendment FY 08-09

**SELECT ONE (click on box):**

Supplemental or Budget Request Amendment Criterion:

- Not a Supplemental or Budget Request Amendment
- An emergency
- A technical error which has a substantial effect on the operation of the program
- New data resulting in substantial changes in funding needs
- Unforeseen contingency such as a significant workload change

Short Summary of Request:

The Department requests a total funds appropriation of \$466,523 from the Nursing Home Penalty Cash Fund to pay temporary management contractor fees and pay for operating expenses of Grand Oaks Care Center while the facility is closed and the contractor finds proper and safe placement for the facility's residents. The Department is required to find placement for the residents under federal law.

Background and Appropriation History:

On February 21, 2008, the Centers for Medicare and Medicaid Services (CMS) informed Grand Oaks Care Center, a 120-bed Medicaid-certified nursing facility located in Lakewood, CO, that a Standard Health and Extended Survey conducted by the Denver Regional Office had determined the facility was not in compliance with federal participation requirements. The survey found the most serious pattern of deficiencies constitutes immediate jeopardy to residents' health or safety and the facility was providing a substandard quality of care. A total of 70 deficiencies were identified to be corrected as a result of three different surveys. The remedy imposed by CMS, in addition

to continued denial of payment for new admissions, was to install a temporary manager in the facility by March 8, 2008. Grand Oaks was required to relinquish to the Contractor the authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and otherwise manage the facility to correct the identified deficiencies.

On March 8, 2008, a temporary management contractor was hired to oversee the plan of correction as agreed by CMS and Grand Oaks. The contract was for a minimum of 59 days, from March 8, 2008 through May 5, 2008. The contractor's scope of work contained two phases. The first phase, from March 8, 2008 through March 21, 2008, the contractor was required to assess and stabilize the situation in the facility, including determining the operating fund needs of the facility. The second phase, from March 22, 2008 through May 5, 2008, required the contractor to implement the Plan of Correction, and to implement procedures to sustain substantial compliance with the federal participation requirements.

On May 5, 2008, CMS informed Grand Oaks that their Medicare provider agreement had been terminated and that payment for clients would only continue to be made for 30 days. Per section 1902(a)(28) of the Social Security Act and 42 CFR § 442.12 (2007), the facility's Medicaid provider agreement was also terminated as of the same date. Therefore, the temporary management contractor's contract was extended in order to find proper and safe placement for the facility's residents. Once the residents have been discharged to new facilities, Grand Oaks will be closed.

General Description of Request:

The Department requests a total funds appropriation of \$466,523 to pay the temporary management contractor fees and pay for operating expenses of Grand Oaks while the contractor finds proper and safe placement for the facility's residents. Of this total, the Department requests that the total amount be funded from the Nursing Home Penalty Cash Fund ("the Fund"), created pursuant to section 25.5-6-205 (3) (a), C.R.S. (2007). There is no General Fund impact to this request. No additional matching federal funds are available for these funds.

The requested funding will be used to pay facility operating expenses for the facility for the period between May 5, 2008 and June 6, 2008, which corresponds to the 30 day period allowed by CMS after the provider agreements were terminated. Further, the requested funding will also pay for the contracted temporary manager. Funding is net of anticipated Medicaid per diem payments for clients which remain in the facility. There is no offset to Medical Services Premiums in this request; per diem payments for clients in the facility are included in the base budget, both prior to, and after their discharge to a new facility. If all residents are not transferred to a new facility by June 6, 2008, an additional request may be required.

The Fund was specifically created to provide funding for this type of relocation and closure activity. Section 25-1-107.5 (c), C.R.S. (2007) specifies that the Fund may be used for relocating residents to other facilities, maintaining the operations of a nursing facility pending correction of violations, and to close a facility. Federal regulations at 42 CFR § 488.426 (2007) require the state to arrange for the safe and orderly transfer of all Medicare and Medicaid residents to another facility. Further, federal regulations at 42 CFR § 488.442 (g) (2007) require that civil money penalties collected by the State from nursing facilities for this purpose are used for the protection of the health or property of residents in facilities that the State or the federal Centers for Medicare and Medicaid Services has found to be noncompliant.

The Fund consists of money that has been collected from nursing facilities that have had a monetary penalty assessed against the facility for substandard care. There has been no expenditure from this fund since FY 02-03. As of June 1, 2008, the balance in the Fund was \$1,801,240, and is projected to increase by \$324,705 in FY 08-09, and increase by \$384,921 in FY 09-10. If this request is approved, the current fund balance would be reduced to \$1,334,717. This request does not impact future increases to the fund and currently no additional expenditures are anticipated.

Consequences if Not Funded:

If this request is not funded, the Department will absorb this Request in the line item for Medical Services Premiums using General Fund. The Department is obligated under federal law (Title XIX of the Social Security Act, §1819(h)(4)) to provide for the safe

and orderly transfer of the residents. Therefore, the Department has already contracted with the temporary management agency and is required to make payments for services performed.

Calculations for Request:

Summary of Request FY 07-08	Total Funds	General Fund	Cash Funds	Federal Funds
<b>Total Request (2) Medical Services Premiums</b>	\$466,523	\$0	\$466,523	\$0

<b>Contractor Fees</b>	<b>Total</b>
Phase I - Initial Assessment	\$25,000
Phase II - Implement Plan of Correction	\$75,000
Phase III - Relocate Residents and Close Facility	\$35,000
<i>Subtotal Contractor Fees</i>	<i>\$135,000</i>
<b>Operating Expenses</b>	
Payroll and Temporary Nurse Staffing	\$468,991
Medical and Equipment Expenses	\$14,695
Administration Expenses	\$110,389
Insurance	\$27,918
<i>Subtotal Operating Expenses</i>	<i>\$621,993</i>
<b>Facility Revenue</b>	
Medicaid Receipts	(\$279,470)
Payment Payment/SSI Receipts	(\$4,000)
Private Pay Receipts	(\$7,000)
<i>Subtotal Facility Revenue</i>	<i>(\$290,470)</i>
<b>Grand Total</b>	<b>\$466,523</b>

<u>Assumptions for Calculations:</u>	Estimates for the facility's operating expenditures have been supplied by the temporary management contractor, and reviewed by the Department. The total amount required to relocate these patients may differ from the amount of this request. If necessary, the Department may submit an additional budget action to account for any differences.
<u>Impact on Other Government Agencies:</u>	None.
<u>Cost Benefit Analysis:</u>	This Request will prevent General Fund expenditure of \$466,523. A like amount will be spent from the Nursing Home Penalty Cash Fund, which was specifically created for this purpose.
<u>Statutory and Federal Authority:</u>	<p>25-1-107.5, C.R.S. (2007)</p> <p><i>(4) (c) Circumstances which shall be considered as a basis for distribution from the nursing home penalty cash fund include paying costs to:</i></p> <p><i>(I) Relocate residents to other facilities;</i></p> <p><i>(II) Maintain the operation of a nursing facility pending correction of violations;</i></p> <p><i>(III) Close a nursing facility;</i></p> <p><i>(IV) Reimburse residents for personal funds lost.</i></p> <p>42 U.S.C. 1395i-3 (h) (2007)</p> <p><i>(4) Immediate termination of participation for facility where secretary finds noncompliance and immediate jeopardy.—If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this title. If the facility's participation under this title is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this title consistent with the requirements of subsection (c)(2).</i></p>
<u>Performance Measures:</u>	Not applicable.