

Governor Jared Polis  
136 State Capitol  
Denver, CO 80203

October 1, 2022

Dear Governor Polis:

Enclosed please find the Department of Public Health and Environment and the Department of Health Care Policy and Financing (the Departments') legislative report on the Nursing Home Penalty Cash Fund (NHPCF).

Section 25-1-107.5 C.R.S requires the Departments to jointly submit an annual report "to the governor and the health and human services 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 NHPCF for the purposes described in Section 25-1-107.5(4)(c)(II), C.R.S. The report shall detail the amount of moneys expended for such purposes, the recipients of the funds, and 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.

The NHPCF is managed in part by the Nursing Home Innovations Grant Board (the Board), which is comprised of ten members representing the nursing home community as outlined in Senate Bill 21-128. The Board solicits, reviews and recommends grants for funding from the NHPCF. The Departments are pleased to submit this report on behalf of the Board. The Departments are supportive of the culture change initiatives and appreciate the Board's work on this important issue. The report describes the goals, costs and results of active grants in SFY 2021-2022 funded from the NHPCF. These projects benefit nursing home residents by improving their quality of life, as authorized by the statute.

If you require further information or have additional questions, please contact Lindsay Ellis at the Department of Public Health and Environment or Jo Donlin at the Department of Health Care Policy & Financing.

Sincerely,



Jill Hunsaker Ryan, Executive Director, Department of Public Health and Environment



Kim Bimestefer, Executive Director, Department of Health Care Policy and Financing



Enclosure(s): 2022 Nursing Home Penalty Cash Fund Report

CC: Elisabeth Arenales, Senior Health Policy Advisor, Governor's Office  
Legislative Council Library  
State Library



The Honorable Dafna Michaelson Jenet, Chair  
House Public & Behavioral Health and Human Services Committee  
200 E. Colfax Avenue  
Denver, CO 80203

October 1, 2022

Dear Representative Michaelson Jenet:

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Jill Hunsaker Ryan, Executive Director, Department of Public Health and Environment



Kim Bimestefer, Executive Director, Department of Health Care Policy and Financing

Enclosure(s): 2022 Nursing Home Penalty Case Fund Report

CC:

Representative Emily Sirota, Vice Chair, House Public & Behavioral Health & Human Services Committee

Representative Judy Amabile, House Public & Behavioral Health & Human Services Committee

Representative Mary Bradfield, House Public & Behavioral Health & Human Services Committee

Representative Lisa Cutter, House Public & Behavioral Health & Human Services Committee

Representative Serena Gonzales-Gutierrez, House Public & Behavioral Health & Human Services Committee

Representative Ron Hanks, House Public & Behavioral Health & Human Services Committee

Representative Richard Holtorf, House Public & Behavioral Health & Human Services Committee

Representative Iman Jodeh, House Public & Behavioral Health & Human Services Committee

Representative Rod Pelton, House Public & Behavioral Health & Human Services Committee

Representative Naquetta Ricks, House Public & Behavioral Health & Human Services Committee

Representative Dave Williams, House Public & Behavioral Health & Human Services Committee

Representative Mary Young, House Public & Behavioral Health & Human Services Committee

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Jo Donlin, Legislative Liaison, HCPF



The Honorable Susan Lontine, Chair  
House Health and Insurance Committee  
200 E. Colfax Avenue  
Denver, CO 80203

October 1, 2022

Dear Representative Lontine:

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Jill Hunsaker Ryan, Executive Director, Department of Public Health and Environment



Kim Bimestefer, Executive Director, Department of Health Care Policy and Financing



Enclosure(s): 2022 Nursing Home Penalty Case Fund Report

CC:

Legislative Council Library

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Representative David Ortiz, Vice Chair, House Health & Insurance Committee

Representative Mark Baisley, House Health & Insurance Committee

Representative Chris Kennedy, House Health & Insurance Committee

Representative Karen McCormick, House Health & Insurance Committee

Representative Kyle Mullica, House Health & Insurance Committee

Representative Patrick Neville, House Health & Insurance Committee

Representative Emily Sirota, House Health & Insurance Committee

Representative Matt Soper, House Health & Insurance Committee

Representative Brianna Titone, House Health & Insurance Committee

Representative Dave Williams, House Health & Insurance Committee





Honorable Senator Rhonda Fields, Chair  
Senate Health and Human Services Committee  
200 E Colfax Avenue  
Denver, CO 80203

October 1, 2022

Dear Senator Fields:

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Sincerely,

A handwritten signature in black ink that reads "Jill Hunsaker Ryan".

Jill Hunsaker Ryan, Executive Director, Department of Public Health and Environment

A handwritten signature in black ink that reads "Kim Bimestefer".

Kim Bimestefer, Executive Director, Department of Health Care Policy and Financing



Enclosure(s): 2022 Nursing Home Penalty Case Fund Report

CC:

Senator Joann Ginal, Vice Chair, Health and Human Services Committee  
Senator Janet Buckner, Health and Human Services Committee  
Senator Sonya Jaquez Lewis, Health and Human Services Committee  
Senator Barbara Kirkmeyer, Health and Human Services Committee  
Senator Cleave Simpson, Health and Human Services Committee  
Senator Jim Smallwood, Health and Human Services Committee  
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Jo Donlin, Legislative Liaison, HCPF



# Nursing Home Penalty Cash Fund Expenditure Report State Fiscal Year (SFY) 2021-2022

## Introduction

A Civil Money Penalty (CMP) is a monetary penalty imposed on nursing facilities by the Centers for Medicare and Medicaid Services (CMS). Penalties are imposed following survey findings in which a facility is found to be out of compliance with one or more participation requirements for Medicare or Medicaid. A portion of collected CMPs are returned to the States to be reinvested in projects that benefit nursing facility residents. Colorado's Nursing Home Penalty Cash Fund (cash fund) comprises the State portion of CMP funds and interest income on the cash fund. The Colorado Department of Public Health and Environment (CDPHE) is the single state survey agency responsible for facility surveys and imposition of CMPs. The Department of Health Care Policy and Financing (HCPF) manages these funds according to Federal regulation and State statute.

## Spending Authorities

Federal Regulations<sup>1</sup> limit the use of these funds to activities that protect or improve the quality of care for nursing home residents including:

- (a) Support and protection of residents of a facility that closes.
- (b) Time-limited expenses incurred in the process of relocating when a facility is closed or downsized.
- (c) Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities.
- (d) Facility improvement initiatives approved by CMS.
- (e) Development and maintenance of temporary management or receivership capabilities.

In 2014, Senate Bill 14-151 established the Nursing Home Innovations Grant Board (the Board) to replace the Nursing Facility Culture Change Accountability Board established by House Bill 09-1196 in 2009. The Bill established funding maximums and expanded the time-period for which a project could be funded to three years.

In 2019, in response to the growing balance of the fund and changes in Federal Guidance, Senate Bill 19-254 lifted the funding maximum. Prior to the COVID-19 pandemic, CMS had expressed that States should work towards making 50% of the fund available for grant making.

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<sup>1</sup> 42 CFR § 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS

In 2021, Senate Bill 21-128 transitioned primary grant making authority to CDPHE and adjusted administrative expense caps in order to improve State and Federal alignment as well grant-making efficiency.

## Transfer of Operational Administration to CDPHE

HCPF and CDPHE worked to transfer operations and grant oversight to CDPHE in State Fiscal Year (SFY) 2022. All ongoing grants, purchase orders and contracts previously managed by HCPF were reissued by CDPHE in Summer 2021. The Departments continued to exchange data, processes and invoicing practices through SFY 2022 to accommodate a series of universal grant opportunities through SFY 2022. CDPHE is now the primary operational contract for CMP grants and began issuing new project purchase orders and contracts in January 2022.

## Nursing Home Innovations Grant Board Activities

SFY 2022 began in the midst of the COVID-19 pandemic. The Board worked closely with Grant recipients and applicants to restart projects as nursing facilities were able to accommodate additional activities. Additionally, grants were revised to allow necessary flexibility as many facilities worked to isolate outbreaks. The Board established universal applications providing emergency grants aimed at:

1. Improving access to safe communication and visitation with friends and family,
2. The purchase of outdoor furniture and tents to expand in-person visitation, and
3. The purchase of air purification systems.

All facilities in the state were eligible for these 3 funding opportunities.

Additionally, the Board continued board member training in compliance with House Bill 18-1198. The SFY 2022 Nursing Home Innovations Grant Board roster is attached. The Board is currently seeking applications for one vacancy who must be a resident of a nursing home, or a family member of a nursing home resident, one member of the business community, and one person employed in a Long-Term Care Facility. Two of these vacant positions have been referred for appointment.

CDPHE and HCPF submitted an expenditure plan to CMS for approval in December 2021. The plan was approved and included reserving \$5 million for potential closures as the risk of further closures was assessed to be high in 2022.

## COVID-19 related grants

In March 2020, in response to the COVID-19 pandemic, the Board recognized a need to mitigate isolation in Colorado Nursing Homes. Following discussion with CMS, the Board secured approval for up to \$700,000 towards the purchase of communication devices for every nursing home in the State. Facilities were given the opportunity to purchase laptops and/or tablets capable of video conferencing solely for resident usage. Every facility in the State was given the opportunity to purchase up to \$3000 in equipment and disinfectant supplies. In SFY 2020 and 2021, 147 facilities utilized these funds, and all expenditures were applied to the 2021 SFY balance.

In September 2020, an additional \$3000 per facility was made available to purchase tents and plastic dividers aimed at accommodating safe outdoor visitation. In SFY 2021, 35 facilities utilized these funds.

An additional application was received in SFY 2022. The Board worked to expand awareness of the opportunity as well as reviewed and approved applications throughout the year. This opportunity was later expanded to include outdoor furniture.

In February 2022, an additional \$3000 per facility was made available to purchase air purification systems for facility usage. At the time of this report, 22 facilities have applied for funding and 11 have been approved.

## Grants Awarded and Funding Expended

The Board continues to receive and review applications from various organizations in Colorado including consultants, charitable organizations, nursing home providers, management companies, higher education organizations, government subdivisions, and others. Upon project approval, the Board members review deliverables and assist grantees in coordinating projects. Board members perform on-site visits or in-person meetings with the grant recipient organization. Project results are made publicly available through the HCPF website. In SFY 2021, the Board has been working with grant recipients to adjust or delay implementation while nursing homes respond to the COVID-19 pandemic.

### Administrative Costs

One FTE was assigned to fund administration through CDPHE. Expenses for administration totaled \$56,490.91. This is the first year that either Department has charged the fund for administration.

### Grant Funds

In SFY 2021-2022 the Board primarily restarted and revised projects from Cycle 11 and 12 that were halted due to the COVID-19 Pandemic. Cycle 13 grants were delayed until nursing facilities were able to accommodate additional projects following pandemic recovery.

### Cycle Eleven

Cycle Eleven applications were received and reviewed in September 2018. The Board received 17 applications of which five were approved. The grant recipients, amounts awarded, purposes, and results of the grant projects for SFY 2019-2020 are summarized on **Attachment B** of this document.

#### **For SFY 2019-2020**

- \$250,000 were made available.
- \$213,593 in Grant funds were awarded.

### Cycle Twelve

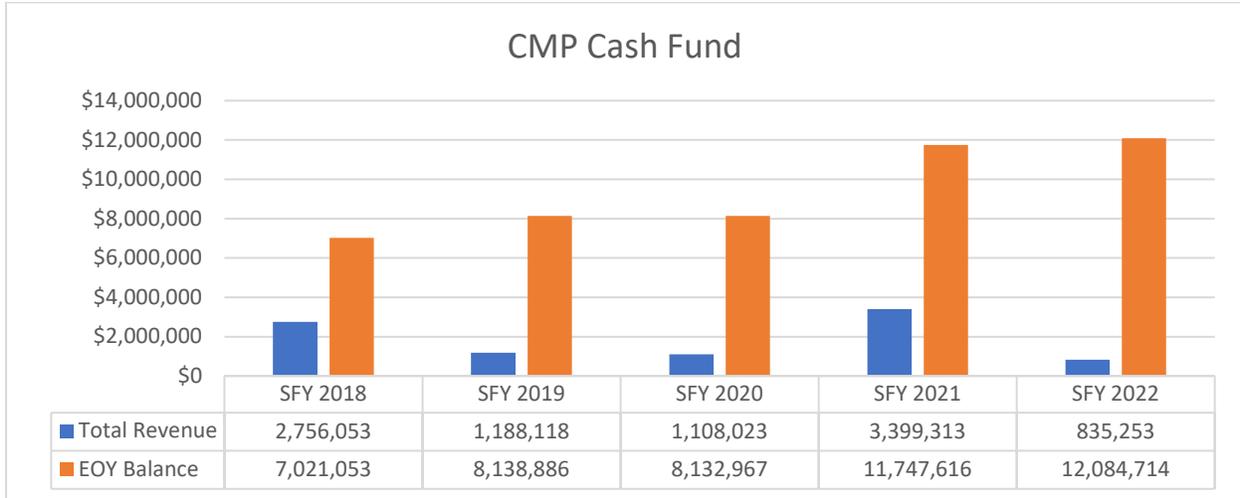
Cycle Twelve grants were received and reviewed in September 2019 with an anticipated start date of July 1, 2020. Cycle Twelve represents the first grant cycle without the \$250,000 spending cap in place. The Board received 20 applications and has obtained Federal approval for 10 projects totaling \$1,064,465.94 over three years. The start dates for many of these projects have been delayed while facilities battle the COVID-19 pandemic, and the Board is in the process of re-developing timelines for project implementations. The grant recipients, amounts awarded, purposes, and results of the grant projects are summarized in Attachment **C** of this document.

### Cycle Thirteen

The Board implemented new application guidelines and received applications for Cycle thirteen grants in August 2021. 8 were approved, including 2 that were delayed from Cycle 12. The approved grants currently total \$1,197,602.38, the Board will additionally be reopening this grant cycle in 2022.

## Nursing Home Penalty Cash Fund Finances

Total CMPs imposed in SFY 2022 declined to \$702,228. A decline in interest starting new projects post COVID-19 also contributed to an expenditure decline. Total Expenditures totaled \$498,158 in the fiscal year. The balance as of July 1, 2022 was \$12,084,714.



|          | CMPs Collected | Recoveries             | Interest Income | Expenditures               | EOY Balance               |
|----------|----------------|------------------------|-----------------|----------------------------|---------------------------|
| SFY 2018 | \$2,661,732    |                        | \$94,320        | (\$185,110)                | \$7,021,053               |
| SFY 2019 | \$1,002,278    |                        | \$188,840       | (\$70,286)                 | \$8,138,886               |
| SFY 2020 | \$919,824      |                        | \$188,199       | (\$1,113,248) <sup>2</sup> | \$8,133,662               |
| SFY 2021 | \$3,292,903    | \$938,360 <sup>3</sup> | \$106,410       | (\$711,104)                | \$11,747,616 <sup>4</sup> |
| SFY 2022 | \$702,228      |                        | \$133,024       | (\$498,158)                | \$12,084,714              |

<sup>2</sup> Number includes cash outlays provided for the closure of Union Printers Home.

<sup>3</sup> Funds recovered to date related to closure of Union Printers Home.

<sup>4</sup> Figure updated to account for payable processed after fiscal year end closure.

## Going Forward

Prior to the pandemic CMS communicated that States should work towards making 50% of non-emergency funds available for grants each year. The CMS goal represented a 1500% increase in annual expenditures over the Boards previous spending authority. With the passage of SB 21-128, the Board will have access to additional administrative support that is needed to meet the Federal expenditure goals as well as engage in expanded oversight and support for grant recipients. HCPF and CDPHE have worked to transition financial management of grants to CDPHE going into SFY 2022. The Board has additionally engaged with providers to solicit a larger and greater number of grant applications aimed at COVID-19 recovery as well as grants aimed at supporting Medicaid Pay for Performance Metrics in 2023 and 2024.

Grants issued during the pandemic actively supported nursing facilities ability to fight and contain the spread of COVID-19. This included support for outdoor activities, electronic communication and the certification of infection preventionists. As the year came to a close interest in restarting projects delayed by the pandemic increased and a substantial number of projects have started in summer 2022. With these projects restarting and application period for 2023 projects being opened, CDPHE and HCPF believe that utilization of CMP funds will be in line with CMS goals in the upcoming year.

## ATTACHMENT A

### NURSING HOME INNOVATIONS GRANT BOARD

10 Members (7 Appointed by Governor)

3 year terms

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|   | <u>APPOINTED</u> | <u>EXPIRES</u> |
|---|------------------|----------------|
| Vacant<br>rep. disability community who is either a resident of a nursing facility or a family member of a nursing facility resident, repl. Miller, appt. |                  |                |
| Referred for appointment<br>rep. currently employed in long-term care nursing facilities, repl. Matlock, appt.  |                  |                |
| Hope Carwile, LCSW, Lakewood (U)<br>rep. currently employed in long-term care nursing facilities, repl. Fox, appt.  | 10-04-14         | 09-01-23       |

|   |          |          |
|---|----------|----------|
| Stacey Lee Love, Aurora (D)<br>rep. currently employed in long-term care<br>nursing facilities, reappt. | 10-04-14 | 09-01-23 |
| Vacant<br>rep. consumer of long-term care,<br>repl. Furch, appt.  |          |          |
| Referred for appointment,<br>rep. business community,<br>repl. Barton, appt                             |          |          |
| Vacant<br>rep. currently employed in long-term<br>nursing facility, repl. Adams (resigned) appt.        |          |          |

*Other Members*

|  |          |     |
|--|----------|-----|
| Amber Franzel, Denver<br>rep. designee of state long-term care ombudsman | 06-26-14 | N/A |
| Richard Clark<br>rep. Executive Director of HCPF, or designee            | 03-16-17 | N/A |
| Jo Tansey<br>rep. Executive Director of CDPHE, or designee               | 08-28-14 | N/A |

**CRS 25-1-107.5**

**Name change (SB 14 151)**

UPDATED: 7-1-22

## **ATTACHMENT B**

### **SFY 2019-20 NURSING HOME INNOVATIONS GRANT BOARD**

#### **SFY 2018-2019 PROJECTS UNDERWAY IN SFY 2020-2021**

##### **Colorado Health Care Association (CHCA): \$72,100**

##### **Specialized Infection Prevention Training in Nursing Homes**

Starting in October 2019, CHCA will be coordinating Infection Preventionist certification for up to 150 Long Term Care Residents. CMP funds will be utilized to ensure no-cost professional development for Colorado's Long Term Care workforce. Courses are offered online and result in an infection preventionist certificate. The project has been extended to maximize participation. This project was completed in SFY 2022.

##### **Vivage Senior Living: \$29,670**

##### **Reading2Connect**

Seven facilities in Colorado will participate in the Reading2Connect project. The program provides accessible books for nursing facility residents. Funds will be used to purchase equipment, books, and training for staff. This project was completed in SFY 2022.

##### **Someren Glen: \$44,635**

##### **Certified Eden Associate Training**

Building off a previous project for Clermont Park, Christian Living Communities seeks to certify staff in the Eden Alternative. The program incorporates culture change and person-centered care approaches for Nursing Facility settings. Someren Glen will be certifying staff as Eden Educators in order to incorporate facility-wide Eden Education certifications. This project was delayed due to COVID-19 visitation measures. This project is expected to conclude by the end of 2022.

## ATTACHMENT C

### SFY 2020-21 NURSING HOME INNOVATIONS GRANT BOARD

#### PROJECTS APPROVED OR INITIATED IN SFY 2020-2021

##### **EDU-Catering: \$53,730**

##### **Validation® Training in Four Colorado Nursing Homes and Beyond**

With the aim of creating a safer environment, the project will provide education to direct care workers on research based interaction techniques aimed at reducing stressors in individuals suffering from dementia related disorders. The project builds on a previous grant that received substantial positive feedback from participants. Facilities will have access to training topics in varying hours in an effort to capture workers across all shifts. This project was delayed due to COVID-19 visitation measures but was restarted in an online format in SFY 2021.

##### **Crisis Prevention Institute: \$352,550**

##### **Crisis Prevention Institute's Colorado Skilled Nursing Facility Initiative**

Crisis Prevention Institute will train and certify instructors in Nonviolent Crisis Intervention for 55 facilities in Colorado. The program focuses on de-escalation techniques towards individuals in crisis and equips employees with the knowledge and skills to safely resolve the situation. Training certifications will allow educators to certify all staff in the building for up to 4 years which will firmly establish the skillset amongst Colorado's direct care workforce. The program aims to reduce incidents of injury towards care providers, staff and residents. This project was delayed related to COVID-19 measure but was relaunched on July 1, 2021.

##### **Volunteers of America: \$28,500**

##### **VOA Nursing Homes Virtual Reality Initiative**

The project will contribute towards the purchase of virtual reality headsets and software in two western slope facilities aiming to reduce the effects of isolation as well as supplement activity and therapy goals. Volunteers of America will develop recommendations for usage, best practices and evaluate impacts on resident behaviors for other Colorado facilities to consider. This project was delayed related to COVID-19 measures but was relaunched in SFY 2021. This project was completed in SFY 2022.

##### **Grand River Health, E. Dene Moore Care Center: \$18,100**

##### **Equine assisted therapy and non-verbal communication**

The project provides a dual benefit to residents and staff at the facility by providing equine therapy for residents and non-verbal communication training for the facility's staff. Non-verbal communication can be critical in caregiving for residents living with dementia. The project includes the development of a guidebook for staff as an onsite reference after the offsite training with horses is delivered, ensuring reinforcement of the hands-on training over time. This project was delayed related to COVID-19 measures but was relaunched on August 1, 2022.

##### **Colorow Care Center: \$84,406.97**

##### **The Culture Change Revolution - Equipping The Western Slope**

Colorow Care Center will be coordinating Eden Alternative training and certification opportunities for western slope nursing facilities. The Eden Alternative applies person-centered care practices to nursing

home settings and has been shown to improve quality and resident satisfaction in nursing facilities. This project was delayed related to COVID-19 measures but was relaunched on April 1, 2022.

**Holly Heights Nursing Home: \$36,644.73**

**Daffodils for Dementia**

The Daffodils for Dementia program will provide nursing home staff with a deeper understanding of the dementia disease process and specialized training in effective techniques for assessing the needs and behavior of residents in order to provide appropriate care interventions. This project was delayed related to COVID-19 measures but was relaunched on August 1, 2022.

**Cherrelyn Health Care: \$11,865**

**Telling Life's Stories**

The proposed project will provide residents with the opportunity to reminisce on their life and record important memories on video and in printed form. Presenting and sharing resident stories will improve staff and resident relationships, while increasing residents' engagement and social interaction. As a result, the project will directly improve resident's overall quality of life. This project was delayed related to COVID-19 measures, the board is working with the facility to establish a new project timeframe.

**Focus Consultation: \$218,992**

**The Live Oak Project**

The project aims to provide continuous training and support in culture change and person-centered care initiatives for 10 facilities in Colorado. The culture change brought about by the Live Oak Project will provide improvements to quality of life focused on meaning, growth, empowerment, connection and engagement for all residents regardless of physical and mental capacity. This project was delayed related to COVID-19 measures but was relaunched on August 4, 2022.

**iAging: \$98,089.40**

**End of Life Dialogues and Program Development for Skilled Nursing Homes**

The project aims to provide education towards dialogues about end-of-life planning. The project will directly benefit nursing home residents by providing staff with training on best practices in end-of-life programming, including creating a space and place for residents and staff to discuss end of life planning. This project was delayed related to COVID-19 measures but was relaunched on July 1, 2022.

**Colorow Care Center: \$32,175**

**The Equine Therapy Program**

Funds will be used towards the implementation of an Equine Therapy program for facility residents. Providing residents interaction with horses will decrease resident depression and agitation through animal companionship and increase quality of life by combating loneliness and providing outdoor engagement. This project was delayed related to COVID-19 measures but was relaunched on July 1, 2022.