

HOUSE BILL No. 2470

By Committee on Appropriations

4-4

AN ACT concerning adult care homes; enacting a quality assurance assessment on facilities for skilled nursing and long term care units of hospitals; prescribing certain guidelines; powers, duties and functions; disposition of proceeds; authorizing a group-funded pool.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in sections 1 through 6, and amendments thereto, unless the context requires otherwise, the words and phrases have the meanings respectively ascribed thereto by K.S.A. 39-923, and amendments thereto.

(b) “Skilled nursing care facility” and “nursing facility” and “long-term care units of hospitals” have the meanings respectively ascribed thereto by K.S.A. 39-923, and amendments thereto.

Sec. 2. (a) The secretary of aging shall assess each skilled nursing facility and nursing facility licensed in Kansas an appropriate sum of money per non-medicare patient day, to finance initiatives designed to maintain or increase the quantity and quality of nursing care.

(b) In determining the amount of the assessment pursuant to this section, the secretary of aging shall establish a uniform rate per non-medicare patient day that is equivalent to a percentage of the total annual accrual basis gross revenue for services provided to residents of all nursing facilities licensed in this state. This percentage shall be determined by the secretary of aging and subject to all appropriate and applicable federal laws. For the purposes of this section, total annual accrual basis gross revenue does not include charitable contributions received by a nursing facility.

(c) The secretary of aging shall calculate the assessment owed by each nursing facility by multiplying the total number of days of care provided to non-medicare residents by the nursing facility, as provided to the secretary of aging pursuant to section 3, and amendments thereto, by the uniform rate established pursuant to this section.

(d) Any amount assessed pursuant to this section is due 30 days after the end of the month for which it has been assessed.

(e) The payment of the assessment to the secretary of aging pursuant to sections 1 through 6, and amendments thereto, is an allowable cost for

1 medicaid reimbursement purposes.

2 Sec. 3. (a) Each nursing facility shall file with the department on
3 aging each calendar quarter a report setting forth the total number of
4 days of care such nursing facility provided to non-medicare residents dur-
5 ing the preceding month.

6 (b) Each nursing facility shall file with the secretary of aging any
7 information required and requested by the secretary to carry out the
8 provisions of sections 1 through 6, and amendments thereto.

9 Sec. 4. (a) There is hereby created in the state treasury the quality
10 assurance assessment fund which shall be administered by the secretary
11 of aging. All moneys in the quality assurance assessment fund shall be
12 used to finance initiatives designed to maintain or increase the quality of
13 nursing care.

14 (b) The quality assurance assessment fund shall be used to maintain
15 or increase the quality of nursing care and shall be a separate and con-
16 tinuing fund. No moneys credited to the quality assurance assessment
17 fund shall be transferred to or revert to the state general fund at any time.

18 (c) Any money received by the secretary of aging pursuant to sections
19 1 through 6, and amendments thereto, shall be deposited in the state
20 treasury and credited to the quality assurance assessment fund to finance
21 initiatives designed to maintain or increase the quality of nursing care.

22 (d) Any money received by the state of Kansas from the federal
23 government as a result of federal financial participation in the state med-
24 icaid program that is derived from the assessments paid pursuant to sec-
25 tions 1 through 6 and amendments thereto, shall be deposited in the state
26 treasury to the credit of the quality assurance assessment fund to finance
27 initiatives designed to maintain or increase the quality of nursing care,
28 except that of such moneys received from the federal government, an
29 amount no greater than 20% of the moneys received from the quality
30 assurance assessment fund, which shall be equivalent to 33 $\frac{1}{3}$ % of the
31 federal matching funds, shall be designated to be expended for adult care
32 programs other than maintaining or increasing the quality of nursing care.

33 (e) The remaining proceeds along with federal matching funds shall
34 be used only to increase or supplement the rates paid to nursing facilities
35 for providing services pursuant to the state medicaid program and shall
36 not be used to replace directly or indirectly existing state expenditures
37 paid to nursing facilities for providing services pursuant to the state med-
38 icaid program.

39 (f) On or before the 10th of each month, the director of accounts
40 and reports shall transfer from the state general fund to the quality as-
41 surance assessment fund of the department on aging interest earnings
42 based on: (1) The average daily balance of moneys in the quality assurance
43 assessment fund for the preceding month; and (2) the net earnings rate

1 for the pooled money investment portfolio for the preceding month.

2 Sec. 5. The department on aging shall establish a reasonable sched-
3 ule of administrative penalties for the late payment by a nursing facility
4 of an assessment imposed pursuant to sections 1 through 6, and amend-
5 ments thereto.

6 Sec. 6. The secretary of aging shall change and collect assessments
7 pursuant to sections 1 through 6, and amendments thereto, on and after
8 July 1, 2003, and no later than July 1 of each subsequent year, except that
9 no nursing facility shall owe or otherwise be liable for an assessment
10 pursuant to this act until and unless:

11 (a) The amendment to the state plan for medicaid which increases
12 the rates paid to nursing facilities for providing services pursuant to the
13 medicaid program is approved by the federal government; and

14 (b) the nursing facilities have been compensated retroactively at the
15 increased rate for services provided pursuant to the federal medicaid
16 program on or after July 1, 2003.

17 Sec. 7. (a) The provisions of section 7 through 19, and amendments
18 thereto, shall be known and may be cited as the adult care home group-
19 funded pool act.

20 (b) The adult care home group-funded pool act shall apply to the
21 adult care home group-funded pool created under the adult care home
22 group-funded pool act and all contracts issued under the adult care home
23 group-funded pool act.

24 Sec. 8. (a) A group-funded pool may be created in accordance with
25 sections 7 through 19, and amendments thereto, for the payment of valid
26 claims and judgments against participating facilities and defense of such
27 claims. Each participating facility shall remit periodic premiums to the
28 fund in accordance with rules promulgated by the board established for
29 the group-funded pool. Premium payments may be prepaid upon terms
30 approved by the board. Assessments and other payments, together with
31 earned income, surplus and all other monies accruing to the fund, shall
32 be held in trust by the board for the purposes set forth herein.

33 (b) The fund shall be a cash fund under the direction and control of
34 the board, as set forth herein.

35 (c) Only claims or judgments arising from a claim or claims made
36 during a period of participation in the fund based on a wrongful act or
37 acts which occurs during the same period of participation in the fund
38 shall be covered by the fund. The fund may offer tail coverage to partic-
39 ipating facilities upon terms approved by the board.

40 (d) A participating facility shall be dismissed as a participant in the
41 fund for nonpayment of premium assessments or excessive claims over a
42 period and for such other reasons as set forth in the bylaws of the pro-
43 posed fund, as determined by the rules and regulations of the fund. The

1 board shall provide by regulation for a grace period for curing a default
2 in the payment of assessments or other payments prior to formal dismissal
3 and may impose a reasonable late fee per event of default. Upon dismissal
4 of a facility from the fund, wrongful acts occurring during such facility's
5 period of participation shall be covered.

6 Sec. 9. (a) Except as otherwise provided in the adult care home
7 group-funded pool act, adult care home facilities may enter into agree-
8 ments to pool their liabilities for the purpose of satisfying personal injury
9 claims by or on behalf of residents of participating facilities. Such arrange-
10 ments shall be known as a group-funded pool, which shall not be deter-
11 mined to be insurance or insurance companies, and shall not be subject
12 to the provisions of Chapter 40 of the Kansas Statutes Annotated, and
13 amendments thereto.

14 (b) For the purposes of this section, "adult care home facility" shall
15 have the meaning ascribed to it in K.S.A. 39-923, and amendments
16 thereto.

17 Sec. 10. (a) Application for a certificate of authority to operate a
18 group-funded pool under the adult care home group-funded pool act shall
19 be made to the commissioner of insurance at least 60 days prior to the
20 proposed inception date of such group-funded pool. The application shall
21 include the following:

22 (1) A copy of the bylaws of the proposed group-funded pool, a copy
23 of the articles of incorporation, if any, and a copy of all agreements and
24 rules of the proposed group-funded pool. If any of the bylaws, articles of
25 incorporation, agreement or rules are changed, the group-funded pool
26 shall notify the commissioner within 30 days after such change.

27 (2) When there is a change in the membership of the board of trust-
28 ees or change of administrator, the group-funded pool shall notify the
29 commissioner within 30 days after such change.

30 (3) The address where the books and records of the group-funded
31 pool will be maintained at all times. If this address is changed, the group-
32 funded pool shall notify the commissioner within 30 days after such
33 change.

34 (4) Evidence consisting of a current financial statement on a form
35 approved by the commissioner showing that the combined net worth of
36 all members applying for coverage on the inception date of the group-
37 funded pool is in an amount not less than one million dollars.

38 (5) An agreement providing that all members of the group-funded
39 pool shall be jointly and severally liable for the payment of claims to the
40 extent the claims exceed the assets of the group-funded pool if the group-
41 funded pool does not cede risk to a reinsurer. If approved claims exceed
42 the assets of the group-funded pool, members may be assessed for any
43 shortfall up to an amount equal to four times the members most recent

1 respective annual premium payment to the group-funded pool.

2 (6) A copy of the procedures adopted by the group-funded pool to
3 provide services with respect to underwriting matters.

4 (7) A copy of the procedures adopted by the group-funded pool to
5 provide claims adjusting and accumulation of income and expense loss
6 data.

7 (8) Any other relevant factors the commissioner may deem
8 necessary.

9 (b) After evaluating the application, the commissioner shall notify
10 the applicant if the plan submitted is inadequate. The commissioner shall
11 notify and explain fully to the applicant what additional requirements
12 must be met. If the application is denied, the applicant shall have 10 days
13 to make an application for hearing by the commissioner after the denial
14 notice is received. A record shall be made of such hearing and the cost
15 thereof shall be assessed against the applicant requesting the hearing.
16 Any hearing under this section shall be conducted in accordance with the
17 provisions of the Kansas administrative procedures act.

18 Sec. 11. As a condition precedent to obtaining authority to operate
19 a group-funded pool under the adult care home group-funded pool act
20 in this state, each group-funded pool shall file in the insurance depart-
21 ment a written irrevocable consent, that any action may be commenced
22 against such group-funded pool in the proper court of any county in this
23 state in which the cause of action shall arise or in which the plaintiff may
24 reside by the service of process on the commissioner of insurance of this
25 state, and stipulating and agreeing that such service shall be taken and
26 held in all courts to be as valid and binding as if due service had been
27 made upon the trustees or the administrator of such group-funded pool.
28 Such consent shall be executed by the board of trustees and shall be
29 accompanied by a duly certified copy of the resolution passed by the
30 trustees to execute such consent.

31 Sec. 12. (a) All certificates granted hereunder shall be perpetual
32 unless sooner suspended or revoked by the commissioner or the attorney
33 general.

34 (b) Whenever the commissioner shall deem it necessary the com-
35 missioner may make, or direct to be made, an examination of the affairs
36 and the financial condition of any group-funded pool, except that once
37 every five years the commissioner shall conduct an examination of the
38 affairs and the financial condition of each group-funded pool. Each group-
39 funded pool shall submit a certified independent audited financial state-
40 ment no later than 90 days after the end of the fiscal year. The financial
41 statement shall include outstanding reserves for claims and for claims
42 incurred but not reported. Each group-funded pool shall file reports as
43 to income, expenses and loss data at such times and in such manner as

1 the commissioner shall require. Premium contributions to the group-
2 funded pool shall be based on rates developed by a licensed rating or-
3 ganization or rates of certain companies that have been filed and approved
4 by the commissioner or rates that are certified to be actuarially sound.
5 Any group-funded pool which does not use rates developed by an ap-
6 proved rating organization shall furnish the commissioner appropriate
7 evidence that such rates are actuarially sound. Whenever it appears to
8 the commissioner from such examination or other satisfactory evidence
9 that the ability to pay current and future claims of any such group-funded
10 pool is impaired, or that it is doing business in violation of any of the laws
11 of this state, or that its affairs are in an unsound condition so as to en-
12 danger its ability to pay or cause to be paid claims in the amount, manner
13 and time due, the commissioner shall, before filing such report or making
14 the same public, grant such group-funded pool upon reasonable notice a
15 hearing, and, if on such hearing the report be confirmed, the commis-
16 sioner may require any of the actions allowed under K.S.A. 40-222b, and
17 amendments thereto, or suspend the certificate of authority for such
18 group-funded pool until its ability to pay current and future claims shall
19 have been fully restored and the laws of the state fully complied with.
20 The commissioner may, if there is an unreasonable delay in restoring the
21 ability to pay claims of such group-funded pool and in complying with
22 the law or if rehabilitation or corrective action taken under K.S.A. 40-
23 222b, and amendments thereto, is unsuccessful, revoke the certificate of
24 authority of such group-funded pool to do business in this state. Upon
25 revoking any such certificate the commissioner shall communicate the
26 fact to the attorney general, whose duty it shall be to commence and
27 prosecute an action in the proper court to dissolve such group-funded
28 pool or to enjoin the same from doing or transacting business in this state.
29 The commissioner of insurance may call a hearing under K.S.A. 40-222b,
30 and amendments thereto, and the provisions thereof shall apply to the
31 group-funded pool established under the adult care home group-funded
32 pool act.

33 (c) On an annual basis, or within 30 days of any change thereto, each
34 group-funded pool shall supply to the commissioner the name and qual-
35 ifications of the designated administrator of the group-funded pool and
36 the terms of the specific and aggregate excess insurance contracts of the
37 group-funded pool.

38 Sec. 13. (a) Premium contributions to the group-funded pool shall
39 be based upon appropriate manual classification and rates, plus or minus
40 applicable experience credits or debits, and minus any advance discount
41 approved by the trustees, not to exceed 25% of manual premium. The
42 group-funded pool shall use rules, classifications and rates as promulgated
43 by an approved rating organization for general and/or professional liability

1 insurance if the group-funded pool has been in operation for less than
2 five years. Such rates shall either be the rates effective June 1, 2002, or
3 the prospective loss costs, as defined in K.S.A. 40-1113, and amendments
4 thereto, plus expenses necessary to administer the group-funded pool.
5 For purposes of subsection (b), the prospective loss costs shall be pre-
6 sumed to be the 70% required to be deposited in the claims fund. If the
7 group-funded pool has been in operation for more than five years, the
8 board of trustees may determine such rates. In lieu of the foregoing, the
9 board of trustees may determine such classification, rates and discounts
10 as approved by the commissioner.

11 (b) An amount equal to at least 70% of the annual premium shall be
12 maintained in a designated depository for the purpose of paying claims
13 in a claims fund account. If the group-funded pool has been in operation
14 for more than five years the commissioner may authorize allocation of a
15 different amount to the claims fund account, if solvency of the group-
16 funded pool would not be endangered. The remaining annual premium
17 shall be placed into a designated depository for the payment of taxes, fees
18 and administrative and other operational costs in an administrative fund
19 account.

20 (c) Any moneys for a fund year in excess of the amount necessary to
21 fulfill all obligations of the group-funded pool for that fund year, including
22 any obligation to retain adequate surplus funds in lieu of specific and
23 aggregate excess insurance, may be declared to be refundable by the
24 trustees not less than 12 months after the end of the fund year. Any such
25 refund shall be paid only to those members who remained participants
26 in the group-funded pool for an entire year. Payment of previously earned
27 refunds shall not be contingent on continued membership in the group-
28 funded pool.

29 Sec. 14. The trustees shall not utilize any of the contributions col-
30 lected as premiums for any purpose unrelated to the group-funded pool.
31 Monies not needed for current obligations may be invested by the trus-
32 tees. Such investments shall be limited to investments permitted by
33 K.S.A. 12-1677b and 75-4209, and amendments thereto, except that a
34 group-funded pool which has been in existence for at least five years shall
35 be permitted to invest in any of the securities or other investments per-
36 mitted by Article 2a of Chapter 40 of the Kansas Statutes Annotated and
37 amendments thereto.

38 Sec. 15. As a condition precedent to the continuation of the certifi-
39 cate of authority provided in the adult care home group-funded pool act,
40 the group-funded pool shall pay no later than 90 days after the end of
41 each fiscal year a tax upon the annual Kansas gross premium collected by
42 the group-funded pool at the rate of 1% per annum applied to the col-
43 lective premium relating to all Kansas members of the group-funded pool

1 for the preceding fiscal year. In the computation of the tax, the group-
2 funded pool shall be entitled to deduct any annual Kansas gross premiums
3 returned on account of cancellation or dividends returned to members of
4 such group-funded pool or expenditures used for the purchase of specific
5 and aggregate excess insurance.

6 Sec. 16. (a) The proposed and authorized group-funded pool to be
7 created under the adult care home group-funded pool act and each per-
8 son representing such proposed and authorized group-funded pool shall
9 be subject to the provisions of Article 24 of Chapter 40 of the Kansas
10 Statutes Annotated and amendments thereto.

11 (b) The group-funded pool created under the adult care home
12 group-funded pool act shall be subject to the provisions of K.S.A. 40-246b
13 to 40-246e, inclusive, and amendments thereto.

14 Sec. 17. (a) After the inception date of the group-funded pool, pro-
15 spective new members of the group-funded pool shall submit an appli-
16 cation for membership to the board of trustees or its administrator. The
17 trustees may approve the application for membership pursuant to the
18 bylaws of the group-funded pool.

19 (b) Before the time that membership in a group-funded pool is
20 granted, the applicant for such membership shall be provided a written
21 notice stating that:

22 (1) The group-funded pool is not an insurance company subject to
23 the general laws and rules and regulations relating to insurance compa-
24 nies; and

25 (2) The group-funded pool is subject to separate regulation by the
26 state insurance department as authorized by state statute and cannot com-
27 mence or continue operations without a certificate of authority. Such
28 authorization shall not constitute an endorsement or recommendation of
29 the coverage provided.

30 (c) Individual members may elect to terminate their participation in
31 a group-funded pool or be subject to cancellation by the group-funded
32 pool pursuant to the bylaws of such group-funded pool.

33 Sec. 18. To ensure the financial stability of the operations of the
34 group-funded pool created under the adult care home group-funded pool
35 act, the board of trustees of the group-funded pool shall be responsible
36 for all operations of the group-funded pool. The board of trustees shall
37 consist of not less than three persons selected according to the bylaws of
38 the group-funded pool for stated terms of office to direct the administra-
39 tion of a group-funded pool. The board of trustees' duties shall include
40 approving applications by new members of the group-funded pool. The
41 majority of the trustees must be a member of the governing body or an
42 officer or employee of members of the group-funded pool, but a trustee
43 may not be an owner, officer or employee of any service agent or rep-

1 resentative. All trustees shall be residents of this state. The board of trust-
2 tees of the group-funded pool shall take all necessary precautions to safe-
3 guard the assets of the fund, including all of the following:

4 (a) Designate an administrator to administer the financial affairs of
5 the group-funded pool who shall furnish a fidelity bond to the group-
6 funded pool in an amount determined by the trustees to protect the
7 group-funded pool against the misappropriation or misuse of any moneys
8 or securities. The administrator shall file evidence of the bond with the
9 commissioner. The bond shall be one of the conditions required for ap-
10 proval of the establishment and continued operation of a group-funded
11 pool. Any administrator so designated shall be a resident of Kansas if an
12 individual or shall be authorized to do business in Kansas if a corporation.

13 (b) Retain control of all moneys collected or disbursed from the
14 group-funded pool and segregate all moneys into a claims fund account
15 and an administrative fund account. All administrative costs and other
16 disbursements shall be made from the administrative fund account. The
17 trustees may establish a revolving fund for use by the authorized service
18 agent which is replenished from time to time from the claims fund ac-
19 count. The service agent and its employees shall be covered by a fidelity
20 bond, with the group-funded pool as obligee, in an amount sufficient to
21 protect all moneys placed in the revolving fund.

22 (c) Audit the accounts and records of the group-funded pool annually
23 or at any time as required. The commissioner shall prescribe the type of
24 audits and a uniform accounting system for use by group-funded pool
25 and service agents to determine the ability of the group-funded pool to
26 pay current and future claims.

27 (d) The trustees shall not extend credit to individual members for
28 any purpose.

29 (e) The board of trustees shall not borrow any moneys from the
30 group-funded pool or in the name of the group-funded pool without ad-
31 vising the commissioner of the nature and purpose of the loan.

32 (f) The board of trustees may delegate authority for specific functions
33 to the administrator of the group-funded pool. The functions which the
34 board may delegate include such matters as contracting with a service
35 agent, determining the premium chargeable to and refunds payable to
36 members, investing surplus moneys and approving applications for mem-
37 bership. The board of trustees shall specifically define all authority it
38 delegates in the written minutes of the trustees' meetings. Any delegation
39 of authority shall not be effective without a formal resolution passed by
40 the trustees.

41 Sec. 19. Any person or agency soliciting for a proposed or authorized
42 group-funded pool shall hold a current license authorizing such person
43 to sell each line of insurance offered for sale. Any person licensed for the

1 kinds of insurance offered by the group-funded pool shall be deemed to
2 be certified by a company for the kinds of insurance permitted by the
3 group-funded pool.

4 Sec. 20. This act shall take effect and be in force from and after its
5 publication in the statute book.

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