

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2673

By Committee on Federal and State Affairs

2-9

10 AN ACT providing for assessments on certain nursing facilities; prescrib-
11 ing powers, duties and functions for the Kansas health policy authority;
12 creating the quality care assessment fund; providing for implementa-
13 tion and administration.

14

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

16 Section 1. (a) As used in this section, and amendments thereto, un-
17 less the context requires otherwise:

18 (1) Words and phrases have the meanings respectively ascribed
19 thereto by K.S.A. 39-923 and amendments thereto.

20 (2) "Skilled nursing care facility" means a licensed nursing facility
21 providing skilled nursing care but shall not include the following: Skilled
22 nursing care facilities which are waived from paying the assessment, the
23 Kansas soldiers' home and the Kansas veterans' home.

24 (3) "Licensed bed" means those beds within a skilled nursing care
25 facility which the facility is licensed to operate.

26 (4) "Authority" means the Kansas health policy authority.

27 (b) (1) Except as otherwise provided in this section and in subsection
28 (f), there is hereby imposed and the authority shall assess an annual,
29 uniform assessment per licensed bed, hereinafter called a quality care
30 assessment, on each skilled nursing care facility. The assessment on all
31 facilities in the aggregate shall be an amount fixed by rules and regulations
32 of the authority, shall not exceed ~~the maximum percentage of nursing~~
33 ~~facility inpatient revenues allowed under federal law~~ **\$1,200 annually**
34 **per licensed bed** and shall be imposed as an amount per licensed bed.
35 No rules and regulations of the authority shall grant any exception to or
36 exemption from the quality care assessment. The assessment shall be paid
37 quarterly, with one fourth of the annual amount due by the 30th day after
38 the end of the month of each calendar quarter. The assessment made for
39 years subsequent to the third year from the date the provisions of this
40 section are implemented shall not exceed 60% of the first assessment
41 made under this section.

42 (2) Beds licensed after July 1 each year shall pay a prorated amount
43 of the applicable annual assessment so that the assessment applies only

1 for the days such new beds are licensed. The proration shall be calculated
2 by multiplying the applicable assessment by the percentage of days the
3 beds are licensed during the year. Any change which reduces the number
4 of licensed beds in a facility shall not result in a refund being issued to
5 the skilled nursing facility.

6 (3) If an entity conducts, operates or maintains more than one li-
7 censed skilled nursing care facility, the entity shall pay the nursing facility
8 assessment for each facility separately. No skilled nursing care facility shall
9 create a separate line-item charge for the purpose of passing through the
10 quality care assessment to residents. No skilled nursing care facility shall
11 be guaranteed, expressly or otherwise, that any additional moneys paid to
12 the facility under this section will equal or exceed the amount of its quality
13 care assessment.

14 (4) The payment of the quality care assessment to the authority shall
15 be an allowable cost for medicaid reimbursement purposes. A rate ad-
16 justment pursuant to paragraph (5) of subsection (d) shall be made ef-
17 fective on the date of imposition of the assessment, to reimburse the
18 portion of this cost imposed on medicaid days.

19 (c) Each skilled nursing care facility shall prepare and submit to the
20 authority any additional information required and requested by the au-
21 thority to implement or administer the provisions of this section.

22 (d) (1) There is hereby created in the state treasury the quality care
23 fund, which shall be administered by the authority. All moneys received
24 for the assessments imposed pursuant to subsection (b), including any
25 penalty assessments imposed thereon pursuant to subsection (e), shall be
26 remitted to the state treasurer in accordance with K.S.A. 75-4215, and
27 amendments thereto. Upon receipt of each such remittance, the state
28 treasurer shall deposit the entire amount in the state treasury to the credit
29 of the quality care fund. All expenditures from the quality care fund shall
30 be made in accordance with appropriation acts upon warrants of the di-
31 rector of accounts and reports issued pursuant to vouchers approved by
32 the authority or the authority's designee.

33 (2) All moneys in the quality care fund shall be used to finance ini-
34 tiatives to maintain or improve the quantity and quality of skilled nursing
35 care in skilled nursing care facilities in Kansas. No moneys credited to
36 the quality care fund shall be transferred to or otherwise revert to the
37 state general fund at any time. Notwithstanding the provisions of any
38 other law to the contrary, if any moneys credited to the quality care fund
39 are transferred or otherwise revert to the state general fund, 30 days
40 following the transfer or reversion the quality care assessment shall ter-
41 minate and the authority shall discontinue the imposition, assessment and
42 collection of the assessment. Upon termination of the assessment, all col-
43 lected assessment revenues, including the moneys inappropriately trans-

1 ferred or reverting to the state general fund, less any amounts expended
2 by the authority, shall be returned on a pro rata basis to skilled nursing
3 care facilities that paid the assessment.

4 (3) Any moneys received by the state of Kansas from the federal gov-
5 ernment as a result of federal financial participation in the state medicaid
6 program that are derived from the quality care assessment shall be used
7 to finance actions to maintain or increase healthcare in skilled nursing
8 care facilities.

9 (4) Moneys in the fund shall be used exclusively for the following
10 purposes:

11 (A) To pay administrative expenses incurred by the authority or its
12 agent in performing the activities authorized by this section, except that
13 such expenses shall not exceed a total of 1% of the aggregate assessment
14 funds collected for the prior fiscal year;

15 (B) to increase nursing facility payments to fund covered services to
16 medicaid beneficiaries within medicare upper payment limits, as may be
17 negotiated;

18 (C) to reimburse the medicaid share of the quality care assessment
19 as a pass-through medicaid allowable cost;

20 (D) to restore the medicaid rate reductions implemented January 1,
21 2010;

22 (E) to restore funding for fiscal year 2010, including re- basing and
23 inflation;

24 (F) The remaining amount, if any, shall be expended for quality en-
25 hancement of skilled nursing care facilities but shall not be used directly
26 or indirectly to replace existing state expenditures for payments to skilled
27 nursing care facilities for providing services pursuant to the state medicaid
28 program.

29 ~~(5) Of the amount allocated pursuant to this subsection to increase~~
30 ~~or supplement the rates paid to skilled nursing care facilities for providing~~
31 ~~services pursuant to the state medicaid program, a rate adjustment shall~~
32 ~~first be made to reimburse the portion of the assessment imposed.~~

33 ~~(6)~~ Adjustment payments shall be paid on a quarterly basis to reim-
34 burse covered medicaid expenditures in the aggregate within the upper
35 payment limit.

36 ~~(7)~~ **(6)** On or before the 10th day of each month, the director of
37 accounts and reports shall transfer from the state general fund to the
38 quality care fund interest earnings based on:

39 (A) The average daily balance of moneys in the quality care fund for
40 the preceding month; and

41 (B) the net earnings rate of the pooled money investment portfolio
42 for the preceding month.

43 (e) If a skilled nursing care facility fails to pay the full amount of the

- 1 quality care assessment imposed pursuant to subsection (b), when due
2 and payable, including any extensions of time granted under that subsec-
3 tion, the authority shall assess a penalty in the amount of the lesser of
4 \$500 per day or 2% of the quality care assessment owed for each day the
5 assessment is delinquent.
- 6 (f) (1) The authority shall assess and collect quality care assessments
7 imposed pursuant to subsection (b), including any penalty assessments
8 imposed thereon pursuant to subsection (e), from skilled nursing care
9 facilities on and after July 1, 2010, except that no assessments or penalties
10 shall be assessed under subsections (a) through (f) until:
- 11 (A) An amendment to the state plan for medicaid, which increases
12 the rates of payments made to skilled nursing care facilities for providing
13 services pursuant to the federal medicaid program and which is proposed
14 for approval for purposes of subsections (a) through (f) is approved by
15 the federal government; and
- 16 (B) the skilled nursing care facilities have been compensated retro-
17 actively at the increased rate for services provided pursuant to the federal
18 medicaid program for the period commencing on and after July 1, 2010.
- 19 (2) The authority shall implement and administer the provisions of
20 subsections (a) through ~~(f)~~ **(f)** in a manner consistent with applicable
21 federal medicaid laws and regulations. The authority shall seek any nec-
22 essary approvals by the federal government that are required for the im-
23 plementation of subsections (a) through (f).
- 24 (3) The provisions of subsections (a) through (f) shall be null and void
25 and shall have no force and effect if either of the following occur:
- 26 (A) The medicaid plan amendment, which increases the rates of pay-
27 ments made to skilled nursing care facilities for providing services pur-
28 suant to the federal medicaid program and which is proposed for approval
29 for purposes of subsections (a) through ~~(f)~~ **(f)** is not approved by the
30 federal centers for medicare and medicaid services; or
- 31 (B) the rates of payments made to skilled nursing care facilities for
32 providing services pursuant to the federal medicaid program are reduced
33 below the rates calculated on June 30, 2010, increased by revenues in the
34 quality care fund and matched by federal financial participation and re-
35 basing as provided for in K.S.A. 2009 Supp. 75-5958, and amendments
36 thereto.
- 37 (g) If the provisions of subsections (a) through (f) are repealed, expire
38 or become null and void and have no further force and effect, all moneys
39 in the quality care fund which were paid under the provisions of subsec-
40 tions (a) through (f) shall be returned to the skilled nursing care facilities
41 which paid such moneys on the basis on which such payments were as-
42 sessed and paid pursuant to subsections (a) through (f).
- 43 (h) The authority may adopt rules and regulations necessary to im-

1 plement the provisions of this section.

2 (i) For purposes of administering and selecting the reimbursements
3 of moneys in the quality care assessment fund, the quality care improve-
4 ment panel is hereby established. The panel shall consist of the following
5 members: Two persons appointed by Kansas **association of** homes and
6 services for the aging; two persons appointed by the Kansas health care
7 association; one person appointed by Kansas advocates for better care;
8 **one person appointed by the Kansas hospital association;** one per-
9 son ~~appointed by the governor~~ who is **a member of the Kansas adult**
10 **care executive association appointed by the governor;** an executive
11 of a Kansas adult care home **and whose employing home is** not affili-
12 ated with any of the trade organizations specified in this subsection; one
13 person appointed by the Kansas foundation for medical care; one person
14 appointed by the governor from the department on aging; and one person
15 appointed by the governor from the Kansas health policy authority. The
16 panel shall meet as soon as possible subsequent to the effective date of
17 this act and shall elect a chairperson from among the members appointed
18 by the trade organizations specified in this subsection. The members of
19 the quality care improvement panel shall serve without compensation or
20 expenses. The quality care improvement panel shall report annually on
21 or before January 10 to the legislature concerning the activities of the
22 panel during the preceding calendar year and any recommendations
23 which the panel may have concerning the administration of and expend-
24 itures from the quality care assessment fund.

25 (j) The authority shall certify to the director of the budget of the
26 department of administration the date upon which the provisions of this
27 section are implemented. The provisions of this section shall expire four
28 years subsequent to the implementation of this section.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the Kansas register.