

SESSION OF 2010

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
SUBSTITUTE FOR HOUSE BILL NO. 2320**

As Amended by Senate Committee of the Whole

**Brief\***

Senate Sub. for Sub. for HB 2320, as amended, would create an annual provider assessment on all licensed beds within skilled nursing care facilities in the State of Kansas, deem the Kansas Health Policy Authority to be the state agency to calculate and implement the provider assessment, establish a Quality Care Fund where all assessments and penalties collected through the assessment program would be deposited, and establish a Quality Care Improvement Panel. The bill would exclude the Kansas Soldiers' Home and the Kansas Veteran's Home from the assessment.

A facility would be assessed on the number of beds for which the facility is licensed as of July 1 each year. The assessment amount would be \$1,950 per skilled nursing facility bed per year, to be applied uniformly except for skilled nursing care facilities that are part of a continuing care retirements facility, small skilled nursing care facilities with no more than 40.0 licensed beds, and high Medicaid volume skilled nursing care facilities. The nursing facilities previously identified as exceptions would not exceed one-sixth of the actual amount assessed to all other skilled nursing care facilities. In addition, the Authority is instructed to seek a waiver from the United States Department of Health and Human Services to be allowed to impose varying levels of assessments on skilled nursing care facilities based on specified criteria in order to achieve a minimized negative fiscal impact on certain classes of skilled nursing care facilities.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The annual assessment amount due would be calculated once, but paid quarterly. If a facility de-licenses beds after July 1 of each year, the facility will not be reimbursed for the assessment already collected, but will not have to pay for the de-licensed beds moving forward. If an organization has more than one licensed facility, then the assessment will be applied to each separate facility. Nursing care facilities could not create a separate line-item charge for the purpose of passing the assessment through to residents. After the first three years, the assessment amount must be adjusted to be no more than 60.0 percent of the assessment collected in previous years to establish a downward collection trend for the assessment.

Revenue from the assessment would be deposited in the Kansas Health Policy Authority's newly created Quality Care Fund. Up to 1.0 percent of the Fund could be used for administration for the program. In addition, the Fund must be used for reimbursement for the FY 2010 Medicaid 10.0 percent provider rate reduction, as well as adjustments for re-basing and inflation. All remaining moneys in the Quality Care Fund would first be used to increase the direct health care costs center limitations up to 150.0 percent of the case mix adjusted median, and then the remaining amount would be used to finance initiatives to maintain or improve the quality of care and quantity of skilled nursing care in Kansas. At no point, the bill provides, would any amount of the assessed funds be allowed to provide for bonuses or profit-sharing for any officer, employee, or parent corporation, but the funds may be used to pay employees who are providing direct care to a resident in a skilled nursing facility. The bill would establish a Quality Care Improvement Panel consisting of representatives of the Kansas Homes and Services for the Aging, Kansas Health Care Association, Kansas Hospital Association, Kansas Adult Care Executives Association, Kansas Advocates for Better Care, one person appointed by the Governor who is a skilled nursing facility resident or the family member of such a resident, Kansas Foundation for Medical Care, the Kansas Department on Aging, and the Kansas Health Policy Authority. Members of the Panel shall serve without compensation or expenses and report annually to the Legislature and the Joint Committee on

Health Policy Oversight concerning the activities of the Panel. Except for the one person appointed by the Governor who is a skilled nursing facility resident or the family member of such a resident, members appointed by the Governor would be nonvoting members of the Panel.

The bill would become effective upon publication in the *Kansas Register* and expire after four years.

### **Background**

The Senate Committee on Ways and Means adopted a substitute bill (Senate Sub. for Sub. for HB 2320) to set the amount to be assessed at \$1,325 annually per licensed bed. Originally, the bill allowed for the assessment amount to be at the discretion of the Kansas Health Policy Authority and assessed at the amount of \$2,550 annually per licensed bed. In addition, the Senate Committee on Ways and Means deleted language allowing for rate adjustments to be made to reimburse the portion of the assessment imposed, established the Kansas Department on Aging as the contracting agency for the assessment program, removed the exclusion of the Kansas Soldiers' Home and the Kansas Veteran's Home from the assessment, and added one representative appointed by the Kansas Hospital Association, one member of the Kansas Adult Care Executives Association and one representative from a Kansas adult care home and whose employing home is not affiliated with any other trade organization specified in the bill to the Quality Care Improvement Panel.

The Senate Substitute bill was referred to the Senate Committee of the Whole and then was re-referred to the Senate Committee on Ways and Means where the bill was further amended to include an assessment amount of \$1,950, creation and definition of different skilled nursing facility classes, instructions for the Authority to see federal waivers to allow the state to impose varying levels of assessments on skilled nursing care facilities based on specified criteria, details on payments to skilled nursing facilities and removal of the

appointment of an executive of a Kansas adult care home (replaced by one person appointed by the Governor who is a skilled nursing care facility resident or family member or a resident).

The Senate substitute bill was referred to the Senate Committee of the Whole where it was amended to add a voting member to the Quality Care Improvement Panel, exclude the Kansas Soldiers' Home and the Kansas Veteran's Home from the assessment and include the word "care" to clarify types of quality care improvements and nursing care services.

Proponents for Senate Bill 546 testified before the Senate Committee on Ways and Means and included Representative Bethell, the Kansas Department on Aging, the Kansas Health Care Association, the Disability Rights Center of Kansas, the Statewide Independent Living Council of Kansas and various representatives from the nursing facility community and private citizens. Opponents included the Kansas Association of Homes and Services for the Aging, and various representatives from the nursing facility community and private citizens. The Kansas Hospital Association and Kansas Advocates for Better Care testified as a neutral. Senate Sub. for Sub. for HB 2320 was re-referred to the Senate Committee on Ways and Means and proponents who testified in support of the bill included the Kansas Health Care Association and the Kansas Association of Homes and Services for the Aging.

The fiscal note prepared by the Division of the Budget on the introduced version of Senate Sub. for Sub. for HB 2320, entitled Senate Bill 546, indicates that passage of the bill allowing for a maximum assessment of \$2,550 per licensed bed would generate approximately \$57.3 million from nursing facility providers. This state funding would be matched by \$129.1 million in federal Medicaid funding, which results in the total additional funding \$186.4 million per fiscal year. In addition, to implement and administer the new program the fiscal note indicated that the Kansas Health Policy Authority would contract with the Kansas Department on Aging. The contracting agency would need 2.0 additional FTE positions and additional

contractual funding for consulting services used in the rate setting process. Estimated yearly salary costs for the new positions would total \$95,406, annual consulting costs are estimated at \$30,000, and one-time start-up costs would total \$5,000. Under Senate Sub. for Sub. for HB 2320 these expenditures also could be made from the assessment revenue. Per Medicare and Medicaid Services (CMS) guidelines, there is no guarantee a facility will have increased reimbursements to offset the expenditures.