As Amended by Senate Committee of the Whole

Session of 2016

SENATE BILL NO. 457

By Committee on Ways and Means

2-15

AN ACT concerning skilled nursing care facilities; relating to the quality care assessment; rate and sunset thereof; quality care improvement panel membership; reporting requirements; amending K.S.A. 2015 Supp. 75-7435 and repealing the existing section.

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

New Section 1. On and after July 1, 2016, notwithstanding the provisions of section 109 of chapter 104 of the 2015 Session Laws of Kansas, the provisions of K.S.A. 2015 Supp. 75-5958, and amendments thereto, shall be in full force and effect.

Sec. 2. K.S.A. 2015 Supp. 75-7435 is hereby amended to read as follows: 75-7435. (a) As used in this section unless the context requires otherwise:

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

(2) "Skilled nursing care facility" means a licensed nursing facility, nursing facility for mental health as defined in K.S.A. 39-923, and amendments thereto, or a hospital long-term care unit licensed by the department of health and environment, providing skilled nursing care, but shall not include the Kansas soldiers' home or the Kansas veterans' home.

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

(4) "Agent" means the Kansas department for aging and disability services.

(5) "Continuing care retirement facility" means a facility holding a certificate of registration issued by the commissioner of insurance pursuant to K.S.A. 40-2235, and amendments thereto.

(b) (1) Except as otherwise provided in this section and in subsection (f), there is hereby imposed and the secretary of health and environment shall assess an annual assessment per licensed bed, hereinafter called a quality care assessment, on each skilled nursing care facility. The assessment on all facilities in the aggregate shall be an amount fixed by rules and regulations of the secretary of health and environment, shall not exceed $1,950 annually per licensed bed, shall be imposed as an
amount per licensed bed and shall be imposed uniformly on all skilled
nursing care facilities except that the assessment rate for skilled nursing
facilities that are part of a continuing care retirement facility, small
skilled nursing care facilities and high medicaid volume skilled nursing
care facilities shall not exceed $\frac{1}{6}$ of the actual amount assessed all other
skilled nursing care facilities. No rules and regulations of the secretary of
health and environment shall grant any exception to or exemption from the
quality care assessment. The assessment shall be paid quarterly, with one
fourth of the annual amount due by the 30th day after the end of the month
of each calendar quarter. The secretary of health and environment is
authorized to establish delayed payment schedules for skilled nursing care
facilities which are unable to make quarterly payments when due under
this section due to financial difficulties, as determined by the secretary of
health and environment. As used in this subsection (b)(1) paragraph, the
terms "small skilled nursing care facilities" and "high medicaid volume
skilled nursing care facilities" shall have the meanings ascribed thereto by
the secretary of health and environment by rules and regulations, except
that the definition of small skilled nursing care facility shall not be lower
than 40 beds.

(2) Beds licensed after July 1 each year shall pay a prorated amount
of the applicable annual assessment so that the assessment applies only for
the days such new beds are licensed. The proration shall be calculated by
multiplying the applicable assessment by the percentage of days the beds
are licensed during the year. Any change which reduces the number of
licensed beds in a facility shall not result in a refund being issued to the
skilled nursing care facility.

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

(4) The payment of the quality care assessment to the secretary of
health and environment shall be an allowable cost for medicaid
reimbursement purposes. A rate adjustment pursuant to paragraph (5) of
subsection (d)(5) shall be made effective on the date of imposition of the
assessment, to reimburse the portion of this cost imposed on medicaid
days.

(5) The secretary of health and environment shall seek a waiver from
the United States department of health and human services to allow the
state to impose varying levels of assessments on skilled nursing care
facilities based on specified criteria. It is the intent of the legislature that
the waiver sought by the secretary of health and environment be structured
to minimize the negative fiscal impact on certain classes of skilled nursing
care facilities.

(c) Each skilled nursing care facility shall prepare and submit to the
secretary of health and environment any additional information required
and requested by the secretary of health and environment to implement or
administer the provisions of this section. Each skilled nursing care facility
shall prepare and submit quarterly to the secretary for aging and disability
services the rate the facility charges to private pay residents, and the
secretary shall cause this information to be posted on the web site of the
department for aging and disability services.

(d) (1) There is hereby created in the state treasury the quality care
fund, which shall be administered by the secretary of health and
environment. All moneys received for the assessments imposed pursuant
to subsection (b), including any penalty assessments imposed thereon
pursuant to subsection (e), shall be remitted to the state treasurer in
accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt
of each such remittance, the state treasurer shall deposit the entire amount
in the state treasury to the credit of the quality care fund. All expenditures
from the quality care fund shall be made in accordance with appropriation
acts upon warrants of the director of accounts and reports issued pursuant
to vouchers approved by the secretary of health and environment or the
secretary's agent.

(2) All moneys in the quality care fund shall be used to finance
initiatives to maintain or improve the quantity and quality of skilled
nursing care in skilled nursing care facilities in Kansas. No moneys
credited to the quality care fund shall be transferred to or otherwise revert
to the state general fund at any time. Notwithstanding the provisions of
any other law to the contrary, if any moneys credited to the quality care
fund are transferred or otherwise revert to the state general fund, 30 days
following the transfer or reversion the quality care assessment shall
terminate and the secretary of health and environment shall discontinue the
imposition, assessment and collection of the assessment. Upon termination
of the assessment, all collected assessment revenues, including the moneys
inappropriately transferred or reverting to the state general fund, less any
amounts expended by the secretary of health and environment, shall be
returned on a pro rata basis to skilled nursing care facilities that paid the
assessment.

(3) Any moneys received by the state of Kansas from the federal
government as a result of federal financial participation in the state
medicaid program that are derived from the quality care assessment shall
be deposited in the quality care fund and used to finance actions to
maintain or increase healthcare in skilled nursing care facilities.

(4) Moneys in the fund shall be used exclusively for the following purposes:
   (A) To pay administrative expenses incurred by the secretary of health and environment or the agent in performing the activities authorized by this section, except that such expenses shall not exceed a total of 1% of the aggregate assessment funds collected pursuant to subsection (b) for the prior fiscal year;
   (B) to increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as may be negotiated;
   (C) to reimburse the medicaid share of the quality care assessment as a pass-through medicaid allowable cost;
   (D) to restore the medicaid rate reductions implemented January 1, 2010;
   (E) to restore funding for fiscal year 2010, including rebasing and inflation to be applied to rates in fiscal year 2011;
   (F) the remaining amount, if any, shall be expended first to increase the direct health care costs center limitation up to 150% of the case mix adjusted median, and then, if there are remaining amounts, for other quality care enhancement of skilled nursing care facilities as approved by the quality care improvement panel but shall not be used directly or indirectly to replace existing state expenditures for payments to skilled nursing care facilities for providing services pursuant to the state medicaid program.

(5) Any moneys received by a skilled nursing care facility from the quality care fund shall not be expended by any skilled nursing care facility to provide for bonuses or profit-sharing for any officer, employee or parent corporation but may be used to pay to employees who are providing direct care to a resident of such facility.

(6) Adjustment payments may be paid quarterly or within the daily medicaid rate to reimburse covered medicaid expenditures in the aggregate within the upper payment limits.

(7) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the quality care fund interest earnings based on:
   (A) The average daily balance of moneys in the quality care fund for the preceding month; and
   (B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) If a skilled nursing care facility fails to pay the full amount of the quality care assessment imposed pursuant to subsection (b), when due and payable, including any extensions of time granted under that subsection,
the secretary of health and environment shall assess a penalty in the
amount of the lesser of $500 per day or 2% of the quality care assessment
owed for each day the assessment is delinquent. The secretary of health
and environment is authorized to establish delayed payment schedules for
skilled nursing care facilities that are unable to make installment payments
when due under this section because of financial difficulties, as determined
by the secretary of health and environment.

(f) (1) The secretary of health and environment shall assess and
collect quality care assessments imposed pursuant to subsection (b),
including any penalty assessments imposed thereon pursuant to subsection
(e), from skilled nursing care facilities on and after July 1, 2010, except
that no assessments or penalties shall be assessed under subsections (a)
through (h) until:

(A) An amendment to the state plan for medicaid, which increases the
rates of payments made to skilled nursing care facilities for providing
services pursuant to the federal medicaid program and which is proposed
for approval for purposes of subsections (a) through (h) is approved by the
federal government in which case the initial assessment is due no earlier
than 60 days after state plan approval; and

(B) the skilled nursing care facilities have been compensated
retroactively within 60 days after state plan approval at the increased rate
for services provided pursuant to the federal medicaid program for the
period commencing on and after July 1, 2010.

(2) The secretary of health and environment shall implement and
administer the provisions of subsections (a) through (h) in a manner
consistent with applicable federal medicaid laws and regulations. The
secretary of health and environment shall seek any necessary approvals by
the federal government that are required for the implementation of
subsections (a) through (h).

(3) The provisions of subsections (a) through (h) shall be null and
void and shall have no force and effect if one of the following occur:

(A) The medicaid plan amendment, which increases the rates of
payments made to skilled nursing care facilities for providing services
pursuant to the federal medicaid program and which is proposed for
approval for purposes of subsections (a) through (h) is not approved by the
federal centers for medicare and medicaid services;

(B) the rates of payments made to skilled nursing care facilities for
providing services pursuant to the federal medicaid program are reduced
below the rates calculated on December 31, 2009, increased by revenues in
the quality care fund and matched by federal financial participation and
rebasing as provided for in K.S.A. 2015 Supp. 75-5958, and amendments
thereto;

(C) any funds are utilized to supplant funding for skilled nursing care
facilities as required by subsection (g);

(D) any funds are diverted from those purposes set forth in subsection (d)(4); or

(E) upon the governor signing, or allowing to become law without signature, legislation which by proviso or otherwise directs any funds from those purposes set forth in subsection (d)(4) or which would propose to suspend the operation of this section.

(g) On and after July 1, 2010, reimbursement rates for skilled nursing care facilities shall be restored to those in effect during December 2009. No funds generated by the assessments or federal funds generated therefrom shall be utilized for such restoration, but such funds may be used to restore the rate reduction in effect from January 1, 2010, to June 30, 2010.

(h) Rates of reimbursement shall not be limited by private pay charges.

(i) If the provisions of subsections (a) through (h) are repealed, expire or become null and void and have no further force and effect, all moneys in the quality care fund which were paid under the provisions of subsections (a) through (h) shall be returned to the skilled nursing care facilities which paid such moneys on the basis on which such payments were assessed and paid pursuant to subsections (a) through (h).

(j) The department of health and environment may adopt rules and regulations necessary to implement the provisions of this section.

(k) For purposes of administering and selecting the reimbursements of moneys in the quality care assessment fund, the quality care improvement panel is hereby established. The panel shall consist of the following members: Two persons appointed by leadingage Kansas homes and services for the aging; two persons appointed by the Kansas health care association; one person appointed by Kansas advocates for better care; one person appointed by the Kansas hospital association; one person appointed by the governor who is a member of the Kansas adult care executives association; one person appointed by the governor who is a skilled nursing care facility resident or the family member of such a resident; one person appointed by the Kansas foundation for medical care; one person appointed by the governor from the department for aging and disability services; and one person appointed by the governor from the department of health and environment; one person appointed by the president of the senate who is affiliated with an organization representing and advocating the interests of retired persons in Kansas; and one person appointed by the speaker of the house of representatives who is a volunteer with the office of the state long-term care ombudsman established by the long-term care ombudsman act. The person appointed by the governor from the department for aging
disability services and the person appointed by the governor from the
department of health and environment shall be nonvoting members of the
panel. The panel shall meet as soon as possible subsequent to the effective
date of this act and shall elect a chairperson from among the members
appointed by the trade organizations specified in this subsection. The
members of the quality care improvement panel shall serve without
compensation or expenses. The quality care improvement panel shall
report annually on or before January 10 to the legislature senate
committees on public health and welfare and ways and means, the house
committees on appropriations and health and human services and the
Robert G. (Bob) Bethell joint committee on home and community based
services and KanCare oversight concerning {the progress to reduce the
incidence of antipsychotic drug use in elders with dementia,
participation in the nursing facility quality and efficiency outcome
incentive factor, participation in the culture change and person-centered
care incentive program, annual resident satisfaction ratings for Kansas
skilled nursing care facilities and} the activities of the panel during the
preceding calendar year and any recommendations which the panel may
have concerning the administration of and expenditures from the quality
care assessment fund.

1. The provisions of this section shall expire on July 1, 2020.
2. Sec. 3. K.S.A. 2015 Supp. 75-7435 is hereby repealed.
3. Sec. 4. This act shall take effect and be in force from and after its
publication in the statute book.