

SENATE BILL No. 409

By Committee on Ways and Means

2-11

1 AN ACT concerning skilled nursing care facilities; relating to the quality
2 care assessment imposed on such facilities; making such assessment
3 permanent; amending K.S.A. 75-7435 and repealing the existing
4 section.

5

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

7 Section 1. K.S.A. 75-7435 is hereby amended to read as follows: 75-
8 7435. (a) As used in this section unless the context requires otherwise:

9 (1) Words and phrases ~~have the meanings respectively ascribed~~
10 ~~thereto~~ *mean the same as defined* by K.S.A. 39-923, and amendments
11 thereto.

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

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

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

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

24 (b) (1) Except as otherwise provided in this section ~~and in subsection~~
25 ~~(f)~~, there is hereby imposed and the secretary of health and environment
26 shall assess an annual assessment per licensed bed, hereinafter called a
27 quality care assessment, on each skilled nursing care facility. The
28 assessment on all facilities in the aggregate shall be an amount fixed by
29 rules and regulations of the secretary of health and environment, shall not
30 exceed \$4,908 annually per licensed bed, shall be imposed as an amount
31 per licensed bed and shall be imposed uniformly on all skilled nursing care
32 facilities except that the assessment rate for skilled nursing care facilities
33 that are part of a continuing care retirement facility, small skilled nursing
34 care facilities and high medicaid volume skilled nursing care facilities
35 shall not exceed $\frac{1}{6}$ of the actual amount assessed all other skilled nursing
36 care facilities. No rules and regulations of the secretary of health and

1 environment shall grant any exception to or exemption from the quality
2 care assessment. The assessment shall be paid quarterly, with one fourth of
3 the annual amount due by the 30th day after the end of the month of each
4 calendar quarter. The secretary of health and environment is authorized to
5 establish delayed payment schedules for skilled nursing care facilities
6 ~~which~~ *that* are unable to make quarterly payments when due under this
7 section due to financial difficulties, as determined by the secretary of
8 health and environment. As used in this paragraph, the terms "small skilled
9 nursing care facilities" and "high medicaid volume skilled nursing care
10 facilities" shall ~~have the meanings ascribed thereto~~ *be defined* by the
11 secretary of health and environment by rules and regulations, except that
12 the definition of "small skilled nursing care facility" shall not be ~~lower~~
13 *fewer* than 40 beds.

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

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

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

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

41 (c) Each skilled nursing care facility shall prepare and submit to the
42 secretary of health and environment any additional information required
43 and requested by the secretary of health and environment to implement or

1 administer the provisions of this section. Each skilled nursing care facility
2 shall prepare and submit quarterly to the secretary for aging and disability
3 services the rate the facility charges to private pay residents, and the
4 secretary shall cause this information to be posted on the web site of the
5 department for aging and disability services.

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

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

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

38 (4) Moneys in the fund shall be used exclusively for the following
39 purposes:

40 (A) To pay administrative expenses incurred by the secretary of
41 health and environment or the agent in performing the activities authorized
42 by this section, except that such expenses shall not exceed a total of 1% of
43 the aggregate assessment funds collected pursuant to subsection (b) for the

1 prior fiscal year;

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

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

7 (D) to restore the medicaid rate reductions implemented January 1,
8 2010;

9 (E) to restore funding for fiscal year 2010, including rebasing and
10 inflation to be applied to rates in fiscal year 2011; *and*

11 (F) the remaining amount, if any, shall be expended first to increase
12 the direct health care costs center limitation up to 150% of the case mix
13 adjusted median, and then, if there are remaining amounts, for other
14 quality care enhancement of skilled nursing care facilities as approved by
15 the quality care improvement panel but shall not be used directly or
16 indirectly to replace existing state expenditures for payments to skilled
17 nursing care facilities for providing services pursuant to the state medicaid
18 program.

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

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

27 (7) On or before the 10th day of each month, the director of accounts
28 and reports shall transfer from the state general fund to the quality care
29 fund interest earnings based on:

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

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

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

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

7 (A) An amendment to the state plan for medicaid, ~~which that~~
8 increases the rates of payments made to skilled nursing care facilities for
9 providing services pursuant to the federal medicaid program and ~~which~~
10 *that* is proposed for approval for purposes of subsections (a) through (h) is
11 approved by the federal government, in which case the initial assessment
12 is due ~~no~~ not earlier than 60 days after state plan approval; and

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

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

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

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

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

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

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

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

43 (g) On and after July 1, 2010, reimbursement rates for skilled nursing

1 care facilities shall be restored to those in effect during December 2009.
2 No funds generated by the assessments or federal funds generated
3 therefrom shall be utilized for such restoration, but such funds may be
4 used to restore the rate reduction in effect from January 1, 2010, to June
5 30, 2010.

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

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

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

16 (k) For purposes of administering and selecting the reimbursements
17 of moneys in the quality care assessment fund, the quality care
18 improvement panel is hereby established. The panel shall consist of the
19 following members: Two persons appointed by leadingage Kansas; two
20 persons appointed by the Kansas health care association; one person
21 appointed by Kansas advocates for better care; one person appointed by
22 the Kansas hospital association; one person appointed by the governor
23 who is a member of the Kansas adult care executives association; one
24 person appointed by the governor who is a skilled nursing care facility
25 resident or the family member of such a resident; one person appointed by
26 the Kansas foundation for medical care; one person appointed by the
27 governor from the department for aging and disability services; one person
28 appointed by the governor from the department of health and environment;
29 one person appointed by the president of the senate who is affiliated with
30 an organization representing and advocating the interests of retired persons
31 in Kansas; and one person appointed by the speaker of the house of
32 representatives who is a volunteer with the office of the state long-term
33 care ombudsman established by the long-term care ombudsman act. The
34 person appointed by the governor from the department for aging and
35 disability services and the person appointed by the governor from the
36 department of health and environment shall be nonvoting members of the
37 panel. The panel shall meet as soon as possible subsequent to the effective
38 date of this act and shall elect a chairperson from among the members
39 appointed by the trade organizations specified in this subsection. The
40 members of the quality care improvement panel shall serve without
41 compensation or expenses. The quality care improvement panel shall
42 report annually on or before January 10 to the senate committees on public
43 health and welfare and ways and means, the house committees on

1 appropriations and health and human services and the Robert G. (Bob)
2 Bethell joint committee on home and community based services and
3 KanCare oversight concerning the progress to reduce the incidence of
4 antipsychotic drug use in elders with dementia, participation in the nursing
5 facility quality and efficiency outcome incentive factor, participation in the
6 culture change and person-centered care incentive program, annual
7 resident satisfaction ratings for Kansas skilled nursing care facilities and
8 the activities of the panel during the preceding calendar year and any
9 recommendations—~~which~~ *that* the panel may have concerning the
10 administration of and expenditures from the quality care assessment fund.

11 ~~(f) The provisions of this section shall expire on July 1, 2020.~~

12 Sec. 2. K.S.A. 75-7435 is hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.