

SENATE BILL No. 210

By Committee on Ways and Means

2-16

1 AN ACT providing for assessments on providers of home and
2 community-based services developmental disability waiver program;
3 prescribing powers, duties and functions for the Kansas health policy
4 authority; creating the quality based community assessment fund;
5 providing for implementation and administration.
6
7

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

9 Section 1. (a) As used in this section, unless the context requires
10 otherwise:

11 (1) "Authority" means the Kansas health policy authority.

12 (2) "Developmental disability" is as defined in K.S.A. 39-
13 1803, and amendments thereto, under the Kansas developmental
14 disabilities reform act.

15 (3) "Entity" means individual, corporation, partnership, limited
16 liability company, joint venture or other legal entity.

17 (4) "Gross revenues" means the revenues received by waiver
18 providers for furnishing services to individuals with developmental
19 disabilities who qualify for the waiver program with eligibility criteria
20 and scope of services not less than those in effect as of January 1, 2011;
21 the revenues received by waiver providers from or on behalf of
22 individuals with developmental disabilities who qualify for the waiver
23 program but for whom the services defined under the waiver program are
24 not reimbursed through such waiver; and, the revenues received by
25 waiver providers from or on behalf of individuals with developmental
26 disabilities who do not qualify for the waiver program but for whom
27 receive the same services offered under such waiver. Gross revenues does
28 not include revenues received for services to individuals with
29 developmental disabilities funded exclusively by state or local
30 governments, or any revenues received for furnishing services to
31 individuals who are not developmentally disabled, or charitable
32 donations.

33 (5) "Quality based community fee fund" means a segregated
34 account within the state treasury for which moneys are collected in
35 accordance with the provisions of this act from developmental disability
36 home and community-based waiver service providers.

1 (6) "Waiver program" means a developmental disability home
2 and community-based services waiver program authorized under the
3 social security act, 42 U.S.C. § 1915, for persons with a developmental
4 disability.

5 (7) "Waiver provider" means an entity that participates in the
6 Kansas developmental disability home and community-based waiver
7 program and that provides services to a person with a developmental
8 disability, regardless of whether such person qualifies under the waiver
9 program.

10 (8) "Waiver provider assessment" means an assessment
11 imposed on all waiver providers at the maximum rate allowable by
12 federal law on the gross revenues applicable to services provided to
13 persons with developmental disabilities.

14 (b) (1) Except as otherwise provided in this section, the authority
15 shall impose an annual assessment, hereinafter called a waiver provider
16 assessment, on each waiver provider at the maximum rate allowable by
17 federal law, on the gross revenues the waiver provider received from
18 providing services to individuals with developmental disabilities during
19 the fiscal year beginning with the effective date of the assessment. The
20 waiver provider assessment shall be imposed as follows:

21 (A) Withheld on a claim-by-claim basis from each waiver
22 provider's uniform percentage increased HCBS MR/DD Medicaid waiver
23 payment rates beginning with the effective date of this section; and,

24 (B) paid on a quarterly basis by waiver providers based on the
25 preceding fiscal revenues received by waiver providers from or on behalf
26 of individuals with developmental disabilities who qualify for the waiver
27 program but for whom the services defined under the waiver program are
28 not reimbursed through such waiver; and, the revenues received by
29 waiver providers from or on behalf of individuals with developmental
30 disabilities who do not qualify for the waiver program but for whom
31 receive the same services offered under such waiver.

32 (2) The waiver provider assessment will become effective
33 beginning with the first full month after:

34 (A) The federal centers for medicare and medicaid services
35 (CMS) authorizes developmental disability home and community-based
36 services as a permissible class of health care services on which states may
37 impose a health care-related assessment without penalty; and,

38 (B) the CMS has approved any and all amendments necessary
39 to authorize the uniform percentage rate increases to the medicaid
40 payment rates under Kansas developmental disability home and
41 community-based waiver program.

42 (3) The duration of the waiver provider assessment shall be all
43 or a portion of the first state fiscal year in which the waiver provider

1 assessment is effective and the subsequent four full state fiscal years.

2 (4) The moneys collected under the provisions of this section
3 shall be used solely as the nonfederal share of uniform percentage
4 increases to the medicaid payment rates for developmental disability
5 home and community-based services waiver providers.

6 (5) The waiver provider assessment will be offset on a per
7 claim basis against each waiver provider's home and community-based
8 services MR/DD medicaid waiver payments in an amount equal to the
9 maximum rate allowable by federal law beginning with the effective date
10 of this section. For gross revenues received by waiver providers from or
11 on behalf of individuals with developmental disabilities who qualify for
12 the waiver program but for whom the services defined under the waiver
13 program are not reimbursed through such waiver, and the revenues
14 received by waiver providers from or on behalf of individuals with
15 developmental disabilities who do not qualify for the waiver program but
16 for whom receive the same services offered under such waiver, the
17 maximum rate allowable by federal law will be applied to the annual
18 revenues received for such services for the waiver providers' preceding
19 fiscal year.

20 (6) The authority shall collect any and all assessment pursuant
21 to the provisions of this section. The authority shall adopt administrative
22 rules and regulations necessary to implement and enforce the provisions
23 of this section within 30 days of the CMS authorization. No rules and
24 regulations of the authority shall grant any exception to or exemption
25 from the waiver provider assessment.

26 (7) If a waiver provider fails to pay the full amount of the
27 waiver provider assessment imposed pursuant to this subsection when
28 due and payable, including any extensions of time granted, the authority
29 shall impose a penalty in the amount of the lesser of \$500 per day or 2%
30 of the assessment owed for the current fiscal year.

31 (c) (1) There is hereby created in the state treasury the quality
32 based community assessment fund, which shall be administered by the
33 authority. All moneys received or withheld for the assessment imposed
34 pursuant to subsection (b) shall be remitted to the state treasurer in
35 accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt
36 of each such remittance the state treasurer shall deposit the entire amount
37 in the state treasury to the credit of the quality based community
38 assessment fund. All expenditures from the quality based community
39 assessment fund shall be made in accordance with appropriation acts
40 upon warrants of the director of accounts and reports issued pursuant to
41 vouchers approved by the authority or the authority's designee. (2) The
42 quality based community assessment fund shall be a no limit fund and
43 shall consist of:

1 (A) The assessments collected by the authority under this
2 section;

3 (B) any interest and penalties levied with the administration of
4 this section; and,

5 (C) any other funds received as donations for the quality based
6 community assessment fund and appropriations from other sources.

7 All moneys in the quality based community assessment fund shall be
8 used solely as the nonfederal share of uniform percentage increases to
9 the medicaid payment rates for waiver providers in order to maintain the
10 quality of services provided to individuals qualifying under Kansas
11 developmental disability waiver program. The fund will reimburse
12 administrative expenses incurred by the authority or its agent in
13 performing the activities authorized by this section, except that such
14 expenses shall not exceed a total of .5% of the aggregate assessment fees
15 collected during the first fiscal year in which the assessment becomes
16 effective for purposes of start-up costs. The fund shall reimburse the
17 authority or its agent in the amount of \$100,000 each year thereafter to
18 administer the assessment program.

19 (3) No moneys credited to the fund shall be transferred to or
20 otherwise revert to the state general fund at any time. Notwithstanding the
21 provisions of any other law to the contrary, if any moneys credited to the
22 quality based community assessment fund are transferred or otherwise
23 revert to the state general fund, 30 days following the transfer or
24 reversion, the waiver provider assessment shall terminate and the
25 authority shall discontinue the imposition, assessment and collection of
26 the assessment. Upon termination of the assessment, any collected
27 assessment revenues, including any moneys transferred or otherwise
28 reverting to the state general fund which resulted in the termination of the
29 assessment, less any administrative expenses incurred by the authority
30 under paragraph (2), shall be returned on a pro rata basis to waiver
31 providers who paid the assessment.

32 (4) On or before the 10th day of each month, beginning with
33 the first full month following the effective date of the waiver provider
34 assessment, the director of accounts and reports shall transfer from the
35 state general fund to the quality based community assessment fund,
36 interest earnings based on:

37 (A) the average daily balance of moneys in the fund for the
38 preceding month; and

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

41 (d) Any moneys received by the state of Kansas from the
42 federal government as a result of federal financial participation in the
43 state's developmental disability waiver program that are derived from the

1 waiver provider assessment shall be used to maintain the quality of
2 services provided by the waiver program.

3 (e) No moneys collected under the provisions of this section
4 shall be used directly or indirectly to replace or supplant existing state
5 expenditures for payments to waiver providers for services furnished to
6 individuals with developmental disabilities.

7 (f) (1) The waiver provider assessment and associated uniform
8 percentage increases for all waiver provider medicaid payment rates shall
9 become effective on the first day of the first full month after which the
10 CMS has adopted rules that recognize the waiver provider assessment as
11 a permissible class of health care services on which states may impose
12 such an assessment:

13 (A) Upon the approval from the CMS of any and all
14 amendments to the medicaid state plan, medicaid developmental
15 disability waiver program, or both, necessary to increase the rates of
16 payments made to the waiver providers for providing services pursuant to
17 the waiver program; and,

18 (B) the waiver providers have been compensated at the uniform
19 percentage increased medicaid payment rates for services provided
20 pursuant to the developmental disability waiver program for the period
21 commencing on and after the authorization of the waiver provider
22 assessment by the CMS.

23 (2) The authority shall implement and administer the
24 provisions of subsections (a) through (e) in a manner consistent with
25 applicable federal laws and regulations. The authority shall seek any
26 necessary approvals of the federal government that are required for the
27 implementation of subsections (a) through (e).

1 (3) The provisions of subsections (a) through (e) shall be null
2 and void and shall have no force and effect if either of the following
3 occurs:

4 (A) The medicaid state plan amendment or an amendment to
5 the Medicaid waiver program, or both, as applicable, that would
6 otherwise authorize the uniform percentage increases to the Medicaid
7 rates of payment made to waiver providers for providing services
8 pursuant to the developmental disability waiver programs and which is
9 proposed for approval for purposes of subsections (a) through (e) is not
10 approved by the CMS;

11 (B) the medicaid payment rates made to waiver providers for
12 providing services pursuant to the developmental disability waiver
13 program are reduced below the rates calculated on the day immediately
14 preceding the effective date of this section, increased by revenues in the
15 quality based community assessment fund and matched by federal
16 financial participation. Nothing in this provision should be construed to
17 preclude additional increases to the medicaid payment rates to waiver
18 providers funded through state general fund appropriation;

19 (C) the medicaid eligibility criteria applicable to individuals
20 qualifying under the Kansas developmental disability waiver program are
21 reduced below the criteria in effect on the day immediately preceding the
22 effective date of this section; or

23 (D) the medicaid services available to individuals qualifying
24 under the Kansas developmental disability waiver program are reduced
25 below the services available on the day immediately preceding the
26 effective date of this section.

27 (g) If the provisions of subsections (a) through (e) are repealed,
28 expire or become null and void and have no further force and effect, all
29 moneys in the quality based community assessment fund which were paid
30 under the provisions of subsections (a) through (e) shall be returned to the
31 waiver provider which paid such moneys on the basis on which such
32 payments were assessed and paid pursuant to subsections (a) through (e).

33 (h) The provisions of this section shall expire five years
34 subsequent to the implementation of this section.

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