

As Amended by Senate Committee

Session of 2016

SENATE BILL No. 457

By Committee on Ways and Means

2-15

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

5
6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

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

28 (b) (1) Except as otherwise provided in this section and in subsection
29 (f), there is hereby imposed and the secretary of health and environment
30 shall assess an annual assessment per licensed bed, hereinafter called a
31 quality care assessment, on each skilled nursing care facility. The
32 assessment on all facilities in the aggregate shall be an amount fixed by
33 rules and regulations of the secretary of health and environment, shall not
34 exceed ~~\$1,950~~ \$4,908 annually per licensed bed, shall be imposed as an
35 amount per licensed bed and shall be imposed uniformly on all skilled
36 nursing care facilities except that the assessment rate for skilled nursing

1 care facilities that are part of a continuing care retirement facility, small
2 skilled nursing care facilities and high medicaid volume skilled nursing
3 care facilities shall not exceed $\frac{1}{6}$ of the actual amount assessed all other
4 skilled nursing care facilities. No rules and regulations of the secretary of
5 health and environment shall grant any exception to or exemption from the
6 quality care assessment. The assessment shall be paid quarterly, with one
7 fourth of the annual amount due by the 30th day after the end of the month
8 of each calendar quarter. The secretary of health and environment is
9 authorized to establish delayed payment schedules for skilled nursing care
10 facilities which are unable to make quarterly payments when due under
11 this section due to financial difficulties, as determined by the secretary of
12 health and environment. As used in this ~~subsection (b)(1) paragraph~~, the
13 terms "small skilled nursing care facilities" and "high medicaid volume
14 skilled nursing care facilities" shall have the meanings ascribed thereto by
15 the secretary of health and environment by rules and regulations, except
16 that the definition of small skilled nursing care facility shall not be lower
17 than 40 beds.

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

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

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

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

1 to minimize the negative fiscal impact on certain classes of skilled nursing
2 care facilities.

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

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

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

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

43 (4) Moneys in the fund shall be used exclusively for the following

1 purposes:

2 (A) To pay administrative expenses incurred by the secretary of
3 health and environment or the agent in performing the activities authorized
4 by this section, except that such expenses shall not exceed a total of 1% of
5 the aggregate assessment funds collected pursuant to subsection (b) for the
6 prior fiscal year;

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

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

12 (D) to restore the medicaid rate reductions implemented January 1,
13 2010;

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

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

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

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

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

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

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

39 (e) If a skilled nursing care facility fails to pay the full amount of the
40 quality care assessment imposed pursuant to subsection (b), when due and
41 payable, including any extensions of time granted under that subsection,
42 the secretary of health and environment shall assess a penalty in the
43 amount of the lesser of \$500 per day or 2% of the quality care assessment

1 owed for each day the assessment is delinquent. The secretary of health
2 and environment is authorized to establish delayed payment schedules for
3 skilled nursing care facilities that are unable to make installment payments
4 when due under this section because of financial difficulties, as determined
5 by the secretary of health and environment.

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

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

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

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

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

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

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

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

43 (D) any funds are diverted from those purposes set forth in subsection

1 (d)(4); or

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

6 (g) On and after July 1, 2010, reimbursement rates for skilled nursing
7 care facilities shall be restored to those in effect during December 2009.
8 No funds generated by the assessments or federal funds generated
9 therefrom shall be utilized for such restoration, but such funds may be
10 used to restore the rate reduction in effect from January 1, 2010, to June
11 30, 2010.

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

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

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

22 (k) For purposes of administering and selecting the reimbursements
23 of moneys in the quality care assessment fund, the quality care
24 improvement panel is hereby established. The panel shall consist of the
25 following members: Two persons appointed by ~~leading age~~ *Kansas homes*
26 ~~and services for the aging~~; two persons appointed by the Kansas health
27 care association; one person appointed by Kansas advocates for better
28 care; one person appointed by the Kansas hospital association; one person
29 appointed by the governor who is a member of the Kansas adult care
30 executives association; one person appointed by the governor who is a
31 skilled nursing care facility resident or the family member of such a
32 resident; one person appointed by the Kansas foundation for medical care;
33 one person appointed by the governor from the department for aging and
34 disability services; ~~and~~ one person appointed by the governor from the
35 department of health and environment; *one person appointed by the*
36 *president of the senate who is affiliated with an organization*
37 *representing and advocating the interests of retired persons in Kansas;*
38 *and one person appointed by the speaker of the house of representatives*
39 *who is a volunteer with the office of the state long-term care*
40 *ombudsman established by the long-term care ombudsman act.* The
41 person appointed by the governor from the department for aging and
42 disability services and the person appointed by the governor from the
43 department of health and environment shall be nonvoting members of the

1 panel. The panel shall meet as soon as possible subsequent to the effective
2 date of this act and shall elect a chairperson from among the members
3 appointed by the trade organizations specified in this subsection. The
4 members of the quality care improvement panel shall serve without
5 compensation or expenses. The quality care improvement panel shall
6 report annually on or before January 10 to the ~~legislature~~ *senate*
7 *committees on public health and welfare and ways and means, the house*
8 *committees on appropriations and health and human services and the*
9 *Robert G. (Bob) Bethell joint committee on home and community based*
10 *services and KanCare oversight* concerning the activities of the panel
11 during the preceding calendar year and any recommendations which the
12 panel may have concerning the administration of and expenditures from
13 the quality care assessment fund.

14 (l) The provisions of this section shall expire on July 1, ~~2016~~ 2020.

15 Sec. 3. K.S.A. 2015 Supp. 75-7435 is hereby repealed.

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the statute book.