

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2938

By Committee on Appropriations

3-16

10 AN ACT concerning social welfare; establishing the health care access
11 improvement program; state medicaid plan; hospitals and health main-
12 tenance organizations.

13

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

15 Section 1. As used in this act, the following have the meanings re-
16 spectively ascribed thereto, unless the context requires otherwise:

17 (a) "Department" means the department of social and rehabilitation
18 services.

19 (b) "Fund" means the health care access improvement fund.

20 (c) "Health maintenance organization" has the meaning provided in
21 K.S.A. 40-3202, and amendments thereto.

22 (d) "Hospital" has the meaning provided in K.S.A. 65-425, and
23 amendments thereto.

24 (e) "Hospital provider" means a person licensed by the department
25 of health and environment to operate, conduct or maintain a hospital,
26 regardless of whether the person is a federal medicaid provider.

27 (f) "Pharmacy provider" means an area, premises or other site where
28 drugs are offered for sale, where there are pharmacists, as defined in
29 K.S.A. 65-1626, and amendments thereto, and where prescriptions, as
30 defined in K.S.A. 65-1626, and amendments thereto, are compounded
31 and dispensed.

32 Sec. 2. Subject to the provisions of section 3, and amendments
33 thereto, an annual assessment on inpatient services is imposed on each
34 hospital provider in an amount equal to 1.83% of each hospital's net
35 inpatient operating revenue for ~~state~~ **the hospital's** fiscal year 2001. **In**
36 **the event a hospital does not have a complete twelve-month 2001**
37 **fiscal year, the assessment shall be \$200,000.**

38 Sec. 3. (a) A hospital provider that is a state agency, a state educa-
39 tional institution, as defined in K.S.A. 76-711, and amendments thereto,
40 or a critical access hospital, as defined in K.S.A. 65-468, and amendments
41 thereto, is exempt from the assessment imposed by section 2, and amend-
42 ments thereto.

43 (b) A hospital operated by the department in the course of perform-

1 ing its mental health or developmental disabilities functions is exempt
2 from the assessment imposed by section 2, and amendments thereto.

3 (c) Nothing in this act shall be construed to authorize any home rule
4 unit or other unit of local government to license for revenue or impose a
5 tax or assessment upon hospital providers or a tax or assessment measured
6 by the income or earnings of a hospital provider.

7 Sec. 4. (a) The assessment imposed by section 2, and amendments
8 thereto, for any state fiscal year to which this statute applies shall be due
9 and payable in equal quarterly installments on, or on the state business
10 day nearest to, July 19, ~~October 19,~~ and January 18 ~~and April 19~~. No
11 installment payment of an assessment under this act shall be due and
12 payable, however, until after:

13 (1) The hospital provider receives written notice from the depart-
14 ment that the payment methodologies to hospitals required under this
15 act have been approved by the centers for medicare and medicaid services
16 of the United States department of health and human services and the
17 state plan amendment for the assessment imposed by section 2, and
18 amendments thereto, has been granted by the centers for medicare and
19 medicaid services of the United States department of health and human
20 services; and

21 (2) ~~the hospital has received the payments required to be paid to it~~
22 ~~under this act~~ **payments for two quarters after the effective date of**
23 **the payment methodology approved by the centers for medicare**
24 **and medicaid services.**

25 (b) The department is authorized to establish delayed payment
26 schedules for hospital providers that are unable to make installment pay-
27 ments when due under this section due to financial difficulties, as deter-
28 mined by the department.

29 (c) If a hospital provider fails to pay the full amount of an installment
30 when due, including any extensions of time for delayed payment granted
31 under this section, there shall be added to the assessment imposed by
32 section 2, and amendments thereto, unless waived by the department for
33 reasonable cause, a penalty assessment equal to the lesser of:

34 (1) An amount equal to 5% of the installment amount not paid on or
35 before the due date plus 5% of the portion thereof remaining unpaid on
36 the last day of each month thereafter; or

37 (2) an amount equal to 100% of the installment amount not paid on
38 or before the due date.

39 For purposes of this subsection (c), payments shall be credited first to
40 unpaid installment amounts, rather than to penalty or interest amounts,
41 beginning with the most delinquent installment.

42 Sec. 5. (a) After December 31 of each year, except as otherwise pro-
43 vided in this subsection, and on or before March 31 of the succeeding

1 year, the department shall send a notice of assessment to every hospital
2 provider subject to assessment under this act.

3 (b) The hospital provider notice of assessment shall notify the hospital
4 provider of its assessment for the state fiscal year commencing on the
5 next July 1.

6 (c) If a hospital provider operates, conducts or maintains more than
7 one licensed hospital in the state, the hospital provider shall pay the as-
8 sessment for each hospital separately.

9 (d) Notwithstanding any other provision in this act, in the case of a
10 person who ceases to operate, conduct or maintain a hospital in respect
11 of which the person is subject to assessment in section 2, and amendments
12 thereto, as a hospital provider, the assessment for the state fiscal year in
13 which the cessation occurs shall be adjusted by multiplying the assessment
14 computed under section 2, and amendments thereto, by a fraction, the
15 numerator of which is the number of the days during the year during
16 which the provider operates, conducts or maintains a hospital and the
17 denominator of which is 365. Immediately upon ceasing to operate, con-
18 duct or maintain a hospital, the person shall pay the adjusted assessment
19 for that state fiscal year, to the extent not previously paid.

20 (e) Notwithstanding any other provision in this act, a person who
21 commences operating, conducting or maintaining a hospital shall pay the
22 assessment computed under section 2, and amendments thereto, in in-
23 stallments on the due dates stated in the notice and on the regular in-
24 stallment due dates for the state fiscal year occurring after the due dates
25 of the initial notice.

26 Sec. 6. (a) The assessment imposed by section 2, and amendments
27 thereto, shall not take effect or shall cease to be imposed and any moneys
28 remaining in the fund shall be refunded to hospital providers in propor-
29 tion to the amounts paid by such hospital providers if the payments to
30 hospitals required under section 13, and amendments thereto, are
31 changed or are not eligible for federal matching funds under title XIX or
32 XXI of the federal social security act.

33 (b) The assessment imposed by section 2, and amendments thereto,
34 shall not take effect or shall cease to be imposed if the assessment is
35 determined to be an impermissible tax under title XIX of the federal social
36 security act. Moneys in the health care access improvement fund derived
37 from assessments imposed prior to such determination shall be disbursed
38 in accordance with section 13, and amendments thereto, to the extent
39 that federal matching is not reduced due to the impermissibility of the
40 assessments and any remaining moneys shall be refunded to hospital pro-
41 viders and health maintenance organizations in proportion to the amounts
42 paid by them.

43 Sec. 7. The department shall assess each health maintenance organ-

1 ization that has a medicaid managed care contract awarded by the state
2 and administered by the department an assessment fee that equals 5.9%
3 of non-medicare premiums collected by that health maintenance organ-
4 ization. The assessment shall be collected on a quarterly basis and cal-
5 culated by reference to information contained in the health maintenance
6 organization's statement filings for the previous state fiscal year.

7 Sec. 8. (a) The assessment imposed by section 7, and amendments
8 thereto, for any state fiscal year to which this statute applies shall be due
9 and payable in equal quarterly installments on, or on the state business
10 day nearest to, July 19, ~~October 19,~~ and January 18 ~~and April 19~~. No
11 installment payment of an assessment under this act shall be due and
12 payable, however, until after:

13 (1) The health maintenance organization receives written notice from
14 the department that the payment methodologies to ~~hospitals~~ **health**
15 **maintenance organizations** required under this act have been ap-
16 proved by the centers for medicare and medicaid services of the United
17 States department of health and human services and the state plan
18 amendment for the assessment imposed by section 7, and amendments
19 thereto, has been granted by the centers for medicare and medicaid serv-
20 ices of the United States department of health and human services; and

21 (2) the health maintenance organization has received ~~the payments~~
22 ~~required to be paid to it under this act~~ **payments for two quarters after**
23 **the effective date of the payment methodology approved by the**
24 **centers for medicare and medicaid services.**

25 (b) The department is authorized to establish delayed payment
26 schedules for health maintenance organizations that are unable to make
27 installment payments when due under this section due to financial diffi-
28 culties, as determined by the department.

29 (c) If a health maintenance organization fails to pay the full amount
30 of an installment when due, including any extensions of time for delayed
31 payment granted under this section, there shall be added to the assess-
32 ment imposed by section 7, and amendments thereto, unless waived by
33 the department for reasonable cause, a penalty assessment equal to the
34 lesser of:

35 (1) An amount equal to 5% of the installment amount not paid on or
36 before the due date plus 5% of the portion thereof remaining unpaid on
37 the last day of each month thereafter; or

38 (2) an amount equal to 100% of the installment amount not paid on
39 or before the due date.

40 For purposes of this subsection (c), payments shall be credited first to
41 unpaid installment amounts, rather than to penalty or interest amounts,
42 beginning with the most delinquent installment.

43 Sec. 9. (a) After December 31 of each year, except as otherwise pro-

1 vided in this subsection, and on or before March 31 of the succeeding
2 year, the department shall send a notice of assessment to every health
3 maintenance organization subject to assessment under this act.

4 (b) The health maintenance organization notice of assessment shall
5 notify the health maintenance organization of its assessment for the state
6 fiscal year commencing on the next July 1.

7 (c) If a health maintenance organization operates, conducts or main-
8 tains more than one health maintenance organization in the state, the
9 health maintenance organization shall pay the assessment for each health
10 maintenance organization separately.

11 (d) Notwithstanding any other provision in this act, in the case of a
12 person who ceases to operate, conduct or maintain a health maintenance
13 organization in respect of which the person is subject to assessment in
14 section 7, and amendments thereto, as a health maintenance organization,
15 the assessment for the state fiscal year in which the cessation occurs shall
16 be adjusted by multiplying the assessment computed under section 7, and
17 amendments thereto, by a fraction, the numerator of which is the number
18 of days during the year during which the health maintenance organization
19 operates, conducts or maintains a health maintenance organization and
20 the denominator of which is 365. Immediately upon ceasing to operate,
21 conduct or maintain a health maintenance organization, the person shall
22 pay the adjusted assessment for the state fiscal year, to the extent not
23 previously paid.

24 (e) Notwithstanding any other provision in this act, a person who
25 commences operating, conducting or maintaining a health maintenance
26 organization shall pay the assessment computed under section 7, and
27 amendments thereto, in installments on the due dates stated in the notice
28 and on the regular installment due dates for the state fiscal year occurring
29 after the due dates of the initial notice.

30 Sec. 10. (a) The assessment imposed by section 7, and amendments
31 thereto, shall not take effect or shall cease to be imposed and any moneys
32 remaining in the fund shall be refunded to health maintenance organi-
33 zations in proportion to the amounts paid by such health maintenance
34 organizations if the payments to health maintenance organizations re-
35 quired under section 9, and amendments thereto, are changed or are not
36 eligible for federal matching funds under title XIX or XXI of the federal
37 social security act.

38 (b) The assessment imposed by section 7, and amendments thereto,
39 shall not take effect or shall cease to be imposed if the assessment is
40 determined to be an impermissible tax under title XIX of the federal social
41 security act. Moneys in the health care access improvement fund derived
42 from assessments imposed prior thereto shall be disbursed in accordance
43 with section 13, and amendments thereto, to the extent that federal

1 matching is not reduced due to the impermissibility of the assessments
2 and any remaining moneys shall be refunded to health maintenance or-
3 ganizations in proportion to the amounts paid by such health maintenance
4 organizations.

5 Sec. 11. To the extent practicable, the department shall administer
6 and enforce this act and collect the assessments, interest and penalty
7 assessments imposed under this act using procedures generally employed
8 in the administration of the department's other powers, duties and
9 functions.

10 Sec. 12. (a) There is hereby created in the state treasury the health
11 care access improvement fund, which shall be administered by the sec-
12 retary of social and rehabilitation services. All expenditures from the
13 health care access improvement fund shall be made in accordance with
14 appropriation acts upon warrants of the director of accounts and reports
15 issued pursuant to vouchers approved by the secretary of social and re-
16 habilitation services or the secretary's designee. **Notwithstanding the**
17 **provisions of any other statute, the cash management fee for serv-**
18 **ices provided by the state treasurer for banking services and for**
19 **processing warrants and direct deposits, or any other fee fixed,**
20 **charged or collected by the state treasurer for recovery of all or**
21 **part of the operating expenditures incurred by the state treasurer**
22 **in providing such services, shall not apply to services or processing**
23 **provided for warrants payable from the health care access im-**
24 **provement fund.**

25 (b) The fund shall not be used to replace any moneys appropriated
26 by the legislature for the department's medicaid program.

27 (c) The fund is created for the purpose of receiving moneys in ac-
28 cordance with this act and disbursing moneys only for the purposes of
29 improving health care delivery and related health activities as specified
30 and provided by section 13, and amendments thereto, notwithstanding
31 any other provision of law.

32 (d) 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 health care
34 access improvement fund interest earnings based on:

35 (1) The average daily balance of moneys in the health care access
36 improvement fund for the preceding month; and

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

39 (e) The fund shall consist of the following:

40 (1) All moneys collected or received by the department from the
41 hospital provider assessment and the health maintenance organization
42 assessment imposed by this act;

43 ~~(2) all federal matching funds received by the department as a result~~

1 ~~of expenditures made by the department that are attributable to moneys~~
2 ~~deposited in the fund;~~

3 ~~—(3) (2) any interest or penalty levied in conjunction with the admin-~~
4 ~~istration of this act; and~~

5 ~~(4) (3) all other moneys received for the fund from any other source.~~

6 Sec. 13. The proceeds of the hospital provider assessment imposed
7 by section 2, and amendments thereto, and the proceeds of the health
8 maintenance organization assessment imposed by section 7, and amend-
9 ments thereto, shall be disbursed for the following purposes and in ac-
10 cordance with and subject to the following:

11 (a) Of the proceeds of the hospital provider assessment credited to
12 the fund:

13 (1) Not less than 80% of hospital provider assessment revenues shall
14 be disbursed to hospital providers through a combination of medicaid
15 access improvement payments and increased medicaid rates on desig-
16 nated diagnostic-related groupings, procedures or codes;

17 (2) not more than 20% of hospital provider assessment revenues shall
18 be disbursed to providers who are persons licensed to practice medicine
19 and surgery or dentistry through increased medicaid rates on designated
20 procedures and codes; and

21 (3) not more than 3.2% of hospital provider assessment revenues shall
22 be used to fund graduate medical education.

23 (b) Of the proceeds of the health maintenance organization assess-
24 ment credited to the fund:

25 (1) Not less than 53% of health maintenance organization assessment
26 revenues shall be disbursed to health maintenance organizations that have
27 a contract with the department through increased medicaid rates;

28 (2) not more than 30% of health maintenance organization assess-
29 ment revenues shall be disbursed to fund medicaid eligible health care
30 clinics, ~~dental care expansion for indigent health care clinics or graduate~~
31 ~~medical education activities to increase access to dental care, pri-~~
32 **mary care safety net clinics, increased medicaid rates on desig-**
33 **nated procedures and codes for providers who are persons li-**
34 **censed to practice dentistry, and home and community-based**
35 **services;**

36 (3) not more than 17% of health maintenance organization assess-
37 ment revenues shall be disbursed to pharmacy providers through in-
38 creased medicaid rates.

39 Sec. 14. There is hereby established the health care access improve-
40 ment advisory panel for the purposes of administering and selecting the
41 disbursements described in section 13, and amendments thereto. The
42 panel shall be appointed as follows: Three members appointed by the
43 Kansas hospital association, two members appointed by the secretary of

1 social and rehabilitation services, two members appointed by the Kansas
2 medical society, one member appointed by each health maintenance or-
3 ganization that has a medicaid managed care contract with the depart-
4 ment of social and rehabilitation services, one member appointed by the
5 Kansas pharmacy association, **one member appointed by the Kansas**
6 **association for the medically underserved**, and one member ap-
7 pointed by the governor. The panel shall make an annual report to the
8 legislature regarding the collection and distribution of all funds received
9 and distributed by this act.

10 Sec. 15. The department of social and rehabilitation services shall not
11 agree to any federal medicaid waiver where the federal government, as a
12 condition of granting the waiver, requires the state of Kansas to agree to
13 any limit on the normal federal cost share in the medicaid program where
14 the state expenditures are not comparably restricted.

15 Sec. 16. The secretary of social and rehabilitation services may adopt
16 rules and regulations necessary to implement this act.

17 Sec. 17. This act shall take effect and be in force from and after its
18 publication in the Kansas register.