

HOUSE BILL No. 2726

By Committee on Federal and State Affairs

3-3

9 AN ACT providing for assessments on providers of certain home and
10 community-based services; prescribing powers, duties and functions
11 for the Kansas health policy authority; creating the waiver provider fee
12 fund; providing for implementation and administration.
13

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

15 Section 1. (a) As used in this section, and amendments thereto, un-
16 less the context requires otherwise:

17 (1) "Entity" means individual, corporation, partnership, limited lia-
18 bility company, joint venture or other legal entity.

19 (2) "Waiver program" means a home and community-based services
20 waiver program for the physically disabled, developmentally disabled,
21 traumatic brain injured and frail elderly.

22 (3) "Waiver provider" means an entity which provides services to 10
23 or more recipients as part of a waiver program.

24 (4) "Authority" means the Kansas health policy authority.

25 (b) (1) Except as otherwise provided in this section and in subsection
26 (f), there is hereby imposed and the authority shall assess an annual as-
27 sessment, hereinafter called a waiver provider fee, on July 1 of each year,
28 on each waiver provider imposed at a rate of 3% of the gross revenues of
29 the waiver provider received from providing services as part of a waiver
30 program during the calendar year preceding the date of the assessment.
31 The waiver provider fee shall be used to finance initiatives designed to
32 maintain or improve the quantity and quality of services provided by the
33 waiver programs. No rules and regulations of the authority shall grant any
34 exception to or exemption from the waiver provider fee.

35 (2) The payment of the waiver provider fee to the authority shall be
36 an allowable cost for medicaid and waiver program reimbursement pur-
37 poses. A rate adjustment pursuant to paragraph (5) of subsection (d) shall
38 be made effective on the date of imposition of the assessment, to reim-
39 burse the portion of this cost imposed on medicaid days.

40 (c) Each waiver provider shall prepare and submit to the authority
41 any additional information required and requested by the authority to
42 implement or administer the provisions of this section.

43 (d) (1) There is hereby created in the state treasury the waiver pro-

1 vider fee fund, which shall be administered by the authority. All moneys
2 received for the assessments imposed pursuant to subsection (b), includ-
3 ing any penalty assessments imposed thereon pursuant to subsection (e),
4 shall be remitted to the state treasurer in accordance with K.S.A. 75-
5 4215, and amendments thereto. Upon receipt of each such remittance,
6 the state treasurer shall deposit the entire amount in the state treasury
7 to the credit of the waiver provider fee fund. All expenditures from the
8 fund shall be made in accordance with appropriation acts upon warrants
9 of the director of accounts and reports issued pursuant to vouchers ap-
10 proved by the authority or the authority's designee.

11 (2) All moneys in the waiver provider fee fund shall be used to finance
12 initiatives to maintain or improve the quantity and quality of services
13 provided by waiver programs. No moneys credited to the waiver provider
14 fee fund shall be transferred to or otherwise revert to the state general
15 fund at any time. Notwithstanding the provisions of any other law to the
16 contrary, if any moneys credited to the waiver provider fee fund are trans-
17 ferred or otherwise revert to the state general fund, 30 days following the
18 transfer or reversion waiver provider fee shall terminate and the authority
19 shall discontinue the imposition, assessment and collection of the fee.
20 Upon termination of the fee, all collected assessment revenues, including
21 any moneys transferred or otherwise reverting to the state general fund
22 which resulted in the termination of the fee, less any amounts expended
23 by the authority, shall be returned on a pro rata basis to waiver providers
24 who paid the fee.

25 (3) Any moneys received by the state of Kansas from the federal gov-
26 ernment as a result of federal financial participation in the state waiver
27 program that are derived from the waiver provider fee shall be used to
28 maintain or improve the quantity and quality of services provided by the
29 waiver programs.

30 (4) Moneys in the fund shall be used exclusively for the following
31 purposes:

32 (A) To pay administrative expenses incurred by the authority or its
33 agent in performing the activities authorized by this section, except that
34 such expenses shall not exceed a total of 1% of the aggregate assessment
35 fees collected for the prior calendar year;

36 (B) to increase waiver provider payments to fund covered services to
37 recipients within waiver program upper payment limits, as may be
38 negotiated;

39 (C) to reimburse the waiver program share of the waiver provider fee
40 assessment as a pass-through allowable cost;

41 (D) to restore the rate reductions implemented January 1, 2010;

42 (E) to restore funding for fiscal year 2010, including re-basing and
43 inflation;

1 (F) The remaining amount, if any, shall be expended for quality en-
2 hancement of waiver programs but shall not be used directly or indirectly
3 to replace existing state expenditures for payments to waiver programs
4 for services.

5 (5) Of the amount allocated pursuant to this subsection to increase
6 or supplement the rates paid to waiver providers for providing services
7 for the waiver program, a rate adjustment shall first be made to reimburse
8 the portion of the assessment imposed.

9 (6) Adjustment payments shall be paid on a quarterly basis to reim-
10 burse covered waiver program expenditures in the aggregate within the
11 upper payment limit.

12 (7) On or before the 10th day of each month, the director of accounts
13 and reports shall transfer from the state general fund to the waiver pro-
14 vider fee fund interest earnings based on:

15 (A) The average daily balance of moneys in the fund for the preceding
16 month; and

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

19 (e) If a waiver provider fails to pay the full amount of the waiver
20 provider fee imposed pursuant to subsection (b), when due and payable,
21 including any extensions of time granted under that subsection, the au-
22 thority shall assess a penalty in the amount of the lesser of \$500 per day
23 or 2% of the fee owed for the current fiscal year.

24 (f) (1) The authority shall assess and collect waiver provider fees im-
25 posed pursuant to subsection (b), including any penalty assessments im-
26 posed thereon pursuant to subsection (e), from waiver providers on and
27 after July 1, 2010, except that no fees or penalties shall be assessed under
28 subsections (a) through (f) until:

29 (A) An amendment to the state plan for the waiver programs, which
30 increases the rates of payments made to the waiver providers for provid-
31 ing services pursuant to the waiver program and which is proposed for
32 approval for purposes of subsections (a) through (f) is approved by the
33 federal government; and

34 (B) the waiver providers have been compensated retroactively at the
35 increased rate for services provided pursuant to the waiver program for
36 the period commencing on and after July 1, 2010.

37 (2) The authority shall implement and administer the provisions of
38 subsections (a) through (f) in a manner consistent with applicable federal
39 laws and regulations. The authority shall seek any necessary approvals by
40 the federal government that are required for the implementation of sub-
41 sections (a) through (f).

42 (3) The provisions of subsections (a) through (f) shall be null and void
43 and shall have no force and effect if either of the following occur:

- 1 (A) The medicaid plan amendment or an amendment to the waiver
2 programs, or both, as appropriate, which increases the rates of payments
3 made to waiver providers for providing services pursuant to the waiver
4 programs and which is proposed for approval for purposes of subsections
5 (a) through (f) is not approved by the federal centers for medicare and
6 medicaid services; or
- 7 (B) the rates of payments made to waiver providers for providing
8 services pursuant to the waiver program are reduced below the rates
9 calculated on June 30, 2010, increased by revenues in the waiver provider
10 fee fund and matched by federal financial participation.
- 11 (g) If the provisions of subsections (a) through (f) are repealed, expire
12 or become null and void and have no further force and effect, all moneys
13 in the waiver provider fee fund which were paid under the provisions of
14 subsections (a) through (f) shall be returned to the waiver provider which
15 paid such moneys on the basis on which such payments were assessed
16 and paid pursuant to subsections (a) through (f).
- 17 (h) The authority may adopt rules and regulations necessary to im-
18 plement the provisions of this section.
- 19 (i) For purposes of administering and selecting the reimbursements
20 of moneys in the waiver provider fee fund, the waiver provider services
21 improvement panel is hereby established. The panel shall consist of the
22 following members: One person appointed by the governor from each of
23 the waiver programs covered by this act; one person appointed by the
24 Kansas foundation for medical care; one person appointed by the gov-
25 ernor from the department on aging; and one person appointed by the
26 governor from the Kansas health policy authority. The panel shall meet
27 as soon as possible subsequent to the effective date of this act and shall
28 elect a chairperson from among the members appointed by the governor
29 from the waiver programs. The members of the panel shall serve without
30 compensation or expenses. The panel shall report annually on or before
31 January 10 to the legislature concerning the activities of the panel during
32 the preceding calendar year and any recommendations which the panel
33 may have concerning the administration of and expenditures from the
34 waiver provider fee fund.
- 35 (j) The authority shall certify to the director of the budget of the
36 department of administration the date upon which the provisions of this
37 section are implemented. The provisions of this section shall expire four
38 years subsequent to the implementation of this section.
- 39 Sec. 2. This act shall take effect and be in force from and after its
40 publication in the Kansas register.