

## SENATE BILL No. 546

By Committee on Ways and Means

2-15

---

9 AN ACT providing for assessments on certain nursing facilities; prescrib-  
10 ing powers, duties and functions for the Kansas health policy authority;  
11 creating the quality care assessment fund; providing for implementa-  
12 tion 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) Words and phrases have the meanings respectively ascribed  
18 thereto by K.S.A. 39-923 and amendments thereto.

19 (2) "Skilled nursing care facility" means a licensed nursing facility  
20 providing skilled nursing care but shall not include the following: Skilled  
21 nursing care facilities which are waived from paying the assessment, the  
22 Kansas soldiers' home and the Kansas veterans' home.

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

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

26 (b) (1) Except as otherwise provided in this section and in subsection  
27 (f), there is hereby imposed and the authority shall assess an annual,  
28 uniform assessment per licensed bed, hereinafter called a quality care  
29 assessment, on each skilled nursing care facility. The assessment on all  
30 facilities in the aggregate shall be an amount fixed by rules and regulations  
31 of the authority, shall not exceed the maximum percentage of nursing  
32 facility inpatient revenues allowed under federal law and shall be imposed  
33 as an amount per licensed bed. No rules and regulations of the authority  
34 shall grant any exception to or exemption from the quality care assess-  
35 ment. The assessment shall be paid quarterly, with one fourth of the  
36 annual amount due by the 30th day after the end of the month of each  
37 calendar quarter. The assessment made for years subsequent to the third  
38 year from the date the provisions of this section are implemented shall  
39 not exceed 60% of the first assessment made under this section.

40 (2) Beds licensed after July 1 each year shall pay a prorated amount  
41 of the applicable annual assessment so that the assessment applies only  
42 for the days such new beds are licensed. The proration shall be calculated  
43 by multiplying the applicable assessment by the percentage of days the

1 beds are licensed during the year. Any change which reduces the number  
2 of licensed beds in a facility shall not result in a refund being issued to  
3 the skilled nursing facility.

4 (3) If an entity conducts, operates or maintains more than one li-  
5 censed skilled nursing care facility, the entity shall pay the nursing facility  
6 assessment for each facility separately. No skilled nursing care facility shall  
7 create a separate line-item charge for the purpose of passing through the  
8 quality care assessment to residents. No skilled nursing care facility shall  
9 be guaranteed, expressly or otherwise, that any additional moneys paid to  
10 the facility under this section will equal or exceed the amount of its quality  
11 care assessment.

12 (4) The payment of the quality care assessment to the authority shall  
13 be an allowable cost for medicaid reimbursement purposes. A rate ad-  
14 justment pursuant to paragraph (5) of subsection (d) shall be made ef-  
15 fective on the date of imposition of the assessment, to reimburse the  
16 portion of this cost imposed on medicaid days.

17 (c) Each skilled nursing care facility shall prepare and submit to the  
18 authority any additional information required and requested by the au-  
19 thority to implement or administer the provisions of this section.

20 (d) (1) There is hereby created in the state treasury the quality care  
21 fund, which shall be administered by the authority. All moneys received  
22 for the assessments imposed pursuant to subsection (b), including any  
23 penalty assessments imposed thereon pursuant to subsection (e), shall be  
24 remitted to the state treasurer in accordance with K.S.A. 75-4215, and  
25 amendments thereto. Upon receipt of each such remittance, the state  
26 treasurer shall deposit the entire amount in the state treasury to the credit  
27 of the quality care fund. All expenditures from the quality care fund shall  
28 be made in accordance with appropriation acts upon warrants of the di-  
29 rector of accounts and reports issued pursuant to vouchers approved by  
30 the authority or the authority's designee.

31 (2) All moneys in the quality care fund shall be used to finance ini-  
32 tiatives to maintain or improve the quantity and quality of skilled nursing  
33 care in skilled nursing care facilities in Kansas. No moneys credited to  
34 the quality care fund shall be transferred to or otherwise revert to the  
35 state general fund at any time. Notwithstanding the provisions of any  
36 other law to the contrary, if any moneys credited to the quality care fund  
37 are transferred or otherwise revert to the state general fund, 30 days  
38 following the transfer or reversion the quality care assessment shall ter-  
39 minate and the authority shall discontinue the imposition, assessment and  
40 collection of the assessment. Upon termination of the assessment, all col-  
41 lected assessment revenues, including the moneys inappropriately trans-  
42 ferred or reverting to the state general fund, less any amounts expended  
43 by the authority, shall be returned on a pro rata basis to skilled nursing

1 care facilities that paid the assessment.

2 (3) Any moneys received by the state of Kansas from the federal gov-  
3 ernment as a result of federal financial participation in the state medicaid  
4 program that are derived from the quality care assessment shall be used  
5 to finance actions to maintain or increase healthcare in skilled nursing  
6 care facilities.

7 (4) Moneys in the fund shall be used exclusively for the following  
8 purposes:

9 (A) To pay administrative expenses incurred by the authority or its  
10 agent in performing the activities authorized by this section, except that  
11 such expenses shall not exceed a total of 1% of the aggregate assessment  
12 funds collected for the prior fiscal year;

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

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

18 (D) to restore the medicaid rate reductions implemented January 1,  
19 2010;

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

22 (F) The remaining amount, if any, shall be expended for quality en-  
23 hancement of skilled nursing care facilities but shall not be used directly  
24 or indirectly to replace existing state expenditures for payments to skilled  
25 nursing care facilities for providing services pursuant to the state medicaid  
26 program.

27 (5) Of the amount allocated pursuant to this subsection to increase  
28 or supplement the rates paid to skilled nursing care facilities for providing  
29 services pursuant to the state medicaid program, a rate adjustment shall  
30 first be made to reimburse the portion of the assessment imposed.

31 (6) Adjustment payments shall be paid on a quarterly basis to reim-  
32 burse covered medicaid expenditures in the aggregate within the upper  
33 payment limit.

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

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

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

41 (e) If a skilled nursing care facility fails to pay the full amount of the  
42 quality care assessment imposed pursuant to subsection (b), when due  
43 and payable, including any extensions of time granted under that subsec-

1 tion, the authority shall assess a penalty in the amount of the lesser of  
2 \$500 per day or 2% of the quality care assessment owed for each day the  
3 assessment is delinquent.

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

9 (A) An amendment to the state plan for medicaid, which increases  
10 the rates of payments made to skilled nursing care facilities for providing  
11 services pursuant to the federal medicaid program and which is proposed  
12 for approval for purposes of subsections (a) through (f) is approved by  
13 the federal government; and

14 (B) the skilled nursing care facilities have been compensated retro-  
15 actively at the increased rate for services provided pursuant to the federal  
16 medicaid program for the period commencing on and after July 1, 2010.

17 (2) The authority shall implement and administer the provisions of  
18 subsections (a) through (f) in a manner consistent with applicable federal  
19 medicaid laws and regulations. The authority shall seek any necessary  
20 approvals by the federal government that are required for the implemen-  
21 tation of subsections (a) through (f).

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

24 (A) The medicaid plan amendment, which increases the rates of pay-  
25 ments made to skilled nursing care facilities for providing services pur-  
26 suant to the federal medicaid program and which is proposed for approval  
27 for purposes of subsections (a) through (f) is not approved by the federal  
28 centers for medicare and medicaid services; or

29 (B) the rates of payments made to skilled nursing care facilities for  
30 providing services pursuant to the federal medicaid program are reduced  
31 below the rates calculated on June 30, 2010, increased by revenues in the  
32 quality care fund and matched by federal financial participation and re-  
33 basing as provided for in K.S.A. 2009 Supp. 75-5958, and amendments  
34 thereto.

35 (g) If the provisions of subsections (a) through (f) are repealed, expire  
36 or become null and void and have no further force and effect, all moneys  
37 in the quality care fund which were paid under the provisions of subsec-  
38 tions (a) through (f) shall be returned to the skilled nursing care facilities  
39 which paid such moneys on the basis on which such payments were as-  
40 sessed and paid pursuant to subsections (a) through (f).

41 (h) The authority may adopt rules and regulations necessary to im-  
42 plement the provisions of this section.

43 (i) For purposes of administering and selecting the reimbursements

1 of moneys in the quality care assessment fund, the quality care improve-  
2 ment panel is hereby established. The panel shall consist of the following  
3 members: Two persons appointed by Kansas homes and services for the  
4 aging; two persons appointed by the Kansas health care association; one  
5 person appointed by Kansas advocates for better care; one person ap-  
6 pointed by the governor who is an executive of a Kansas adult care home  
7 not affiliated with any of the trade organizations specified in this subsec-  
8 tion; one person appointed by the Kansas foundation for medical care;  
9 one person appointed by the governor from the department on aging;  
10 and one person appointed by the governor from the Kansas health policy  
11 authority. The panel shall meet as soon as possible subsequent to the  
12 effective date of this act and shall elect a chairperson from among the  
13 members appointed by the trade organizations specified in this subsec-  
14 tion. The members of the quality care improvement panel shall serve  
15 without compensation or expenses. The quality care improvement panel  
16 shall report annually on or before January 10 to the legislature concerning  
17 the activities of the panel during the preceding calendar year and any  
18 recommendations which the panel may have concerning the administra-  
19 tion of and expenditures from the quality care assessment fund.

20 (j) The authority shall certify to the director of the budget of the  
21 department of administration the date upon which the provisions of this  
22 section are implemented. The provisions of this section shall expire four  
23 years subsequent to the implementation of this section.

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