

## CHAPTER 89

SENATE Substitute for HOUSE BILL No. 2912°  
(Amended by Chapter 141)

AN ACT providing for assessments on certain hospital providers and health maintenance organizations; creating the health care access improvement fund; establishing the health care access improvement panel; providing for administration.

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

Section 1. As used in sections 1 to 14, inclusive, and amendments thereto, the following have the meaning respectively ascribed thereto, unless the context requires otherwise:

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

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

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

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

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

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

(g) "Assessment revenues" means the revenues generated directly by the assessments imposed by section 2 and section 7, and amendments thereto, any penalty assessments and all interest credited to the fund under this act, and any federal matching funds obtained through the use of such assessments, penalties and interest amounts.

Sec. 2. (a) Subject to the provisions of section 3, and amendments thereto, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to 1.83% of each hospital's net inpatient operating revenue for the hospital's fiscal year 2001. In the event that a hospital does not have a complete twelve-month 2001 fiscal year, the assessment under this section shall be \$200,000 until such date that such hospital has completed the hospital's first twelve-month fiscal year. Upon completing such first twelve-month fiscal year, such hospital's assessment under this section shall be the amount equal to 1.83% of such hospital's net operating revenue for such first completed twelve-month fiscal year.

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

Sec. 3. (a) A hospital provider that is a state agency, the authority, as defined in K.S.A. 2003 Supp. 76-3304, and amendments thereto, a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or a critical access hospital, as defined in K.S.A. 65-468, and amendments thereto, is exempt from the assessment imposed by section 2, and amendments thereto.

(b) A hospital operated by the department in the course of performing its mental health or developmental disabilities functions is exempt from the assessment imposed by section 2, and amendments thereto.

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

(1) The hospital provider receives written notice from the department that the payment methodologies to hospitals required under this act have been approved by the centers for medicare and medicaid services of the United States department of health and human services under 42 C.F.R. 433.68 for the assessment imposed by section 2, and amendments thereto, has been granted by the centers for medicare and medicaid services of the United States department of health and human services; and

(2) in the case of a hospital provider, the hospital has received payments for two quarters after the effective date of the payment methodology approved by the centers for medicare and medicaid services.

(b) The department is authorized to establish delayed payment schedules for hospital providers that are unable to make installment payments when due under this section due to financial difficulties, as determined by the department.

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

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

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

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

Sec. 5. (a) After December 31 of each year, except as otherwise provided in this subsection, and on or before March 31 of the succeeding year, the department shall send a notice of assessment to every hospital provider subject to assessment under this act.

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

(c) If a hospital provider operates, conducts or maintains more than one licensed hospital in the state, the hospital provider shall pay the assessment for each hospital separately.

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

(e) Notwithstanding any other provision in this act, a person who commences operating, conducting or maintaining a hospital shall pay the assessment computed under subsection (a) of section 2, and amendments thereto, in installments on the due dates stated in the notice and on the regular installment due dates for the state fiscal year occurring after the due dates of the initial notice.

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

Sec. 7. The department shall assess each health maintenance organization that has a medicaid managed care contract awarded by the state and administered by the department an assessment fee that equals 5.9% of nonmedicare premiums collected by that health maintenance organization. The assessment shall be calculated by reference to information contained in the health maintenance organization's statement filings for the previous state fiscal year.

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

(1) The health maintenance organization receives written notice from the department that the payment methodologies to health maintenance organizations required under this act have been approved by the centers for medicare and medicaid services of the United States department of health and human services and the state plan amendment for the assess-

ment imposed by section 7, and amendments thereto, has been granted by the centers for medicare and medicaid services of the United States department of health and human services; and

(2) the health maintenance organization has received payments for two quarters after the effective date of the payment methodology approved by the centers for medicare and medicaid services.

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

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

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

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

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

Sec. 9. (a) After December 31 of each year, except as otherwise provided in this subsection, and on or before March 31 of the succeeding year, the department shall send a notice of assessment to every health maintenance organization subject to assessment under this act.

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

(c) If a health maintenance organization operates, conducts or maintains more than one health maintenance organization in the state, the health maintenance organization shall pay the assessment for each health maintenance organization separately.

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

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

Sec. 10. (a) The assessment imposed by section 7, and amendments thereto, shall not take effect or shall cease to be imposed and any moneys remaining in the fund attributable to the assessment imposed by section 7, and amendments thereto, shall be refunded to health maintenance organizations in proportion to the amounts paid by such health maintenance organizations if the payments to health maintenance organizations required under subsection (b) of section 13, and amendments thereto, are changed or are not eligible for federal matching funds under title XIX or XXI of the federal social security act.

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

that federal matching is not reduced due to the impermissibility of the assessments and any remaining moneys shall be refunded to health maintenance organizations in proportion to the amounts paid by such health maintenance organizations.

Sec. 11. (a) There is hereby created in the state treasury the health care access improvement fund, which shall be administered by the secretary of social and rehabilitation services. All moneys received for the assessments imposed by section 2 and section 7, and amendments thereto, including any penalty assessments imposed thereon, shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the health care access improvement fund. All expenditures from the health care access improvement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of social and rehabilitation services or the secretary's designee.

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

(c) The fund is created for the purpose of receiving moneys in accordance with this act and disbursing moneys only for the purpose of improving health care delivery and related health activities, notwithstanding any other provision of law.

(d) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the health care access improvement fund interest earnings based on:

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

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

(e) The fund shall consist of the following:

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

(2) any interest or penalty levied in conjunction with the administration of this act; and

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

Sec. 12. (a) The assessment imposed by section 2, and amendments thereto, shall not take effect or shall cease to be imposed and any moneys remaining in the fund attributable to assessments imposed under section 2, and amendments thereto, shall be refunded to hospital providers in proportion to the amounts paid by them if the payments to hospitals required under subsection (a) of section 13, and amendments thereto, are changed or are not eligible for federal matching funds under title XIX or XXI of the federal social security act.

(b) The assessment imposed by section 2, and amendments thereto, shall not take effect or shall cease to be imposed if the assessment is determined to be an impermissible tax under title XIX of the federal social security act. Moneys in the health care access improvement fund derived from assessments imposed prior thereto shall be disbursed in accordance with subsection (a) of section 13, and amendments thereto, to the extent that federal matching is not reduced due to the impermissibility of the assessments and any remaining moneys shall be refunded to hospital providers in proportion to the amounts paid by them.

Sec. 13. (a) Assessment revenues generated from the hospital provider assessments shall be disbursed as follows:

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

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

(3) not more than 3.2% of hospital provider assessment revenues shall be used to fund health care access improvement programs in undergraduate, graduate or continuing medical education, including the medical student loan act.

(b) Assessment revenues generated from the health maintenance or-

ganization assessment shall be disbursed as follows:

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

(2) not more than 30% of health maintenance organization assessment revenues shall be disbursed to fund activities to increase access to dental care, primary care safety net clinics, increased medicaid rates on designated procedures and codes for providers who are persons licensed to practice dentistry, and home and community-based services;

(3) not more than 17% of health maintenance organization assessment revenues shall be disbursed to pharmacy providers through increased medicaid rates.

(c) For the purposes of administering and selecting the disbursements described in subsections (a) and (b) of this section, the health care access improvement panel is hereby established. The panel shall consist of the following: Three members appointed by the Kansas hospital association, two members who are persons licensed to practice medicine and surgery appointed by the Kansas medical society, one member appointed by each health maintenance organization that has a medicaid managed care contract with the department of social and rehabilitation services, one member appointed by the Kansas association for the medically underserved, and one representative of the department of social and rehabilitation services appointed by the governor. The panel shall meet as soon as possible subsequent to the effective date of this act and shall elect a chairperson from among the members appointed by the Kansas hospital association. A representative of the panel shall be required to make an annual report to the legislature regarding the collection and distribution of all funds received and distributed under this act.

Sec. 14. The secretary of social and rehabilitation services with the advice and subject to the approval of the health care access improvement panel may adopt rules and regulations necessary to implement this act.

Sec. 15. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 14, 2004.

Published in the *Kansas Register* April 22, 2004.

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