

## HOUSE BILL No. 2160

By Committee on Appropriations

1-30

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1 AN ACT concerning quality care assessment on skilled nursing care  
2 facilities; amending K.S.A. 2012 Supp. 75-7435 and repealing the  
3 existing section.  
4

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

6 Section 1. K.S.A. 2012 Supp. 75-7435 is hereby amended to read as  
7 follows: 75-7435. (a) As used in this section, ~~and amendments thereto,~~  
8 unless the context requires otherwise:

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

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

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

18 (4) "Agent" means the Kansas department ~~on aging for aging and~~  
19 *disability services.*

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

23 (b) (1) Except as otherwise provided in this section and in subsection  
24 (f), there is hereby imposed and the secretary of health and environment  
25 shall assess an annual assessment per licensed bed, hereinafter called a  
26 quality care assessment, on each skilled nursing care facility. The  
27 assessment on all facilities in the aggregate shall be an amount fixed by  
28 rules and regulations of the secretary of health and environment, shall not  
29 exceed \$1,950 annually per licensed bed, shall be imposed as an amount  
30 per licensed bed and shall be imposed uniformly on all skilled nursing care  
31 facilities except that the assessment rate for skilled nursing care facilities  
32 that are part of a continuing care retirement facility, small skilled nursing  
33 care facilities and high medicaid volume skilled nursing care facilities  
34 shall not exceed  $\frac{1}{6}$  of the actual amount assessed all other skilled nursing  
35 care facilities. No rules and regulations of the secretary of health and  
36 environment shall grant any exception to or exemption from the quality

1 care assessment. The assessment shall be paid quarterly, with one fourth of  
2 the annual amount due by the 30<sup>th</sup> day after the end of the month of each  
3 calendar quarter. The secretary of health and environment is authorized to  
4 establish delayed payment schedules for skilled nursing care facilities  
5 which are unable to make quarterly payments when due under this section  
6 due to financial difficulties, as determined by the secretary of health and  
7 environment. ~~The assessment made for years subsequent to the third year~~  
8 ~~from the date the provisions of this section are implemented shall not~~  
9 ~~exceed 60% of the first assessment made under this section.~~ As used in this  
10 subsection (b)(1), the terms "small skilled nursing care facilities" and  
11 "high medicaid volume skilled nursing care facilities" shall have the  
12 meanings ascribed thereto by the secretary of health and environment by  
13 rules and regulations, except that the definition of small skilled nursing  
14 care facility shall not be lower than 40 beds.

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

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

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

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

43 (c) Each skilled nursing care facility shall prepare and submit to the

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

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

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

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

40 (4) Moneys in the fund shall be used exclusively for the following  
41 purposes:

42 (A) To pay administrative expenses incurred by the secretary of  
43 health and environment or the agent in performing the activities authorized

1 by this section, except that such expenses shall not exceed a total of 1% of  
2 the aggregate assessment funds collected pursuant to subsection (b) for the  
3 prior fiscal year;

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

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

9 (D) to restore the medicaid rate reductions implemented January 1,  
10 2010;

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

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

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

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

29 (7) On or before the 10<sup>th</sup> day of each month, the director of accounts  
30 and reports shall transfer from the state general fund to the quality care  
31 fund interest earnings based on:

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

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

36 (e) If a skilled nursing care facility fails to pay the full amount of the  
37 quality care assessment imposed pursuant to subsection (b), when due and  
38 payable, including any extensions of time granted under that subsection,  
39 the secretary of health and environment shall assess a penalty in the  
40 amount of the lesser of \$500 per day or 2% of the quality care assessment  
41 owed for each day the assessment is delinquent. The secretary of health  
42 and environment is authorized to establish delayed payment schedules for  
43 skilled nursing care facilities that are unable to make installment payments

1 when due under this section because of financial difficulties, as determined  
2 by the secretary of health and environment.

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

9 (A) An amendment to the state plan for medicaid, which increases the  
10 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 (h) is approved by the  
13 federal government in which case the initial assessment is due no earlier  
14 than 60 days after state plan approval; and

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

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

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

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

32 (B) the rates of payments made to skilled nursing care facilities for  
33 providing services pursuant to the federal medicaid program are reduced  
34 below the rates calculated on December 31, 2009, increased by revenues in  
35 the quality care fund and matched by federal financial participation and  
36 rebasing as provided for in K.S.A. 2012 Supp. 75-5958, and amendments  
37 thereto;

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

40 (D) any funds are diverted from those purposes set forth in subsection  
41 (d)(4); or

42 (E) upon the governor signing, or allowing to become law without  
43 signature, legislation which by proviso or otherwise directs any funds from

1 those purposes set forth in subsection (d)(4) or which would propose to  
2 suspend the operation of this section.

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

9 (h) Rates of reimbursement shall not be limited by private pay  
10 charges.

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

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

19 (k) For purposes of administering and selecting the reimbursements  
20 of moneys in the quality care assessment fund, the quality care  
21 improvement panel is hereby established. The panel shall consist of the  
22 following members: Two persons appointed by Kansas homes and services  
23 for the aging; two persons appointed by the Kansas health care association;  
24 one person appointed by Kansas advocates for better care; one person  
25 appointed by the Kansas hospital association; one person appointed by the  
26 governor who is a member of the Kansas adult care executives association;  
27 one person appointed by the governor who is a skilled nursing care facility  
28 resident or the family member of such a resident; one person appointed by  
29 the Kansas foundation for medical care; one person appointed by the  
30 governor from the department ~~on aging~~ *for aging and disability services*;  
31 and one person appointed by the governor from the department of health  
32 and environment. The person appointed by the governor from the  
33 department ~~on aging~~ *for aging and disability services* and the person  
34 appointed by the governor from the department of health and environment  
35 shall be nonvoting members of the panel. The panel shall meet as soon as  
36 possible subsequent to the effective date of this act and shall elect a  
37 chairperson from among the members appointed by the trade organizations  
38 specified in this subsection. The members of the quality care improvement  
39 panel shall serve without compensation or expenses. The quality care  
40 improvement panel shall report annually on or before January 10 to ~~the~~  
41 ~~joint committee on health policy oversight~~ and the legislature concerning  
42 the activities of the panel during the preceding calendar year and any  
43 recommendations which the panel may have concerning the administration

1 of and expenditures from the quality care assessment fund.

2 (l) ~~The department of health and environment shall certify to the~~  
3 ~~director of the budget of the department of administration the date upon~~  
4 ~~which the provisions of this section are implemented.~~ The provisions of  
5 this section shall expire ~~four years subsequent to the implementation of~~  
6 ~~this section~~ *on July 1, 2016.*

7 Sec. 2. K.S.A. 2012 Supp. 75-7435 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its  
9 publication in the statute book.