

HOUSE BILL No. 2699

By Committee on Health and Human Services

2-11

1 AN ACT concerning skilled nursing care facilities; relating to the quality
2 care assessment; exempting facilities for which the secretary for aging
3 and disability services is appointed as receiver from such assessment;
4 amending K.S.A. 2021 Supp. 75-7435 and repealing the existing
5 section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2021 Supp. 75-7435 is hereby amended to read as
9 follows: 75-7435. (a) As used in this section, unless the context requires
10 otherwise:

11 (1) Words and phrases mean the same as defined by K.S.A. 39-923,
12 and amendments thereto.

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

19 (3) "Licensed bed" means those beds within a skilled nursing care
20 facility that the facility is licensed to operate.

21 (4) "Agent" means the Kansas department for aging and disability
22 services.

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

26 (b) (1) Except as otherwise provided in this section, there is hereby
27 imposed and the secretary of health and environment shall assess an
28 annual *quality care* assessment per licensed bed, ~~hereinafter called a~~
29 ~~quality care assessment~~, on each skilled nursing care facility. The
30 assessment on all facilities in the aggregate shall be an amount fixed by
31 rules and regulations of the secretary of health and environment, shall not
32 exceed \$4,908 annually per licensed bed, shall be imposed as an amount
33 per licensed bed and shall be imposed uniformly on all skilled nursing care
34 facilities except that the assessment rate for skilled nursing care facilities
35 that are part of a continuing care retirement facility, small skilled nursing
36 care facilities and high medicaid volume skilled nursing care facilities

1 shall not exceed $\frac{1}{6}$ of the actual amount assessed all other skilled nursing
2 care facilities. No rules and regulations of the secretary of health and
3 environment shall grant any exception to or exemption from the quality
4 care assessment. The assessment shall be paid quarterly, with ~~one fourth~~ $\frac{1}{4}$
5 of the annual amount due by the 30th day after the end of the month of each
6 calendar quarter. The secretary of health and environment is authorized to
7 establish delayed payment schedules for skilled nursing care facilities that
8 are unable to make quarterly payments when due under this section due to
9 financial difficulties, as determined by the secretary of health and
10 environment. As used in this paragraph, the terms "small skilled nursing
11 care facilities" and "high medicaid volume skilled nursing care facilities"
12 shall be defined by the secretary of health and environment by rules and
13 regulations, except that the definition of "small skilled nursing care
14 facility" shall not be fewer 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 that 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 subsection ~~(d)(5)~~
33 *(e)(5)* shall be made effective on the date of imposition of the assessment;
34 to reimburse the portion of ~~this~~ *the* cost imposed on medicaid days.

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

42 *(c) (1) If a district court appoints the secretary for aging and*
43 *disability services as the receiver of a skilled nursing care facility*

1 *pursuant to K.S.A. 39-954, and amendments thereto, such skilled nursing*
2 *care facility shall be exempt from imposition of the quality care*
3 *assessment during the period of time that the secretary for aging and*
4 *disability services serves as receiver of the skilled nursing care facility.*
5 *Such exemption shall commence on the date of the filing of the application*
6 *for receivership under K.S.A. 39-954, and amendments thereto, and shall*
7 *terminate on the date the secretary for aging and disability services is*
8 *removed as receiver of the skilled nursing care facility by the district court*
9 *by the earliest of:*

10 (A) *Dismissal of the receivership;*

11 (B) *entry of an order by the district court substituting a private*
12 *receiver in the place of the secretary for aging and disability services as*
13 *receiver of the skilled nursing care facility; or*

14 (C) *entry of an order by the district court approving the transfer of*
15 *operations of the skilled nursing care facility from the secretary for aging*
16 *and disability services as receiver to a new operator.*

17 (2) *After the exemption from the quality care assessment provided in*
18 *paragraph (1) terminates, the quality care assessment shall be assessed*
19 *and imposed against the new licensed owner, lessee, sublessee, manager*
20 *or operator of the skilled nursing care facility, commencing on the first*
21 *day following termination of the exemption.*

22 (3) *Any licensee that owned, leased, subleased, managed or operated*
23 *a skilled nursing care facility immediately prior to the filing of the*
24 *application for receivership shall be liable for the total amount of unpaid*
25 *quality care assessments, calculated pursuant to subsection (b), that are*
26 *due and owing to the department of health and environment or the*
27 *department's agent on the date the application for receivership was filed*
28 *pursuant to K.S.A. 39-954, and amendments thereto.*

29 ~~(e)~~(d) *Each skilled nursing care facility shall prepare and submit to*
30 *the secretary of health and environment any additional information*
31 *required and requested by the secretary of health and environment to*
32 *implement or administer the provisions of this section. Each skilled*
33 *nursing care facility shall prepare and submit quarterly to the secretary for*
34 *aging and disability services the rate the facility charges to private pay*
35 *residents, and the secretary shall cause this information to be posted on the*
36 *web site of the department for aging and disability services.*

37 ~~(d)~~(e) (1) *There is hereby created in the state treasury the quality care*
38 *fund to be administered by the secretary of health and environment. All*
39 *moneys received for the assessments imposed pursuant to subsection (b),*
40 *including any penalty assessments imposed thereon pursuant to subsection*
41 *~~(e)~~ (f), shall be remitted to the state treasurer in accordance with K.S.A.*
42 *75-4215, and amendments thereto. Upon receipt of each such remittance,*
43 *the state treasurer shall deposit the entire amount in the state treasury to*

1 the credit of the quality care fund. All expenditures from the quality care
2 fund shall be made in accordance with appropriation acts upon warrants of
3 the director of accounts and reports issued pursuant to vouchers approved
4 by the secretary of health and environment or the secretary's agent.

5 (2) All moneys in the quality care fund shall be used to finance
6 initiatives to maintain or improve the quantity and quality of skilled
7 nursing care in skilled nursing care facilities in Kansas. No moneys
8 credited to the quality care fund shall be transferred to or otherwise revert
9 to the state general fund at any time. Notwithstanding the provisions of
10 any other law to the contrary, if any moneys credited to the quality care
11 fund are transferred or otherwise revert to the state general fund, 30 days
12 following the transfer or reversion the quality care assessment shall
13 terminate and the secretary of health and environment shall discontinue the
14 imposition, assessment and collection of the assessment. Upon termination
15 of the assessment, all collected assessment revenues, including the moneys
16 inappropriately transferred or reverting to the state general fund, less any
17 amounts expended by the secretary of health and environment, shall be
18 returned on a pro rata basis to skilled nursing care facilities that paid the
19 assessment.

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

25 (4) Moneys in the fund shall be used exclusively for the following
26 purposes:

27 (A) To pay administrative expenses incurred by the secretary of
28 health and environment or the agent in performing the activities authorized
29 by this section, except that such expenses shall not exceed a total of 1% of
30 the aggregate assessment funds collected pursuant to subsection (b) for the
31 prior fiscal year;

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

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

37 (D) to restore the medicaid rate reductions implemented January 1,
38 2010;

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

41 (F) the remaining amount, if any, shall be expended first to increase
42 the direct health care costs center limitation up to 150% of the case mix
43 adjusted median, and then, if there are remaining amounts, for other

1 quality care enhancement of skilled nursing care facilities as approved by
2 the quality care improvement panel but shall not be used directly or
3 indirectly to replace existing state expenditures for payments to skilled
4 nursing care facilities for providing services pursuant to the state medicaid
5 program.

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

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

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

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

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

21 ~~(e)~~(f) If a skilled nursing care facility fails to pay the full amount of
22 the quality care assessment imposed pursuant to subsection (b), when due
23 and payable, including any extensions of time granted under that
24 subsection, the secretary of health and environment shall assess a penalty
25 in the amount of the lesser of \$500 per day or 2% of the quality care
26 assessment owed for each day the assessment is delinquent. The secretary
27 of health and environment is authorized to establish delayed payment
28 schedules for skilled nursing care facilities that are unable to make
29 installment payments when due under this section because of financial
30 difficulties, as determined by the secretary of health and environment.

31 ~~(f)~~~~(1)~~(g) The secretary of health and environment shall assess and
32 collect quality care assessments imposed pursuant to subsection (b),
33 including any penalty assessments imposed thereon pursuant to subsection
34 ~~(e)~~ (f), from skilled nursing care facilities ~~on and after July 1, 2010, except~~
35 ~~that no assessments or penalties shall be assessed under subsections (a)~~
36 ~~through (h) until:~~

37 ~~(A) An amendment to the state plan for medicaid that increases the~~
38 ~~rates of payments made to skilled nursing care facilities for providing~~
39 ~~services pursuant to the federal medicaid program and that is proposed for~~
40 ~~approval for purposes of subsections (a) through (h) is approved by the~~
41 ~~federal government, in which case the initial assessment is due not earlier~~
42 ~~than 60 days after state plan approval; and~~

43 ~~(B) the skilled nursing care facilities have been compensated~~

1 retroactively within 60 days after state plan approval at the increased rate
2 for services provided pursuant to the federal medicaid program for the
3 period commencing on and after July 1, 2010.

4 ~~(2) The secretary of health and environment shall implement and~~
5 ~~administer the provisions of subsections (a) through (h) in a manner~~
6 ~~consistent with applicable federal medicaid laws and regulations. The~~
7 ~~secretary of health and environment shall seek any necessary approvals by~~
8 ~~the federal government that are required for the implementation of~~
9 ~~subsections (a) through (h).~~

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

12 (A) The medicaid plan amendment that increases the rates of
13 payments made to skilled nursing care facilities for providing services
14 pursuant to the federal medicaid program and that is proposed for approval
15 for purposes of subsections (a) through (h) is not approved by the United
16 States centers for medicare and medicaid services;

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

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

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

26 (E) upon the governor signing, or allowing to become law without
27 signature, legislation that, by proviso or otherwise, directs any funds from
28 those purposes set forth in subsection (d)(4) or that would propose to
29 suspend the operation of this section.

30 (g) On and after July 1, 2010, reimbursement rates for skilled nursing
31 care facilities shall be restored to those in effect during December 2009.
32 No funds generated by the assessments or federal funds generated
33 therefrom shall be utilized for such restoration, but such funds may be
34 used to restore the rate reduction in effect from January 1, 2010, to June
35 30, 2010.

36 (h) Rates of reimbursement shall not be limited by private pay
37 charges.

38 (i) If the provisions of subsections (a) through (h) are repealed, expire
39 or become null and void and have no further force and effect, all moneys
40 in the quality care fund that were paid under the provisions of subsections
41 (a) through (h) shall be returned to the skilled nursing care facilities that
42 paid such moneys on the basis on which such payments were assessed and
43 paid pursuant to subsections (a) through (h).

1 (†) The department of health and environment may adopt rules and
2 regulations necessary to implement the provisions of this section.

3 ~~(†)(j)~~ (1) For purposes of administering and selecting the
4 reimbursements of moneys in the quality care assessment fund, the quality
5 care improvement panel is hereby established.

6 (2) The panel shall consist of the following members: Two persons
7 appointed by leadingage Kansas; two persons appointed by the Kansas
8 health care association; one person appointed by Kansas advocates for
9 better care; one person appointed by the Kansas hospital association; one
10 person appointed by the governor who is a member of the Kansas adult
11 care executives association; one person appointed by the governor who is a
12 skilled nursing care facility resident or the family member of such a
13 resident; one person appointed by the Kansas foundation for medical care;
14 one person appointed by the governor from the department for aging and
15 disability services; one person appointed by the governor from the
16 department of health and environment; one person appointed by the
17 president of the senate who is affiliated with an organization representing
18 and advocating the interests of retired persons in Kansas; and one person
19 appointed by the speaker of the house of representatives who is a volunteer
20 with the office of the state long-term care ombudsman established by the
21 long-term care ombudsman act.

22 (3) The person appointed by the governor from the *Kansas*
23 department for aging and disability services and the person appointed by
24 the governor from the department of health and environment shall be
25 nonvoting members of the panel.

26 ~~(4) The panel shall meet as soon as possible subsequent to the~~
27 ~~effective date of this act and shall~~ elect a chairperson from among the
28 members appointed by the trade organizations specified in this subsection.
29 The members of the quality care improvement panel shall serve without
30 compensation or expenses.

31 (5) The quality care improvement panel shall report annually on or
32 before January 10 to the senate committees on public health and welfare
33 and ways and means, the house of *representatives* committees on
34 appropriations and health and human services and the Robert G. (Bob)
35 Bethell joint committee on home and community based services and
36 KanCare oversight concerning the progress to reduce the incidence of
37 antipsychotic drug use in elders with dementia, participation in the nursing
38 facility quality and efficiency outcome incentive factor, participation in the
39 culture change and person-centered care incentive program, annual
40 resident satisfaction ratings for Kansas skilled nursing care facilities and
41 the activities of the panel during the preceding calendar year and any
42 recommendations that the panel may have concerning the administration
43 of and expenditures from the quality care assessment fund.

- 1 ~~(j)~~(k) The provisions of this section shall expire on July 1, 2030.
- 2 Sec. 2. K.S.A. 2021 Supp. 75-7435 is hereby repealed.
- 3 Sec. 3. This act shall take effect and be in force from and after its
- 4 publication in the statute book.