

**Proposed**

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT

DEPARTMENT ON AGING AND DISABILITY SERVICES

**Notice of Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment (KDHE) and the Kansas Department on Aging and Disability Services (KDADS) will conduct a public hearing at 9:00 a.m. Thursday, May 21, 2020, in the Basement Conference Room, New England Building, 503 S. Kansas Avenue, Topeka, Kansas 66603, to consider the adoption of proposed amendments to K.A.R. 129-10-31 concerning the Quality Care Assessments for beds in a skilled nursing care facility.

The proposed amendment to K.A.R. 129-10-31 would increase the annual assessment to \$818 per bed for facilities identified by KAR 129-10-31 (b)(1) and to \$4,908 per bed for facilities identified by KAR 129-10-31 (b)(2). Amending the regulation will not change the Quality Care Assessment program for either providers of nursing facility services or any other government agencies. The proposed changes align the Quality Care Assessment rates referenced in the regulation with the rates stated in K.S.A. 75-7435. The economic impact statement is available from the agency contact person listed below.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Stephanie Volle, Kansas Department on Aging and Disability Services, 503 S. Kansas Avenue, Topeka, Kansas 66603 or by email to [stephanie.volle1@ks.gov](mailto:stephanie.volle1@ks.gov). During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to

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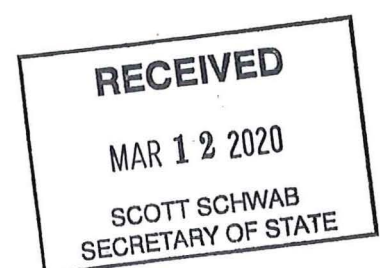
submit their written comments. It is requested that each individual giving oral comments also provide a written copy for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and corresponding economic impact statement may be obtained by contacting Stephanie Volle at (785) 296-0270 or [stephanie.volle1@ks.gov](mailto:stephanie.volle1@ks.gov) . Questions pertaining to the proposed regulations should be directed to the agency contact person using the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Stephanie Volle at (785) 296-0270 or [stephanie.volle1@ks.gov](mailto:stephanie.volle1@ks.gov) .

Lee A. Norman, M.D., Secretary, KDHE

Laura Howard, Secretary, KDADS



129-10-31. Responsibilities of, assessment of, and disbursements for the nursing facility quality care assessment program. (a) In addition to the terms defined in K.S.A. 2013-Supp. 75-7435 and amendments thereto, each of the following terms shall have the meanings meaning specified in this subsection, unless the context requires otherwise.:

(1) "High medicaid volume skilled nursing care facility" means any facility that provided more than 25,000 days of nursing facility care to medicaid recipients during the most recent calendar year cost-reporting period.

(2) "Kansas homes and services for the aging," as used in K.S.A. 2013-Supp. 75-7435 and amendments thereto, means leadingage Kansas.

(3) "Nursing facility quality care assessment program" means the determination, imposition, assessment, collection, and management of an annual assessment imposed on each licensed bed in a skilled nursing care facility required by K.S.A. 2013-Supp. 75-7435, and amendments thereto.

(4) "Skilled nursing care facility that is part of a continuing care retirement facility" means a provider who is certified as such by the Kansas insurance department before the start of the state's fiscal year in which the assessment process is occurring.

(5) "Small skilled nursing care facility" means any facility with fewer than 46 licensed nursing facility beds.

(b) The assessment shall be based on a state fiscal year. Each skilled nursing facility shall pay the annual assessment as follows:

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(1) The assessment amount shall be ~~\$325~~ \$818 annually per licensed bed for the following:

- (A) Each skilled nursing care facility that is part of a continuing care retirement facility;
- (B) each small skilled nursing care facility; and
- (C) each high medicaid volume skilled nursing care facility.

(2) The assessment amount for each skilled nursing care facility other than those identified in paragraphs (c)(1)(A) through (C) shall be ~~\$1,950~~ \$4,908 annually per licensed bed.

(3) The assessment amount shall be paid according to the method of payment designated by the secretary of the Kansas department of health and environment. Any skilled nursing care facility may be allowed by the secretary of the Kansas department of health and environment to have an extension to complete the payment of the assessment, but no such extension shall exceed 90 days. (Authorized by and implementing K.S.A. ~~2013-Supp.~~ 75-7435; effective Feb. 18, 2011; amended Dec. 27, 2013; amended P-\_\_\_\_\_.)

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**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

**Proposed**

Kansas Department on Aging and  
Disability Services (KDADS)

Stephanie Volle (785) 296.0270  
Agency Contact

Proposed 129-10-31  
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget, 900 SW Jackson, Room 504-N, Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

This involves the "quality care assessment" rates imposed upon beds in licensed nursing facilities authorized by K.S.A. 75-7435. The proposed regulatory amendment is to K.A.R. 129-10-31, a regulation under the Division of Health Care Finance in the Kansas Department of Health and Environment in the Article dealing with Adult Care Home Program. The Kansas Department on Aging and Disability Services administers the Adult Care Home Program and the quality care assessments. In 2016, based on recommendations from the Quality Care Improvement Panel (QCIP), the Kansas Legislature amended K.S.A. 75-7435 in two ways. First, the amended statute extended the quality care assessment, which was scheduled to sunset on July 1, 2016, to July 1, 2020. Second, the amendments increased the annual quality care assessment rates for nursing facilities (NF) and nursing facilities for mental health (NFMH). The base quality care assessment rate was increased from \$1,950 per licensed bed per year to \$4,908 per licensed bed per year. For nursing facilities that were: (1) part of a continuing care retirement community (CCRC); (2) with less than 46 beds; or (3) that provide more than 25,000 Medicaid days of nursing facility care to Medicaid recipients during the most recent calendar year cost-reporting period, the rate was set at one-sixth of the base rate, i.e., \$818 per licensed bed per year. K.A.R. 129-10-31 is being amended to align the quality care assessment rates set forth in the regulation to reflect the current assessment rates outlined in K.S.A. 75-7435.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

This is not based on federal requirements.

**III. Agency analysis specifically addressing following:**

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- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

Amending the regulation will not change the Quality Care Assessment program for either providers of nursing facility services or any other government agencies. The proposed changes align the Quality Care Assessment rates reference in the regulation with the rates stated in K.S.A. 75-7435.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

There is no anticipated economic impact to the agency for amending K.A.R. 129-10-31 to reflect the quality care assessment rates denoted in statute at K.S.A. 75-7435. The proposed amendment simply serves to align the Quality Care Assessment rates referenced in the regulation with the rates denoted in statute. As an informational point, in 2016, the agency estimated the amendments to K.S.A. 75-7435 would result in an additional \$26,987,715 in state dollars per fiscal year. As a result, the additional revenue from the amendment of K.S.A. 75-7435 allowed the agency to re-establish the base years for NF and NFMH cost data to 2013, 2014, and 2015 with inflation through June 30, 2016 (from the previous base years of 2010, 2011, and 2012 inflated to the rate mid-year of 2012).

- C. Businesses that would be directly affected by the proposed rule and regulation;**

The Quality Care Assessment is only applicable to Kansas nursing facilities.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

In 2016, the agency estimated the increased provider assessment would generate an additional \$26,987,715 in state dollars per fiscal year. The additional revenue allowed the State to reestablish the base years for NF and NFMH cost data to 2013, 2014 and 2015 with inflation through June 30, 2016 (from the previous base years of 2010, 2011 and 2012 inflated to mid-year 2012). The Kansas Department for Aging and Disability Services will continue to be responsible for managing the quality care assessment program, receive quality care assessment payments, and set rates for providers.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

No agency action taken.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are**

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reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$0. There is no anticipated implementation and compliance costs to businesses, local governments, or members of the public for amending K.A.R. 129-10-31 to reflect the quality care assessment rates denoted in statute at K.S.A. 75-7435. The proposed amendment simply serves to align the Quality Care Assessment rates reference in the regulation with the rates denoted in statute.

**An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0. There is no anticipated implementation and compliance costs that are expected to be incurred or passed along to businesses, local governments, or members of the public for amending K.A.R. 129-10-31 to reflect the quality care assessment rates denoted in statute at K.S.A. 75-7435. The proposed amendment simply serves to align the Quality Care Assessment rates reference in the regulation with the rates denoted in statute.

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

YES ☐ NO ☒

**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

Not applicable.

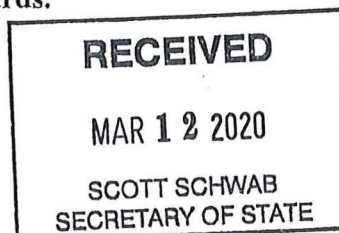
**Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.**

YES ☒ NO ☐

The agency published a Notice of Budget Hearing in the Kansas register on November 14, 2019. The Hearing was held on November 25, 2019 in the New England Building at 503 S. Kansas Ave. in Topeka, KS at 9:00 a.m.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

Not applicable.



- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

The agency published a Notice of Budget Hearing in the Kansas register on November 14, 2019. The Hearing was held on November 25, 2019 in the New England Building at 503 S. Kansas Ave. in Topeka, KS at 9:00 a.m. Two statements, one written and one verbal, were received. Both supported the regulation.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

N/A

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DIVISION OF THE BUDGET



STATE OF KANSAS

BEFORE THE KANSAS DEPARTMENT ON  
AGING AND DISABILITY SERVICES

In the Matter of the Proposed Adoption of  
Permanent Kansas Administrative Regulation  
K.A.R. 129-10-31

**BUDGET HEARING RE IMPLEMENTATION AND COMPLIANCE COSTS**

**REPORT OF THE HEARING OFFICER**

This matter comes before Sherry Diel, hearing officer appointed by the Secretary of the Kansas Department on Aging and Disability Services (KDADS), to receive public comment regarding the implementation and compliance costs of the above-referenced proposed permanent amended regulation.

**INTRODUCTION**

KAR 129-10-31 is being amended to modify the quality care assessment rates. The range for the current assessment rates are outlined in K.S.A. 75-7435. Based on recommendations from the Quality Care Improvement Panel (QCIP), the 2016 Kansas Legislature amended K.S.A. 75-7435. The amended statute extended the quality care assessment, which was scheduled to sunset on July 1, 2016, until July 1, 2020, and increased the annual quality care assessment rates for nursing facilities (NF) and nursing facilities for mental health (NFMH). Specifically, K.S.A. 75-7435 increased the base quality care assessment rate from a maximum of \$1,950 per licensed bed per year to a maximum of \$4,908 per licensed bed per year. For nursing facilities (1) that are part of a continuing care retirement community (CCRC), or (2) with less than 46 beds, or (3) that provide more than 25,000 Medicaid days of nursing facility care to Medicaid recipients during the most recent calendar year cost-reporting period, the rate is one-sixth (a maximum of \$818 per licensed bed per year) of the base rate per licensed bed per year.

Notice of the public comment period and public hearing were published in the *Kansas Register* on November 14, 2019 for a public hearing at 9:00 a.m. on Monday, November 25, 2019, in the Basement Conference Room, New England Building, 503 S. Kansas Avenue, Topeka, Kansas, 66603. A copy of the public notice is included in this report as Attachment 1. A list of the persons present at the public hearing, as recorded on the registration sign-in sheets, is included in this report as Attachment 2.

**SUMMARY OF THERECORD**

During the portion of the public comment period, which began with publication of the notice of hearing in the *Kansas Register*, KDADS received one comment from the general public and regulated community.

The hearing officer opened the public hearing at 9:00 a.m. with other KDADS or KDHE staff in attendance. One person from the public was present.

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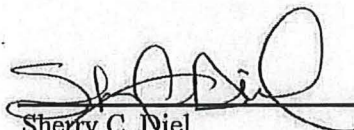
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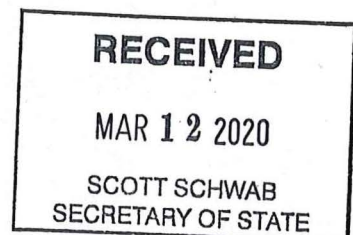
The public comment period that was established for receiving comment from the public on the implementation and compliance costs of the proposed regulation was concluded on November 25, 2019, the date of the public hearing. Two comments, one written and one oral, were received. The comments supported increasing the quality care assessment rates. No criticism was offered concerning the computation or statement of the budgetary impact due to an increase in the quality care assessment rates.

CONCLUSIONS

As required by K.S.A. 2018 Supp. 77-240 and upon review of the Economic Impact Statement, the hearing officer concludes that the costs of the proposed rule and regulation have been accurately determined and are necessary for legislative intent as set forth in the Economic Impact Statement.

Dated this 14th day of February, 2020

  
\_\_\_\_\_  
Sherry C. Diel  
Hearing Officer



**Proposed**

ATTACHMENT 1

BUDGET HEARING FOR PERMANENT REGULATION K.A.R. 129-10-31

November 25, 2019

Kansas Department on Aging and Disability Services

Kansas Department of Health and Environment

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of December 17, 2019, the City's total outstanding general obligation debt (including the Bonds), is \$45,225,000\*. The City's total indebtedness which is subject to debt limitation, as of December 17, 2019, is estimated to be \$19,286,783.63\*, which is 11.22%\* of the assessed valuation of the City.

#### Additional Information

For additional information contact the City Clerk at the address and telephone number shown below, or the Financial Advisor, Piper Jaffray & Co., Mr. Dustin Avey, 11635 Rosewood St., Leawood, KS 66211-2000, telephone 913-345-3375.

City of Andover, Kansas  
By Susan C. Renner  
City Clerk  
City Hall, 1609 E. Central  
Andover, KS 67002  
316-733-1303  
Fax: 316-733-4634

\*Principal amount subject to change  
Doc. No. 047643

#### State of Kansas

### Kansas Development Finance Authority

#### Notice of Hearing

A public hearing will be conducted at 9:00 a.m. Monday, December 12, 2019, in the offices of the Kansas Development Finance Authority (KDFA), 534 S. Kansas Ave., Suite 800, Topeka, on the proposal for the KDFA to issue its Agricultural Development Revenue Bond for the project numbered below in the respective maximum principal amount. The bond will be issued to assist the borrower named below (who will be the owner and operator of the project) to finance the cost in the amount of the bond, which is then typically purchased by a lender bank who then, through the KDFA, loans the bond proceeds to the borrower for the purposes of acquiring the project. The project shall be located as shown:

**Project No. 001048 Maximum Principal Amount:** \$206,000. **Owner/Operator:** Dylan B. and Brianne M. Goeckel; **Description:** Acquisition of 103.5 acres of agricultural land and related improvements and equipment to be used by the owner/operator for farming purposes (the "Project"). The Project is being financed by the Lender for Dylan B. and Brianne M. Goeckel (the "Beginning Farmer") and is located in the Southeast Quarter of Section 29, Township 1 South, Range 6 East of the 6th PM, Marshall County, Kansas, approximately 2 miles north of Bremen, Kansas on 2nd Road, then ¾ mile east on Eagle Road.

The bond, when issued, will be a limited obligation of the KDFA and will not constitute a general obligation or indebtedness of the state of Kansas or any political subdivision thereof, including the KDFA, nor will it be an indebtedness for which the faith and credit and taxing powers of the state of Kansas are pledged. The bond will be payable solely from amounts received from the respective borrower, the obligation of which will be sufficient to pay the principal of, interest and redemption premium, if any, on the bond when it becomes due.

All individuals who appear at the hearing will be given an opportunity to express their views concerning the proposal to issue the bond to finance the project, and all written comments previously filed with the KDFA at its offices at 534 S. Kansas Ave., Suite 800, Topeka, 66603, will be considered. Additional information regarding the project may be obtained by contacting the KDFA.

Rebecca Floyd  
President

Doc. No. 047652

#### State of Kansas

### Department of Health and Environment Division of Health Care Finance

### Department for Aging and Disability Services

#### Notice of Budget Hearing

Pursuant to K.S.A. 77-420, the Kansas Department of Health and Environment, Division of Health Care Finance and the Kansas Department for Aging and Disability Services will conduct a public hearing at 9:00 a.m. Monday, November 25, 2019, in the New England Building, basement conference room, 503 S. Kansas Ave., Topeka, KS 66603. The purpose of the hearing is to consult and solicit information from individuals and entities that may be affected by the implementation and compliance costs of proposed amended K.A.R. 129-10-31, regarding the assessment of fees for beds in a skilled nursing care facility. The proposed amendments would increase annual assessment to \$818 per bed for facilities identified by K.A.R. 129-10-31 (b)(1) and to \$4,908 per bed for facilities identified by K.A.R. 129-10-31 (b)(2).

All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Stephanie Volle, Kansas Department for Aging and Disability Services, 503 S. Kansas Ave., Topeka, KS 66603, or by email to stephanie.volle1@ks.gov. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame. Complete copies of the proposed regulation and corresponding economic impact statement may be obtained by contacting Stephanie Volle at 785-296-0270 or stephanie.volle1@ks.gov.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Stephanie Volle at the contact information above.

Lee A. Norman, M.D., Secretary  
Department of Health and Environment

Laura Howard, Secretary,  
Department for Aging and Disability Services

Doc. No. 047653

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ATTACHMENT 2

BUDGET HEARING FOR PERMANENT REGULATION K.A.R. 129-10-31

November 25, 2019

Kansas Department on Aging and Disability Services

Kansas Department of Health and Environment

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SIGN-IN SHEET FOR  
PUBLIC HEARING ON  
PROPOSED PERMANENT AMENDED REGULATION K.A.R. 129-10-31  
NOVEMBER 25, 2019

| PRINT NAME    | ORGANIZATION | ADDRESS      | EMAIL                |
|---------------|--------------|--------------|----------------------|
| Linda Mowbray | KHCA         | 1100 SW Gage | lmowbray@khca.org    |
| Brian Vazquez | KDHE         |              | brian.vazquez@ks.gov |
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75-7435. Quality care assessments for skilled nursing care facilities; imposition and administration by department of health and environment; rules and regulations; collection and disposition; quality care fund; authorized uses; conditions and limitations; quality care improvement panel; reporting requirements; expiration of statute. (a) As used in this section unless the context requires otherwise:

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

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

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

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

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

(b) (1) Except as otherwise provided in this section and in subsection (f), there is hereby imposed and the secretary of health and environment shall assess an annual assessment per licensed bed, hereinafter called a quality care assessment, on each skilled nursing care facility. The assessment on all facilities in the aggregate shall be an amount fixed by rules and regulations of the secretary of health and environment, shall not exceed \$4,908 annually per licensed bed, shall be imposed as an amount per licensed bed and shall be imposed uniformly on all skilled nursing care facilities except that the assessment rate for skilled nursing care facilities that are part of a continuing care retirement facility, small skilled nursing care facilities and high medicaid volume skilled nursing care facilities shall not exceed  $\frac{1}{6}$  of the actual amount assessed all other skilled nursing care facilities. No rules and regulations of the secretary of health and environment shall grant any exception to or exemption from the quality care assessment. The assessment shall be paid quarterly, with one fourth of the annual amount due by the 30<sup>th</sup> day after the end of the month of each calendar quarter. The secretary of health and environment is authorized to establish delayed payment schedules for skilled nursing care facilities which are unable to make quarterly payments when due under this section due to financial difficulties, as determined by the secretary of health and environment. As used in this paragraph, the terms "small skilled nursing care facilities" and "high medicaid volume skilled nursing care facilities" shall have the meanings ascribed thereto by the secretary of health and environment by rules and regulations, except that the definition of small skilled nursing care facility shall not be lower than 40 beds.

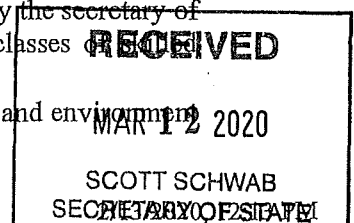
(2) Beds licensed after July 1 each year shall pay a prorated amount of the applicable annual assessment so that the assessment applies only for the days such new beds are licensed. The proration shall be calculated by multiplying the applicable assessment by the percentage of days the beds are licensed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

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

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

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

(c) Each skilled nursing care facility shall prepare and submit to the secretary of health and environment



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

(d) (1) There is hereby created in the state treasury the quality care fund, which shall be administered by the secretary of health and environment. All moneys received for the assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), 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 quality care fund. All expenditures from the quality care 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 health and environment or the secretary's agent.

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

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

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

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

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

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

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

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

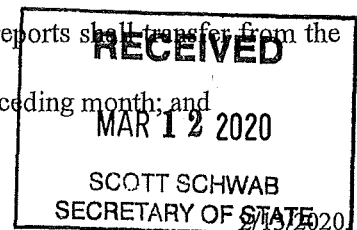
(F) the remaining amount, if any, shall be expended first to increase the direct health care costs center limitation up to 150% of the case mix adjusted median, and then, if there are remaining amounts, for other quality care enhancement of skilled nursing care facilities as approved by the quality care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

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

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

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

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





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

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

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

(A) An amendment to the state plan for medicaid, which increases the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program and which is proposed for approval for purposes of subsections (a) through (h) is approved by the federal government in which case the initial assessment is due no earlier than 60 days after state plan approval; and

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

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

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

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

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

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

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

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

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

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

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

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

(k) For purposes of administering and selecting the reimbursements of moneys in the quality care assessment fund, the quality care improvement panel is hereby established. The panel shall consist of the

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following members: Two persons appointed by leadingage Kansas; two persons appointed by the Kansas health care association; one person appointed by Kansas advocates for better care; one person appointed by the Kansas hospital association; one person appointed by the governor who is a member of the Kansas adult care executives association; one person appointed by the governor who is a skilled nursing care facility resident or the family member of such a resident; one person appointed by the Kansas foundation for medical care; one person appointed by the governor from the department for aging and disability services; one person appointed by the governor from the department of health and environment; one person appointed by the president of the senate who is affiliated with an organization representing and advocating the interests of retired persons in Kansas; and one person appointed by the speaker of the house of representatives who is a volunteer with the office of the state long-term care ombudsman established by the long-term care ombudsman act. The person appointed by the governor from the department for aging and disability services and the person appointed by the governor from the department of health and environment shall be nonvoting members of the panel. 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 trade organizations specified in this subsection. The members of the quality care improvement panel shall serve without compensation or expenses. The quality care improvement panel shall report annually on or before January 10 to the senate committees on public health and welfare and ways and means, the house committees on appropriations and health and human services and the Robert G. (Bob) Bethell joint committee on home and community based services and KanCare oversight concerning the progress to reduce the incidence of antipsychotic drug use in elders with dementia, participation in the nursing facility quality and efficiency outcome incentive factor, participation in the culture change and person-centered care incentive program, annual resident satisfaction ratings for Kansas skilled nursing care facilities and the activities of the panel during the preceding calendar year and any recommendations which the panel may have concerning the administration of and expenditures from the quality care assessment fund.

(l) The provisions of this section shall expire on July 1, 2020.

**History:** L. 2010, ch. 159, § 1; L. 2012, ch. 102, § 53; L. 2013, ch. 55, § 1; L. 2016, ch. 107, § 2; July 1.

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