

## 2021 Kansas Statutes

**75-7436. Waiver provider assessments for developmental disability home and community based services waiver programs; imposition and administration by department of health and environment; rules and regulations; collection and dispositions; quality based community assessment fund; authorized uses; conditions and limitations; expiration of statute.** (a) As used in this section, unless the context requires otherwise:

- (1) "Developmental disability" is as defined in K.S.A. 39-1803, and amendments thereto, under the Kansas developmental disabilities reform act.
- (2) "Entity" means individual, corporation, partnership, limited liability company, joint venture or other legal entity.
- (3) "Gross revenues" means the revenues received by waiver providers for furnishing services to individuals with developmental disabilities who qualify for the waiver program with eligibility criteria and scope of services not less than those in effect as of January 1, 2011; the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who qualify for the waiver program but for whom the services defined under the waiver program are not reimbursed through such waiver; and, the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who do not qualify for the waiver program but for whom receive the same services offered under such waiver. Gross revenues does not include revenues received for services to individuals with developmental disabilities funded exclusively by state or local governments, or any revenues received for furnishing services to individuals who are not developmentally disabled, or charitable donations.
- (4) "Quality based community assessment fund" means a segregated account within the state treasury for which moneys are collected in accordance with the provisions of this act from developmental disability home and community-based waiver service providers.
- (5) "Waiver program" means a developmental disability home and community-based services waiver program authorized under the social security act, 42 U.S.C. § 1915, for persons with a developmental disability.
- (6) "Waiver provider" means an entity that participates in the Kansas developmental disability home and community-based waiver program and that provides services to a person with a developmental disability, regardless of whether such person qualifies under the waiver program.
- (7) "Waiver provider assessment" means an assessment imposed on all waiver providers at the maximum rate allowable by federal law on the gross revenues applicable to services provided to persons with developmental disabilities.

(b) (1) Except as otherwise provided in this section, the secretary of health and environment shall impose an annual assessment, hereinafter called a waiver provider assessment, on each waiver provider at the maximum rate allowable by federal law, on the gross revenues the waiver provider received from providing services to individuals with developmental disabilities during the fiscal year beginning with the effective date of the assessment. The waiver provider assessment shall be imposed as follows:

- (A) Withheld on a claim-by-claim basis from each waiver provider's uniform percentage increased HCBS MR/DD medicaid waiver payment rates beginning with the effective date of this section; and
- (B) paid on a quarterly basis by waiver providers based on the preceding fiscal revenues received by waiver providers from or on behalf of individuals with developmental disabilities who qualify for the waiver program but for whom the services defined under the waiver program are not reimbursed through such waiver; and, the revenues received

by waiver providers from or on behalf of individuals with developmental disabilities who do not qualify for the waiver program but for whom receive the same services offered under such waiver.

(2) The waiver provider assessment will become effective beginning with the first full month after:

(A) The federal centers for medicare and medicaid services (CMS) authorizes developmental disability home and community-based services as a permissible class of health care services on which states may impose a health care-related assessment without penalty; and

(B) the CMS has approved any and all amendments necessary to authorize the uniform percentage rate increases to the medicaid payment rates under Kansas developmental disability home and community-based waiver program.

(3) The duration of the waiver provider assessment shall be all or a portion of the first state fiscal year in which the waiver provider assessment is effective and the subsequent four full state fiscal years.

(4) The moneys collected under the provisions of this section shall be used solely as the nonfederal share of uniform percentage increases to the medicaid payment rates for developmental disability home and community-based services waiver providers.

(5) The waiver provider assessment will be offset on a per claim basis against each waiver provider's home and community-based services MR/DD medicaid waiver payments in an amount equal to the maximum rate allowable by federal law beginning with the effective date of this section. For gross revenues received by waiver providers from or on behalf of individuals with developmental disabilities who qualify for the waiver program but for whom the services defined under the waiver program are not reimbursed through such waiver, and the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who do not qualify for the waiver program but for whom receive the same services offered under such waiver, the maximum rate allowable by federal law will be applied to the annual revenues received for such services for the waiver providers' preceding fiscal year.

(6) The secretary of health and environment shall collect any and all assessments pursuant to the provisions of this section. The secretary of health and environment shall adopt administrative rules and regulations necessary to implement and enforce the provisions of this section within 30 days of the CMS authorization. No rules and regulations of the secretary of health and environment shall grant any exception to or exemption from the waiver provider assessment.

(7) If a waiver provider fails to pay the full amount of the waiver provider assessment imposed pursuant to this subsection when due and payable, including any extensions of time granted, the secretary of health and environment shall impose a penalty in the amount of the lesser of \$500 per day or 2% of the assessment owed for the current fiscal year.

(c) (1) There is hereby created in the state treasury the quality based community assessment fund, which shall be administered by the secretary of health and environment. All moneys received or withheld for the assessment imposed pursuant to subsection (b) 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 based community assessment fund. All expenditures from the quality based community assessment 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 designee.

(2) The quality based community assessment fund shall be a no limit fund and shall consist

of:

- (A) The assessments collected by the secretary of health and environment under this section;
- (B) any interest and penalties levied with the administration of this section; and
- (C) any other funds received as donations for the quality based community assessment fund and appropriations from other sources.

All moneys in the quality based community assessment fund shall be used solely as the nonfederal share of uniform percentage increases to the medicaid payment rates for waiver providers in order to maintain the quality of services provided to individuals qualifying under Kansas developmental disability waiver program. The fund will reimburse administrative expenses incurred by the department of health and environment or its agent in performing the activities authorized by this section, except that such expenses shall not exceed a total of .5% of the aggregate assessment fees collected during the first fiscal year in which the assessment becomes effective for purposes of start-up costs. The fund shall reimburse the department of health and environment or its agent in the amount of \$100,000 each year thereafter to administer the assessment program.

(3) No moneys credited to the 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 based community assessment fund are transferred or otherwise revert to the state general fund, 30 days following the transfer or reversion, the waiver provider 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, any collected assessment revenues, including any moneys transferred or otherwise reverting to the state general fund which resulted in the termination of the assessment, less any administrative expenses incurred by the department of health and environment under paragraph (2), shall be returned on a pro rata basis to waiver providers who paid the assessment.

(4) On or before the 10th day of each month, beginning with the first full month following the effective date of the waiver provider assessment, the director of accounts and reports shall transfer from the state general fund to the quality based community assessment fund, interest earnings based on:

- (A) The average daily balance of moneys in the fund for the preceding month; and
- (B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) Any moneys received by the state of Kansas from the federal government as a result of federal financial participation in the state's developmental disability waiver program that are derived from the waiver provider assessment shall be used to maintain the quality of services provided by the waiver program.

(e) No moneys collected under the provisions of this section shall be used directly or indirectly to replace or supplant existing state expenditures for payments to waiver providers for services furnished to individuals with developmental disabilities.

(f) (1) The waiver provider assessment and associated uniform percentage increases for all waiver provider medicaid payment rates shall become effective on the first day of the first full month after which the CMS has adopted rules that recognize the waiver provider assessment as a permissible class of health care services on which states may impose such an assessment:

- (A) Upon the approval from the CMS of any and all amendments to the medicaid state plan, medicaid developmental disability waiver program, or both, necessary to increase the rates of payments made to the waiver providers for providing services pursuant to the waiver program; and

(B) the waiver providers have been compensated at the uniform percentage increased medicaid payment rates for services provided pursuant to the developmental disability waiver program for the period commencing on and after the authorization of the waiver provider assessment by the CMS.

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

(3) The provisions of subsections (a) through (e) shall be null and void and shall have no force and effect if either of the following occurs:

(A) The medicaid state plan amendment or an amendment to the medicaid waiver program, or both, as applicable, that would otherwise authorize the uniform percentage increases to the medicaid rates of payment made to waiver providers for providing services pursuant to the developmental disability waiver programs and which is proposed for approval for purposes of subsections (a) through (e) is not approved by the CMS;

(B) the medicaid payment rates made to waiver providers for providing services pursuant to the developmental disability waiver program are reduced below the rates calculated on the day immediately preceding the effective date of this section, increased by revenues in the quality based community assessment fund and matched by federal financial participation. Nothing in this provision should be construed to preclude additional increases to the medicaid payment rates to waiver providers funded through state general fund appropriation;

(C) the medicaid eligibility criteria applicable to individuals qualifying under the Kansas developmental disability waiver program are reduced below the criteria in effect on the day immediately preceding the effective date of this section; or

(D) the medicaid services available to individuals qualifying under the Kansas developmental disability waiver program are reduced below the services available on the day immediately preceding the effective date of this section.

(g) If the provisions of subsections (a) through (e) are repealed, expire or become null and void and have no further force and effect, all moneys in the quality based community assessment fund which were paid under the provisions of subsections (a) through (e) shall be returned to the waiver provider which paid such moneys on the basis on which such payments were assessed and paid pursuant to subsections (a) through (e).

(h) The provisions of this section shall expire five years subsequent to the implementation of this section.

**History:** L. 2011, ch. 58, § 1; L. 2012, ch. 102, § 54; July 1.