

*As Amended by Senate Committee*

Session of 2006

**SENATE BILL No. 536**

By Committee on Judiciary

2-9

10 AN ACT concerning medicaid; relating to reimbursement; amending  
11 K.S.A. 59-2249 and 59-3086 and ~~K.S.A. 2005 Supp. 21-3847~~ and re-  
12 pealing the existing sections.  
13

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

15 ~~Section 1. K.S.A. 2005 Supp. 21-3847 is hereby amended to read as~~  
16 ~~follows: 21-3847. (a) No person nor family member of such person shall:~~

17 ~~—(1) Knowingly and intentionally solicit or~~  
18 ~~receive any remuneration, including but not limited to any kickback, bribe~~  
19 ~~or rebate, directly or indirectly, overtly or covertly, in cash or in kind:~~

20 ~~—(A) In return for referring or refraining from referring an individual~~  
21 ~~to a person for the furnishing or arranging for the furnishing of any goods,~~  
22 ~~service, item, facility or accommodation for which payment may be made,~~  
23 ~~in whole or in part, under the medicaid program; or~~

24 ~~—(B) in return for purchasing, leasing, ordering or arranging for or~~  
25 ~~recommending purchasing, leasing or ordering any goods, service, item,~~  
26 ~~facility or accommodation for which payment may be made, in whole or~~  
27 ~~in part, under the medicaid program.~~

28 ~~—(2) Knowingly and intentionally offer or pay any remuneration, in-~~  
29 ~~cluding, but not limited to, any kickback, bribe or rebate, directly or~~  
30 ~~indirectly, overtly or covertly, in cash or in kind to any person to induce~~  
31 ~~such person:~~

32 ~~—(A) To refer or refrain from referring an individual to a person for~~  
33 ~~the furnishing or arranging for the furnishing of any goods, service, item,~~  
34 ~~facility or accommodation for which payment may be made, in whole or~~  
35 ~~in part, under the medicaid program; or~~

36 ~~—(B) to purchase, lease, order, or arrange for or recommend purchas-~~  
37 ~~ing, leasing, or ordering any goods, service, item, facility or accommo-~~  
38 ~~dation for which payment may be made, in whole or in part, under the~~  
39 ~~medicaid program.~~

40 ~~—(3) Knowingly and intentionally file a statement pursuant to K.S.A.~~  
41 ~~59-2249 or 59-3086, and amendments thereto, falsely stating that no re-~~  
42 ~~imbursement of medicaid funds is owed.~~

43 ~~—(b) A violation of this section is a severity level 7, nonperson felony.~~

1  
2 ~~—(c) This section shall not apply to a refund, discount, copayment,~~  
3 ~~deductible, incentive or other reduction obtained by a provider in the~~  
4 ~~ordinary course of business, and appropriately reflected in the claims or~~  
5 ~~reports submitted to the medicaid program, or its fiscal agent, nor shall~~  
6 ~~it be construed to prohibit deductibles, copayments or any other cost or~~  
7 ~~risk sharing arrangements which are a part of any program operated by~~  
8 ~~or pursuant to contracts with the medicaid program.~~

9 ~~—Sec. 2.~~ **Section 1.** K.S.A. 59-2249 is hereby amended to read as  
10 follows: 59-2249. (a) On the hearing, unless otherwise ordered, the ex-  
11 ecutor or administrator shall, and other persons may, be examined relative  
12 to the account and the distribution of the estate. If all ~~the~~ **medicaid**  
13 **reimbursement has been determined and paid, and** taxes payable by  
14 the estate have been paid, so far as there are funds to pay them and the  
15 account is correct, it shall be settled and allowed. If the account is incor-  
16 rect, it shall be corrected and then settled and allowed. Upon settlement  
17 and allowance, the court shall determine the heirs, devisees and legatees  
18 entitled to the estate and assign it to them by its decree, pursuant to the  
19 terms of the will, the laws of intestate succession in effect on the date of  
20 the decedent's death or a valid settlement agreement. The decree shall  
21 name the heirs, devisees and legatees; describe the property; and state  
22 the proportion or part thereof to which each is entitled. The decree shall  
23 be binding as to all the estate of the decedent, whether specifically de-  
24 scribed in the proceedings or not. In the estate of a testate decedent, no  
25 heirs need be named in the decree unless they have, as such, an interest  
26 in the estate.

27 (b) No final decree shall be entered for decedents dying before July  
28 1, 1998, until after the determination and payment of inheritance taxes,  
29 *and no final decree shall be entered until after the determination and*  
30 *reimbursement of any medicaid funds owed to the state of Kansas.* When  
31 the final decree includes real estate, such decree, or a certified copy of  
32 it, may be entered on the transfer record of the county clerk of the proper  
33 county. When any such decree which includes real estate shall become  
34 final, it shall be the duty of the court to transmit a certified copy of it to  
35 the county clerk and the county clerk shall enter it on the transfer record  
36 in the clerk's office.

37 (c) If any person entitled to receive a distributive share of an estate  
38 pursuant to a decree hereunder is the defendant in a garnishment action  
39 or proceeding in which the executor or administrator of the estate is the  
40 garnishee, the person's distributive share shall be subject to the order of  
41 garnishment served upon the executor or administrator, and no property  
42 or funds of the estate shall be delivered or paid over to the person until  
43 further order of the court from which the order of garnishment was

1 issued.

2 Sec. ~~3~~ **2**. K.S.A. 59-3086 is hereby amended to read as follows: 59-  
3 3086. (a) At the time of or at any time after the filing of an accounting  
4 by the conservator, the conservator may file with the court a verified  
5 petition requesting a hearing on that accounting for the purposes of al-  
6 lowance and settlement. The petition shall include:

7 (1) The conservator's name and address, and if the conservator is also  
8 the guardian, that fact;

9 (2) the conservatee's name, age, date of birth, address of permanent  
10 residence, and present address or whereabouts, if different from the con-  
11 servatee's permanent residence;

12 (3) the name and address of the court appointed guardian, if different  
13 from the conservator;

14 (4) the names and addresses of any spouse, adult children and adult  
15 grandchildren of the conservatee, and those of any parent and adult sib-  
16 lings of the conservatee, or if no such names or addresses are known to  
17 the petitioner, the name and address of at least one adult who is nearest  
18 in kinship to the conservatee, or if none, that fact. If no such names or  
19 addresses are known to the conservator, but the conservator has reason  
20 to believe that such persons exist, then the petition shall state that fact  
21 and that the conservator has made diligent inquiry to learn those names  
22 and addresses;

23 (5) the names and addresses of other persons, if any, whom the con-  
24 servator knows to have an interest in the matter, or a statement that the  
25 petitioner knows of no other persons having an interest in the matter;

26 (6) designation of the accounting period for which allowance and set-  
27 tlement is sought; and

28 (7) a request that this accounting be accepted and that the court issue  
29 an order providing that all matters related thereto are finally allowed and  
30 settled.

31 (b) Upon the filing of such a petition, the court shall issue an order  
32 fixing the date, time and place of a hearing on the petition, which hearing  
33 may be held forthwith and without further notice if those persons named  
34 within the petition pursuant to the requirement of subsections (a)(3),  
35 (a)(4) and (a)(5), as applicable, have entered their appearances, waived  
36 notice, and agreed to the court's accepting the accounting and issuing an  
37 order of final allowance and settlement. Otherwise, the court shall require  
38 the conservator to give notice of this hearing to such persons in such  
39 manner as the court may specify, including therewith a copy of the con-  
40 servator's petition and a copy or copies of the accounting or accountings  
41 for which the conservator requests an order of final allowance and settle-  
42 ment. This notice shall advise such persons that if they have any objections  
43 to the accounting or accountings for which final allowance and settlement

1 is sought that they must file their written objections with the court prior  
2 to the scheduled hearing or that they must appear at the hearing to pres-  
3 ent those objections. The court may appoint an attorney to represent the  
4 conservatee in this matter similarly as provided for in subsection (a)(3) of  
5 K.S.A. 59-3063, and amendments thereto, and in such event, the court  
6 shall require the conservator to also give this notice to that attorney.

7 (c) In the absence of a petition having been filed by the conservator  
8 pursuant to this section, the court may set a hearing to determine whether  
9 an order of final allowance and settlement should be issued with regard  
10 to any accounting which has been previously filed by the conservator, and  
11 may require the conservator or some other person to give notice thereof  
12 as provided for herein.

13 (d) The hearing shall be conducted in as informal a manner as may  
14 be consistent with orderly procedure. The court shall have the authority  
15 to receive all relevant and material evidence which may be offered, in-  
16 cluding the testimony or written report, findings or recommendations of  
17 any professional or other person who has familiarity with the conservatee  
18 or the conservatee's estate. The court may review the court's prior orders,  
19 any conservatorship plan which has been filed pursuant to K.S.A. 59-3079,  
20 and amendments thereto, and any reports and accountings which have  
21 been filed by the guardian or conservator, or both, even if previously  
22 approved or allowed, to determine whether the current accounting seems  
23 reasonable in light of the past reports or accountings, and to determine  
24 whether any further proceedings under this act may be appropriate. The  
25 court shall give to the conservator, to the conservatee, and to other in-  
26 terested persons, the opportunity to present evidence to the court con-  
27 cerning the actions of the conservator, the conservatee's estate and the  
28 recommendations of such persons.

29 (e) At the conclusion of the hearing, if the court finds, by a prepon-  
30 derance of the evidence, that the accounting accurately accounts for the  
31 conservatee's estate, shows appropriate administration on the part of the  
32 conservator, that any fees of the conservator are reasonable, and that due  
33 notice and an opportunity to be heard has been provided to any interested  
34 parties, the court shall approve the accounting and order that it is allowed  
35 and settled. Such allowance and settlement shall relieve the conservator  
36 and the conservator's sureties from liability for all acts and omissions  
37 which are fully and accurately described in the accounting, including the  
38 investments of the assets of the conservatee's estate.

39 (f) If the court finds by a preponderance of the evidence that the  
40 conservator has innocently misused any funds or assets of the conserva-  
41 tee's estate, the court shall order the conservator to repay such funds or  
42 return such assets to the conservatee's estate. If the court finds that the  
43 conservator has embezzled or converted for the conservator's own per-

1 sonal use any funds or assets of the conservatee's estate, the court shall  
2 find the conservator liable for double the value of those funds or assets,  
3 as provided for in K.S.A. 59-1704, and amendments thereto. In either  
4 case, the court may order the forfeiture of the conservator's bond, or such  
5 portion thereof as equals the value of such funds or assets, including any  
6 lost earnings and the costs of recovering those funds or assets, including  
7 reasonable attorney fees, as the court may allow, and may require of the  
8 surety satisfaction thereof. Neither the conservator, nor the conservator's  
9 estate or surety, shall be finally released from such bond until the satis-  
10 fication thereof.

11 (g) At no time shall the conservator, or the conservator's estate or  
12 surety, be finally released from the bond required by the court pursuant  
13 to K.S.A. 59-3069, and amendments thereto until a final accounting has  
14 been filed, allowed and settled as provided for herein.

15 (h) Upon the filing of a final accounting, delivery of any remaining  
16 funds and assets of the conservatee's estate to the person entitled thereto  
17 *and reimbursement of any medicaid funds owed to the state of Kansas*,  
18 and presentation to the court of a receipt for such, the court may issue a  
19 final order of allowance and settlement as provided for herein, and only  
20 thereby finally shall release the conservator, the conservator's estate and  
21 the conservator's surety.

22 Sec. ~~4. 3.~~ K.S.A. 59-2249 and 59-3086 and ~~K.S.A. 2005 Supp. 21-~~  
23 ~~3847~~ are hereby repealed.

24 Sec. ~~5. 4.~~ This act shall take effect and be in force from and after its  
25 publication in the statute book.