

HOUSE BILL No. 2753

By Committee on Health and Human Services

Requested by Kyle Kessler on behalf of the Association of Community Mental
Health Centers of Kansas

2-6

1 AN ACT concerning the Kansas program of medical assistance; relating to
2 procurement and oversight of managed care organizations; establishing
3 the managed care bid fidelity and accountability act; prohibiting the
4 termination of certain clinical service contracts; providing penalties for
5 material deviations from request for proposal responses and requiring
6 reporting to the legislature of bid audits and material deviations.

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

9 Section 1. (a) This act shall be known and may be cited as the Kansas
10 managed care bid fidelity and accountability act.

11 (b) As used in this act:

12 (1) "Bid fidelity" means the continuous and material adherence by a
13 managed care organization to the provider network representations,
14 clinical service expertise and management methodologies set forth in such
15 managed care organization's response to the state's request for proposal
16 during the procurement process.

17 (2) "Clinical service contract" means any agreement between a
18 managed care organization and a healthcare provider for the provision of
19 medical, behavioral or long-term care services to recipients of medical
20 assistance, including contracts for value-based care.

21 (3) "Material deviation" means any action or omission by a managed
22 care organization within 24 months of the contract effective date that
23 results in:

24 (A) The termination or cancellation of clinical service contracts
25 involving more than 3% of the providers cited in the organization's RFP
26 response;

27 (B) a reduction in the geographic availability of specific clinical
28 services cited in the RFP response by more than 5%; or

29 (C) the implementation of prior authorization or utilization
30 management criteria that are more restrictive than those described in the
31 technical proposal of the RFP response, unless such change is mandated by
32 federal or state law.

33 (4) "RFP" means request for proposal.

34 (5) "RFP response" means the technical proposal and all

1 accompanying documentation submitted by a managed care organization
2 in response to a bid event for the Kansas program of medical assistance.

3 (c) Bid fidelity period; mandatory retention of services.

4 (1) Any managed care organization awarded a contract to provide
5 state medicaid services shall be required to maintain bid fidelity for the
6 entire duration of the initial contract term and any subsequent renewal
7 periods.

8 (2) During the first 24 months of a contract term, a managed care
9 organization shall not terminate a clinical service contract with any
10 healthcare provider cited in such managed care organization's RFP
11 response as evidence of network adequacy or expertise, except for cause as
12 provided in subsection (d).

13 (3) A managed care organization seeking to cancel a clinical service
14 contract cited in such managed care organization's RFP response during
15 the first 24 months of a contract term shall provide written notice to the
16 department of health and environment not less than 90 days prior to the
17 proposed termination date. The notice shall include a detailed justification
18 for the cancellation and a plan that ensures member access to equivalent
19 services within the same geographic area.

20 (d) Termination for cause; administrative review.

21 (1) Cause for termination of a clinical service contract shall be
22 limited to:

23 (A) Fraud, waste or abuse by the provider as determined by the
24 department or the office of inspector general as established by K.S.A. 75-
25 7427, and amendments thereto;

26 (B) documented quality of care concerns that pose an immediate risk
27 to member safety; or

28 (C) the provider's voluntary withdrawal from the network.

29 (2) The department of health and environment shall have the
30 authority to disallow a proposed clinical service contract cancellation if the
31 department determines the cancellation would constitute a material
32 deviation from the organization's RFP response.

33 (e) Penalties for material deviation and bid inflation.

34 (1) The department of health and environment shall conduct a bid
35 fidelity audit of each managed care organization at least once every six
36 months. This audit shall compare the managed care organization's actual
37 provider network and service authorizations against the representations
38 made in the managed care organization's winning RFP response.

39 (2) If the department determines that a managed care organization has
40 committed a material deviation, the department shall impose one or more
41 of the following sanctions:

42 (A) A civil penalty of not less than \$100,000 per instance of
43 unauthorized clinical service contract cancellation or reduction;

1 (B) liquidated damages in an amount equal to 5% of the total
2 capitation payments made to the managed care organization for the month
3 in which the deviation occurred;

4 (C) suspension of the automatic assignment of new members to the
5 managed care organization for a period of not less than six months; and

6 (D) in cases of systemic or willful bid inflation, in which a managed
7 care organization is found to have cited expertise or providers in such
8 managed care organization's RFP response but such managed care
9 organization did not possess or intended to terminate, the department may
10 initiate proceedings to terminate the contract for cause.

11 (3) All penalties and liquidated damages collected under this section
12 shall be deposited into the state general fund and earmarked for rural
13 hospital stabilization grants.

14 (f) A healthcare provider whose clinical service contract was
15 cancelled in violation of subsection (c) shall have a private cause of action
16 against the managed care organization for actual damages, injunctive relief
17 and any other appropriate relief. In an action brought for violation of this
18 section, a prevailing plaintiff in such action may recover reinstatement of
19 the clinical service contract, compensatory damages for lost
20 reimbursement and the costs of the suit, including reasonable attorney
21 fees.

22 (g) Transparency and Reporting.

23 (1) The department of health and environment shall provide a
24 quarterly report to the Robert G. (Bob) Bethell joint committee on home
25 and community based services and Kancare oversight detailing:

26 (A) All bid fidelity audits conducted during each quarter;

27 (B) any material deviations identified and the penalties imposed; and

28 (C) a summary of all clinical service contract cancellations reviewed
29 by the department under subsection (c).

30 (2) All technical proposals and RFP responses submitted by managed
31 care organizations that were awarded a contract shall be considered public
32 records and shall be posted on the department's website within 30 days of
33 contract execution.

34 (h) If any provision or clause of this act or application thereof to any
35 person or circumstance is held invalid, such invalidity shall not affect other
36 provisions or applications of this act that can be given effect without the
37 invalid provision or application, and to this end, the provisions of this act
38 are declared to be severable.

39 Sec. 2. This act shall take effect and be in force from and after its
40 publication in the statute book.