

AN ACT concerning health and healthcare; relating to health insurance coverage; expanding medical assistance eligibility; implementing a health plan reinsurance program; amending K.S.A. 2019 Supp. 40-3213 and repealing the existing section.

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

New Section 1. (a) Sections 1 through 14, and amendments thereto, shall be known and may be cited as the Kansas innovative solutions for affordable healthcare act.

(b) The legislature expressly consents to expand eligibility for receipt of benefits under the Kansas program of medical assistance, as required by K.S.A. 39-709(e)(2), and amendments thereto, by the passage and enactment of the act, subject to all requirements and limitations established in the Kansas innovative solutions for affordable healthcare act.

(c) The secretary of health and environment shall adopt rules and regulations as necessary to administer and implement the Kansas innovative solutions for affordable healthcare act.

(d) As used in sections 1 through 14, and amendments thereto, unless otherwise specified, "act" means the Kansas innovative solutions for affordable healthcare act.

New Sec. 2. (a) The secretary of health and environment shall submit to the United States centers for medicare and medicaid services and the United States department of the treasury any state plan amendment, waiver request or other approval request to implement the act. At least 10 calendar days prior to submission of any such approval request to the United States centers for medicare and medicaid services or the United States department of the treasury, the secretary of health and environment or the insurance commissioner, as applicable, shall submit such approval application to: The house of representatives standing committees on

appropriations and health and human services; the senate standing committees on ways and means and public health and welfare; and the legislative coordinating council.

(b) For purposes of eligibility determinations under the Kansas program of medical assistance on and after January 1, 2021, medical assistance shall be granted to any adult under 65 years of age who is not pregnant and whose income meets the limitation established in subsection (c), as permitted under the provisions of 42 U.S.C. § 1396a, as it exists on the effective date of this act, and subject to all requirements and limitations established in the act.

(c) (1) (A) The secretary of health and environment shall submit to the United States centers for medicare and medicaid services a waiver request under section 1115 of the federal social security act, 42 U.S.C. § 1315, as it exists on the effective date of this act, to provide medical assistance eligibility to individuals described in subsection (b) whose modified adjusted gross income does not exceed 100% of the federal poverty level.

(B) The insurance commissioner shall submit to the United States department of the treasury and the United States centers for medicare and medicaid services a waiver request under section 1332 of the federal affordable care and patient protection act, 42 U.S.C. § 18052, as it exists on the effective date of this act, for a reinsurance program for health insurance plans on the health benefit exchange in Kansas established under the federal affordable care and patient protection act. The insurance commissioner shall design the reinsurance program in coordination with the secretary of health and environment to offset any cost of the section 1115 waiver described in this paragraph to the United States government in order to meet federal budget neutrality requirements for medicaid waivers.

(C) The secretary of health and environment may implement expanded medical

assistance eligibility as described in subparagraph (A) with the approval of the United States centers for medicare and medicaid services during the pendency of any approval decision required under subparagraph (B). If the United States centers for medicare and medicaid services and the United States department of the treasury do not approve both waivers submitted in accordance with this paragraph, then income eligibility under the act shall be established under paragraph (2).

(2) (A) The secretary of health and environment shall submit to the United States centers for medicare and medicaid services a waiver request under section 1115 of the federal social security act, 42 U.S.C. § 1315, as it exists on the effective date of this act, to provide medical assistance eligibility to individuals described in subsection (b) whose modified adjusted gross income does not exceed 100% of the federal poverty level, and shall provide to individuals whose modified adjusted gross income is greater than 100% but does not exceed 138% of the federal poverty level the option of eligibility under the act or selection of a plan on the health benefit exchange in Kansas established under the federal affordable care and patient protection act.

(B) The insurance commissioner shall submit to the United States department of the treasury and the United States centers for medicare and medicaid services a waiver request under section 1332 of the federal affordable care and patient protection act, 42 U.S.C. § 18052, as it exists on the effective date of this act, for a reinsurance program for health insurance plans on the health benefit exchange in Kansas established under the federal affordable care and patient protection act. The insurance commissioner shall design the reinsurance program in coordination with the secretary of health and environment to offset any cost of the section 1115 waiver

described in this paragraph to the United States government in order to meet federal budget neutrality requirements for medicaid waivers.

(C) The secretary of health and environment may implement expanded medical assistance eligibility as described in subparagraph (A) with the approval of the United States centers for medicare and medicaid services during the pendency of any approval decision required under subparagraph (B). If the United States centers for medicare and medicaid services and the United States department of the treasury do not approve both waivers submitted in accordance with this paragraph, then income eligibility under the act shall be established under paragraph (3), and the insurance commissioner shall terminate any request for a section 1332 waiver for a reinsurance program.

(3) The secretary of health and environment shall submit to the United States centers for medicare and medicaid services a waiver request under section 1115 of the federal social security act, 42 U.S.C. § 1315, as it exists on the effective date of this act, to provide medical assistance eligibility to individuals described in subsection (b) whose modified adjusted gross income does not exceed 138% of the federal poverty level.

New Sec. 3. (a) The secretary of health and environment shall refer each non-disabled adult applying for or receiving coverage under the act who is unemployed or working fewer than 20 hours per week to the Kansasworks program administered by the department of commerce. The secretary of commerce shall coordinate with the secretary of health and environment to certify to the secretary of health and environment each covered individual's compliance with this section. The secretary of commerce shall maintain a unique database of Kansasworks participants who are covered individual under the act to track employment outcomes and

progress toward employment.

(b) The secretary of health and environment shall evaluate each new applicant for coverage under the act for education status, employment status and any factors impacting the applicant's employment status, if less than full-time employment, and shall require each applicant to acknowledge the referral required under subsection (a). Such evaluation shall be a prerequisite for coverage under the act.

(c) Full-time students enrolled in a postsecondary education institution or technical school shall be exempt from the referral required by subsection (a) for each year the student is enrolled in such educational setting.

(d) The secretary of health and environment shall report annually to the legislature, in coordination with the secretary of commerce, on or before the first day of each regular session of the legislature regarding the employment outcomes of covered individuals under the act.

New Sec. 4. (a) (1) The secretary of health and environment shall charge to each covered individual under the act a coverage premium equal to the following amounts:

(A) For a covered individual whose modified adjusted gross income does not exceed 100% of the federal poverty level, no premium; and

(B) for a covered individual whose modified adjusted gross income is greater than 100% of the federal poverty level, a premium equal to 5% of the individual's household modified adjusted gross income.

(2) The secretary of health and environment shall remit all moneys collected or received for coverage premiums charged under this subsection 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 remitted into the state treasury to the credit of the state general fund.

(b) The secretary of health and environment shall submit to the United States centers for medicare and medicaid services any state plan amendment, waiver request or other approval request to assess to each covered individual a copayment for each instance of non-urgent emergency care in an amount determined by the secretary of health and environment.

(c) (1) An individual shall be ineligible for coverage under the act if:

(A) The individual has not made the first coverage premium payment charged by the secretary of health and environment under subsection (a); or

(B) the individual is delinquent in making a coverage premium payment by 60 days or more.

(2) An individual who is delinquent in making a coverage premium payment by 60 days or more shall be ineligible for coverage under the act for a period of six months.

(d) The secretary of health and environment shall utilize the debt collection procedures authorized by K.S.A. 75-6201 et seq., and amendments thereto, for a covered individual under the act who is in making a coverage premium payment by 60 days or more.

New Sec. 5. (a) The secretary of health and environment may establish a health insurance coverage premium assistance program for individuals who meet the following requirements:

(1) The individual has an annual household income of not more than 138% of the federal poverty level, based on the modified adjusted gross income provisions set forth in section 2001(a)(1) of the federal patient protection and affordable care act; or

(2) the individual is eligible for health insurance coverage through an employer but cannot afford the health insurance coverage premiums, as determined by the secretary of health and environment.

(b) A program established under this section shall:

(1) Contain eligibility requirements that are the same as in sections 2 and 3, and amendments thereto; and

(2) provide that an individual's payment for a health insurance coverage premium may not exceed 5% of the individual's household modified adjusted gross income.

New Sec. 6. (a) The secretary of health and environment shall administer medical assistance benefits using a managed care delivery system using organizations subject to assessment of the privilege fee under K.S.A. 40-3213, and amendments thereto. If the United States centers for medicare and medicaid services determines that the assessment of a privilege fee provided in K.S.A. 40-3213, and amendments thereto, is unlawful or otherwise invalid, then the secretary of health and environment shall administer state medicaid services using a managed care delivery system.

(b) In awarding any contract for an entity to administer state medicaid services using a managed care delivery system, the secretary of health and environment shall:

(1) Not provide favorable or unfavorable treatment in awarding a contract based on an entity's for-profit or not-for-profit tax status;

(2) give preference in awarding a contract to an entity that provides health insurance coverage plans on the health benefit exchange in Kansas established under the federal affordable care and patient protection act; and

(3) require that any entity administering state medicaid services provide tiered benefit plans with enhanced benefits for covered individuals who demonstrate healthy behaviors, as determined by the secretary of health and environment.

New Sec. 7. If, at any point, the federal medical assistance percentage for coverage of medical assistance participants described in section 1902(a)(10)(A)(i)(VIII) of the federal social security act, 42 U.S.C. § 1396a, as it exists on the effective date of this section, becomes lower than 90%, then the secretary of health and environment shall terminate coverage under the act over a 12-month period, beginning on the first day that the federal medical assistance percentage falls below 90%. No individual shall be newly enrolled for coverage under the act after such date.

New Sec. 8. (a) Section 7, and amendments thereto, shall be nonseverable from the remainder of the act. If the provisions of section 7, and amendments thereto, are not approved by the United States centers for medicare and medicaid services, then the act shall be null and void and shall have no force and effect.

(b) A denial of federal approval or federal financial participation that applies to any provision of the act not enumerated in subsection (a) shall not prohibit the secretary of health and environment from implementing any other provision of the act that is federally approved for federal financial participation or that does not require federal approval or federal financial participation.

New Sec. 9. (a) The secretary of health and environment shall impose a surcharge on each hospital provider, as defined in K.S.A. 65-6207, and amendments thereto, in an amount necessary to generate, in the aggregate, \$31,000,000 per fiscal year. The surcharge shall be

collected once per calendar quarter. Prior to imposing or collecting such surcharge, the secretary of health and environment shall adopt rules and regulations setting the manner of collection for the surcharge and the basis upon which the surcharge shall be imposed on each hospital provider.

(b) All moneys collected or received by the secretary of health and environment for the surcharge imposed under this section shall be remitted to the state treasurer in accordance with the provisions of 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 medicaid expansion hospital surcharge fund.

(c) There is hereby created in the state treasury the medicaid expansion hospital surcharge fund. Moneys in the fund shall be expended for the purpose of administering and providing services under the act. All expenditures from the 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.

New Sec. 10. (a) All moneys collected or received by the secretary of health and environment for privilege fees collected pursuant to K.S.A. 40-3213, and amendments thereto, connected to covered individuals under the act shall be remitted to the state treasurer in accordance with the provisions of 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 medicaid expansion privilege fee fund.

(b) There is hereby created in the state treasury the medicaid expansion privilege fee fund as a reappropriating fund. Moneys in the fund shall be expended for the purpose of medicaid medical assistance payments for covered individuals under the act. All expenditures

from the 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.

(c) The medicaid expansion privilege fee fund shall be used for the purposes set forth in the act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in the act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(d) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the medicaid expansion privilege fee fund interest earnings based on:

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

(e) On or before January 10, 2022, and on or before the first day of the regular session of the legislature each year thereafter, the secretary of health and environment shall prepare and deliver a report to the legislature that summarizes all expenditures from the medicaid expansion privilege fee fund, fund revenues and recommendations regarding the adequacy of the fund to support necessary program expenditures.

New Sec. 11. (a) On or before January 10, 2022, and on or before the first day of the regular session of the legislature each year thereafter, the secretary of health and environment shall prepare and deliver a report to the legislature that summarizes the cost savings achieved by

the state from the movement of covered individuals from the KanCare program to coverage under the act, including, but not limited to, the MediKan program, the medically needy spend-down program and the breast and cervical cancer program.

(b) State cost savings shall be determined by calculating the cost of providing services to covered individuals in the KanCare program less the cost of services provided to covered individuals under the act.

New Sec. 12. (a) The secretary of corrections shall coordinate with county sheriffs to facilitate medicaid coverage for any inmate incarcerated in a Kansas jail during any time period that the inmate is eligible for coverage.

(b) On or before January 10, 2022, and on or before the first day of the regular session of the legislature each year thereafter, the secretary of corrections shall prepare and deliver a report to the legislature that identifies cost savings to the state from the use of the act to provide medicaid reimbursement for inmate inpatient hospitalization.

New Sec. 13. On or before February 15 of each year, the secretary of health and environment shall present a report to the house committee on appropriations and the senate committee on ways and means that summarizes the costs of the act and the cost savings and additional revenues generated during the preceding fiscal year.

New Sec. 14. The legislative post audit committee shall direct the legislative division of post audit to conduct an audit of the direct economic impact of the implementation of the act on the state general fund during the first two fiscal years following implementation of the act. Such audit shall be submitted to the legislature on or before the first day of the regular legislative session immediately following the end of the time period audited.

New Sec. 15. (a) The department of health and environment shall remit all moneys received by the department of health and environment from drug rebates associated with medical assistance enrollees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state general fund.

(b) The department of health and environment shall certify the amount of moneys received by such agency from drug rebates associated with medical assistance enrollees on a monthly basis and shall transmit each such certification to the director of legislative research and the director of the budget.

(c) Upon receipt of each such certification, the director of legislative research and the director of the budget shall include such certified amount on any monthly report prepared by the legislative research department or the division of the budget that details state general fund receipts as a separate item entitled "drug rebates" under a category of other revenue sources.

(d) This section shall take effect and be in force on and after July 1, 2021.

New Sec. 16. (a) There is hereby established in the state treasury the federal medical assistance percentage stabilization fund to be administered by the secretary of health and environment. All expenditures from the federal medical assistance percentage stabilization 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.

(b) Notwithstanding the provisions of any other statute, the attorney general is hereby authorized and directed to remit to the state treasurer, in accordance with the provisions of

K.S.A. 75-4215, and amendments thereto, any moneys that are recovered by the attorney general on behalf of the state in the civil action Texas v. United States, no. 7:15-cv-00151-O (N.D. Tex.). Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the federal medical assistance percentage stabilization fund.

(c) Beginning in fiscal year 2021, all transfers from the federal medical assistance percentage stabilization fund shall be used during any fiscal year to fund any additional title XIX costs incurred due to any decrease to the federal medical assistance percentage for the state of Kansas.

(d) Each fiscal year, on December 1 and June 30, beginning in fiscal year 2021, the secretary shall determine and certify the estimated amount of any reduced or increased title XIX costs incurred due to any increase or decrease to the federal medical assistance percentage for the state of Kansas in the current fiscal year. The secretary shall certify each such amount to the director of accounts and reports and shall transmit a copy of each such certification to the director of the budget and the director of legislative research. Upon receipt of any such certification indicating reduced costs, the director of accounts and reports shall transfer such certified amount of moneys from the state general fund to the federal medical assistance percentage stabilization fund. Upon receipt of any such certification indicating increased costs, the director of accounts and reports shall transfer such certified amount of moneys from the federal medical assistance percentage stabilization fund to the state general fund.

(e) The federal medical assistance percentage stabilization fund and any other moneys transferred pursuant to this section shall be used for the purposes set forth in this section and for no other governmental purposes. It is the intent of the legislature that the funds and the moneys

deposited in this fund shall remain intact and inviolate for the purposes set forth in this section.

(f) As used in this section, "moneys that are recovered" includes damages, penalties, attorney fees, costs, disbursements, refunds, rebates or any other monetary payment made or paid by any defendant by reason of any judgment, consent decree or settlement, after payment of any costs or fees allocated by court order.

(g) On or before September 1 of each year, the secretary of health and environment shall submit an annual report to the legislature and the legislative budget committee. The report shall include details of actual expenditures related to adjustments of the federal medical assistance percentage for the state of Kansas and all certified amounts transferred in and out of the federal medical assistance percentage stabilization fund.

Sec. 17. K.S.A. 2019 Supp. 40-3213 is hereby amended to read as follows: 40-3213. (a) Every health maintenance organization and medicare provider organization subject to this act shall pay to the commissioner the following fees:

- (1) For filing an application for a certificate of authority, \$150;
- (2) for filing each annual report, \$50;
- (3) for filing an amendment to the certificate of authority, \$10.

(b) Every health maintenance organization subject to this act shall pay annually to the commissioner at the time such organization files its annual report, a privilege fee in an amount equal to ~~the following percentages~~ 5.77% of the total of all premiums, subscription charges or any other term that may be used to describe the charges made by such organization to enrollees: ~~3.31% during the reporting period beginning January 1, 2015, and ending December 31, 2017; and 5.77% on and after January 1, 2018.~~ In such computations all such organizations shall be

entitled to deduct therefrom any premiums or subscription charges returned on account of cancellations and dividends returned to enrollees. If the commissioner shall determine at any time that the application of the privilege fee, or a change in the rate of the privilege fee, would cause a denial of, reduction in or elimination of federal financial assistance to the state or to any health maintenance organization subject to this act, the commissioner is hereby authorized to terminate the operation of such privilege fee or the change in such privilege fee.

(c) For the purpose of insuring the collection of the privilege fee provided for by subsection (b), every health maintenance organization subject to this act and required by subsection (b) to pay such privilege fee shall at the time it files its annual report, as required by K.S.A. 40-3220, and amendments thereto, make a return, generated by or at the direction of its chief officer or principal managing director, under penalty of K.S.A. 2019 Supp. 21-5824, and amendments thereto, to the commissioner, stating the amount of all premiums, assessments and charges received by the health maintenance organization, whether in cash or notes, during the year ending on the last day of the preceding calendar year. Upon the receipt of such returns the commissioner of insurance shall verify such returns and reconcile the fees pursuant to subsection (f) upon such organization on the basis and at the rate provided in this section.

(d) Premiums or other charges received by an insurance company from the operation of a health maintenance organization subject to this act shall not be subject to any fee or tax imposed under the provisions of K.S.A. 40-252, and amendments thereto.

(e) Fees charged under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, [except as provided in section 10, and amendments thereto](#), the state treasurer shall

deposit the entire amount in the state treasury to the credit of the medical assistance fee fund created by K.S.A. 2019 Supp. 40-3236, and amendments thereto.

(f) (1) ~~On and after January 1, 2018,~~ In addition to any other filing or return required by this section, each health maintenance organization shall submit a report to the commissioner on or before March 31 and September 30 of each year containing an estimate of the total amount of all premiums, subscription charges or any other term that may be used to describe the charges made by such organization to enrollees that the organization expects to collect during the current calendar year. Upon filing each March 31 report, the organization shall submit payment equal to $\frac{1}{2}$ of the privilege fee that would be assessed by the commissioner for the current calendar year based upon the organization's reported estimate. Upon filing each September 30 report, the organization shall submit payment equal to the balance of the privilege fee that would be assessed by the commissioner for the current calendar year based upon the organization's reported estimates.

(2) Any amount of privilege fees actually owed by a health maintenance organization during any calendar year in excess of estimated privilege fees paid shall be assessed by the commissioner and shall be due and payable upon issuance of such assessment.

(3) Any amount of estimated privilege fees paid by a health maintenance organization during any calendar year in excess of privilege fees actually owed shall be reconciled when the commissioner assesses privilege fees in the ensuing calendar year. The commissioner shall credit such excess amount against future privilege fee assessments. Any such excess amount paid by a health maintenance organization that is no longer doing business in Kansas and that no longer has a duty to pay the privilege fee shall be refunded by the commissioner from funds

appropriated by the legislature for such purpose.

Sec. 18. K.S.A. 2019 Supp. 40-3213 is hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

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