HOUSE BILL No. 2079

AN ACT concerning health and healthcare; providing for reimbursement to eligible providers for medicaid ground emergency medical transportation services; relating to health maintenance organizations; privilege fees; rate; disposition of moneys; extending the medical assistance fee fund; establishing the community mental health center improvement fund; amending K.S.A. 2016 Supp. 40-3213, 40-3236 and 65-180 and repealing the existing sections.

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

New Section 1. (a) An eligible provider, as described in subsection (b), in addition to the rate of payment that the provider would otherwise receive for medicaid ground emergency medical transportation services, shall receive supplemental medicaid reimbursement to the extent provided by law.

(b) A provider shall be eligible for supplemental reimbursement only if the provider meets the following conditions during the reporting period:

(1) Provides ground emergency medical transportation services to medicaid beneficiaries;

(2) is a provider that is enrolled as a medicaid provider for the period being claimed; and

(3) is owned or operated by the state, a political subdivision or local government, that employs or contracts with persons or providers who are licensed or permitted to provide emergency medical services in the state of Kansas, including hospitals and private entities to the extent permissible under federal law.

(c) An eligible provider's supplemental reimbursement pursuant to this section shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible provider, as described in subsection (b), shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to subsection (f)(2);

(2) in no instance may the amount certified pursuant to subsection (e)(1), when combined with the amount received from all other sources of reimbursement from the medicaid program, exceed or be less than 100% of actual costs, as determined pursuant to the medicaid state plan, for ground emergency medical transportation services; and

(3) the supplemental medicaid reimbursement provided by this section must be distributed exclusively to eligible providers under a payment methodology based on ground emergency medical transportation services provided to medicaid beneficiaries by eligible providers on a per-transport basis or other federally permissible basis. The department of health and environment shall obtain approval from the federal centers for medicare and medicaid services for the payment methodology to be utilized, and shall not make any payment pursuant to this section prior to obtaining that approval.

(d) (1) It is the legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the state general fund. An eligible provider, as a condition of receiving supplemental reimbursement pursuant to this section, shall enter into, and maintain, an agreement with the department for the purposes of implementing this section and reimbursing the department for the costs of administering this section.

(2) The nonfederal share of the supplemental reimbursement submitted to the federal centers for medicare and medicaid services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in subsection (b)(3) and certified to the state as provided in subsection (e).

(e) Participation in the program by an eligible provider described in this section is voluntary. If an applicable governmental entity elects to seek supplemental reimbursement pursuant to this section on behalf of an eligible provider, the governmental entity shall do the following:

(1) Certify, in conformity with the requirements of 42 C.F.R. § 433.51, that the claimed expenditures for the ground emergency medical transportation services are eligible for federal financial participation;

(2) provide evidence supporting the certification as specified by the department;

(3) submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation; and

(4) keep, maintain, and have readily retrievable any records specified

by the department to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required by the federal centers for medicare and medicaid services.

(f) The department shall promptly seek any necessary federal approvals for the implementation of this section. The department may limit the program to those costs that are allowable expenditures under title XIX of the federal social security act, 42 U.S.C. § 1396 et seq. If federal approval is not obtained for implementation of this section, this section shall not be implemented.

(1) The department shall submit claims for federal financial participation for the expenditures for the services described in subsection (e) that are allowable expenditures under federal law.

(2) The department shall submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law. The department may utilize intergovernmental transfers or certified public expenditures to implement this section subject to the same provisions and requirements of section 2, and amendments thereto.

New Sec. 2. (a) The department of health and environment shall design and implement, in consultation and coordination with eligible providers as described in subsection (b), an intergovernmental transfer program relating to medicaid managed care, ground emergency medical transport services and those services provided by emergency medical services personnel at the emergency medical responder, emergency medical technician, advanced emergency medical technician and paramedic levels in the pre-stabilization and preparation for transport.

(b) A provider shall be eligible to transfer public funds to the state pursuant to this section only if the provider meets both of the following conditions in an applicable reporting period:

(1) Provides ground emergency medical transport services to medicaid managed care enrollees pursuant to a contract or other arrangement with a medicaid managed care plan; and

(2) is owned or operated by the state, a political subdivision or local government that employs or contracts with persons or providers who are licensed or permitted to provide emergency medical services in the state of Kansas, including hospitals and private entities to the extent permissible under federal law.

(c) To the extent intergovernmental transfers are voluntarily made by, and accepted from, an eligible provider described in subsection (b), or a governmental entity affiliated with an eligible provider, the department shall make increased capitation payments to applicable medicaid managed care plans.

(1) The increased capitation payments made pursuant to this section shall be, at a minimum, in actuarially determined amounts to the extent permissible under federal law.

(2) Except as provided in subsection (f), funds associated with intergovernmental transfers made and accepted pursuant to this section shall be used to fund additional payments to medicaid managed care plans.

(3) Medicaid managed care plans shall enter into contracts or contract amendments with eligible providers for the disbursement of increased capitation payments made pursuant to this section.

(d) The intergovernmental transfer program developed pursuant to this section shall be implemented on the date federal approval is obtained, and only to the extent intergovernmental transfers from the eligible provider, or the governmental entity with which it is affiliated, are provided for this purpose. To the extent permissible under federal law, the department shall implement the intergovernmental transfer program and increased capitation payments under this section on a retroactive basis as approved by the federal centers for medicare and medicaid services.

(e) Participation in the intergovernmental transfers under this section is voluntary on the part of the transferring entities for purposes of all applicable federal laws.

(f) This section shall be implemented without any additional expenditure from the state general fund. As a condition of participation under this section, each eligible provider as described in subsection (b), or the governmental entity affiliated with an eligible provider, shall agree to reimburse the department for any costs associated with implementing

this section. Intergovernmental transfers described in this section are subject to an administration fee of up to 20% of the non-federal share paid to the department and shall be allowed to count as a cost of providing the services not to exceed 120% of the total amount.

(g) As a condition of participation under this section, medicaid managed care plans, eligible providers as described in subsection (b), and governmental entities affiliated with eligible providers shall agree to comply with any requests for information or similar data requirements imposed by the department for purposes of obtaining supporting documentation necessary to claim federal funds or to obtain federal approvals.

(h) This section shall be implemented only if and to the extent federal financial participation is available and is not otherwise jeopardized and any necessary federal approvals have been obtained.

(i) To the extent that the department determines that the payments made pursuant to this section do not comply with federal medicaid requirements, the department may return or not accept an intergovernmental transfer and may adjust payments pursuant to this section as necessary to comply with federal medicaid requirements.

(j) The state of Kansas and the department of health and environment shall implement whatever program the federal centers for medicare and medicaid services approves for use in Kansas under sections 1 and 2, and amendments thereto.

New Sec. 3. There is hereby established in the state treasury the community mental health center improvement fund. All moneys credited to the community mental health center improvement fund shall be used by the Kansas department for aging and disability services only for purposes related to community mental health centers. All expenditures from the community mental health center improvement 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 for aging and disability services or the secretary's designee.

Sec. 4. K.S.A. 2016 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 ~~1% per annum~~ *the following percentages* of the total of all premiums, subscription charges or any other term ~~which~~ *that* may be used to describe the charges made by such organization to enrollees~~, except~~*: 3.31%* during the reporting period beginning January 1, 2015, and ending December 31, 2017~~, the privilege fee shall be 3.31%,~~*;* and *5.77%* on and after January 1, 2018~~, the privilege fee shall be 2%~~. 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. 2016 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 ~~the same~~ *such returns* and ~~assess~~ *reconcile* the fees *pursuant to*

subsection (f) upon such organization on the basis and at the rate provided ~~herein and such fees shall thereupon become due and payable~~ *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, the state treasurer shall deposit the entire amount in the state treasury to the credit of ~~the state general fund, except during the period beginning July 1, 2015, and ending on June 30, 2018, such deposit shall be to the credit of~~ the medical assistance fee fund created by K.S.A. 2016 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 ½ 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. 5. K.S.A. 2016 Supp. 40-3236 is hereby amended to read as follows: 40-3236. (a) There is hereby created in the state treasury the medical assistance fee fund. The commissioner of insurance shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys collected or received by the commissioner from health maintenance organizations and medicare provider organizations for the fees specified in K.S.A. 40-3213, 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 medical assistance fee fund.

(b) *(1)* Moneys in the medical assistance fee fund shall be expended *subject to the following priorities:*

(A) First, to restore any reductions initiated during calendar year 2016 to provider reimbursement rates for state medicaid services;

(B) second, on July 1, 2017, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer the amount of $3,500,000 to the community mental health center improvement fund created by section 3, and amendments thereto, and on July 1 of each year thereafter, or as soon after each such date as moneys are available, the director of accounts and reports shall transfer the amount of $5,000,000 to the community mental health center improvement fund established by section 3, and amendments thereto;

(C) third, to transfer moneys to the Kansas newborn screening fund pursuant to K.S.A. 65-180, and amendments thereto; and

(D) fourth, if any moneys remain, for the purpose of medicaid medical assistance payments.

(2) All expenditures from the medical assistance fee 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) On or before the 10th *day* of each month, the director of accounts and reports shall transfer from the state general fund to the medical assistance fee fund interest earnings based on:

(1) The average daily balance of moneys in the medical ~~programs~~ *assistance* fee fund for the preceding month; and

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

(d) The medical assistance fee fund shall be used for the purposes set forth in this 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 this 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.

(e) The secretary of health and environment shall prepare and deliver to the legislature on or before the first day of each regular legislative session~~,~~ a report ~~which~~ *that* summarizes all expenditures from the medical assistance fee fund, fund revenues and recommendations regarding the adequacy of the fund to support necessary medical assistance programs.

~~(f) The provisions of this section shall expire on July 1, 2018.~~

Sec. 6. K.S.A. 2016 Supp. 65-180 is hereby amended to read as follows: 65-180. The secretary of health and environment shall:

(a) Institute and carry on an intensive educational program among physicians, hospitals, public health nurses and the public concerning congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases detectable with the same specimen. This educational program shall include information about the nature of such conditions and examinations for the detection thereof in early infancy in order that measures may be taken to prevent intellectual disability or morbidity resulting from such conditions.

(b) Provide recognized screening tests for phenylketonuria, galactosemia, hypothyroidism and such other diseases as may be appropriately detected with the same specimen. The initial laboratory screening tests for these diseases shall be performed by the department of health and environment or its designee for all infants born in the state. Such services shall be performed without charge.

(c) Provide a follow-up program by providing test results and other information to identified physicians; locate infants with abnormal newborn screening test results; with parental consent, monitor infants to assure appropriate testing to either confirm or not confirm the disease suggested by the screening test results; with parental consent, monitor therapy and treatment for infants with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria or other genetic diseases being screened under this statute; and establish ongoing education and support activities for individuals with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases being screened under this statute and for the families of such individuals.

(d) Maintain a registry of cases including information of importance for the purpose of follow-up services to prevent intellectual disability or morbidity.

(e) Provide, within the limits of appropriations available therefor, the necessary treatment product for diagnosed cases for as long as medically indicated, when the product is not available through other state agencies. In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual meets medicaid eligibility, such individuals' needs shall be covered under the medicaid state plan. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual is not medicaid eligible, but is below 300% of the federal poverty level established under the most

recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of between 50% to 100% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual exceeds 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of an amount not to exceed 50% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment.

(f) Provide state assistance to an applicant pursuant to subsection (e) only after it has been shown that the applicant has exhausted all benefits from private third-party payers, medicare, medicaid and other government assistance programs and after consideration of the applicant's income and assets. The secretary of health and environment shall adopt rules and regulations establishing standards for determining eligibility for state assistance under this section.

(g) (1) Except for treatment products provided under subsection (e), if the medically necessary food treatment product for diagnosed cases must be purchased, the purchaser shall be reimbursed by the department of health and environment for costs incurred up to $1,500 per year per diagnosed child age 18 or younger at 100% of the product cost upon submission of a receipt of purchase identifying the company from which the product was purchased. For a purchaser to be eligible for reimbursement under this subsection, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(2) As an option to reimbursement authorized under subsection (g)(1), the department of health and environment may purchase food treatment products for distribution to diagnosed children in an amount not to exceed $1,500 per year per diagnosed child age 18 or younger. For a diagnosed child to be eligible for the distribution of food treatment products under this subsection, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(3) In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection.

(h) The department of health and environment shall continue to receive orders for both necessary treatment products and necessary food treatment products, purchase such products, and shall deliver the products to an address prescribed by the diagnosed individual. The department of health and environment shall bill the person or persons who have legal responsibility for the diagnosed patient for a pro-rata share of the total costs, in accordance with the rules and regulations adopted pursuant to this section.

(i) The secretary of health and environment shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American college of medical genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department of health and environment to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.

(j) In performing the duties under subsection (i), the secretary of health and environment shall appoint an advisory council to advise the department of health and environment on implementation of subsection (i).

(k) The department of health and environment shall periodically review the newborn screening program to determine the efficacy and cost effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of newborns and

to maximize the number of newborn screenings that may be conducted with the funding available for the screening program.

(l) There is hereby established in the state treasury the Kansas newborn screening fund ~~which~~ *that* shall be administered by the secretary of health and environment. All expenditures from the fund shall be for the newborn screening program. 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. ~~Each month~~ *On July 1 of each year*, the director of accounts and reports shall determine the amount credited to the ~~state general~~ *medical assistance fee* fund pursuant to K.S.A. 40-3213, and amendments thereto, and shall transfer the *estimated* portion of such amount that is necessary to fund the newborn screening program for the ~~preceding month~~ *ensuing fiscal year* as certified by the secretary of health and environment or the secretary's designee~~,~~ to the *Kansas* newborn screening fund, except that such amount shall not exceed ~~the amount to be credited to the state general fund pursuant to K.S.A. 40-3213, and amendments thereto~~ *$2,500,000 in any one fiscal year*.

Sec. 7. K.S.A. 2016 Supp. 40-3213, 40-3236 and 65-180 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

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HOUSE adopted
Conference Committee Report _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.