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Kansas Department of Health and Environment
Economic Impact Statement
Changes to Medicaid Eligibility Regulations
October 22, 2013

Pursuant to the requirements of K.S.A. 2013 Supp. 65-1,254 and 75-7403, the Kansas Department of Health and Environment submits the following economic impact statement concerning new, amended, and revoked regulations regarding the Medicaid program. Many of the proposed regulations, along with the identified revocations, are being promulgated for the purposes of transitioning all medical assistance regulations from the Department of Children and Families, formerly the Department of Social and Rehabilitation Services as still identified in administrative regulations, to the Department of Health and Environment which is now responsible for the administration of the Medicaid program. In addition, further changes have been promulgated within these regulations in order to implement requirements of the Patient Protection and Affordable Care Act as necessary to receive federal financial participation for the program. These regulations also incorporate established policy not previously included in K.A.R.'s such as changes required by the Deficit Reduction Act of 2005 (Public Law 109-171) and the Medicare Improvement for Patients and Providers Act (MIPPA) of 2008 (Public Law 110-275) as well as other policy updates associated with administration of the Medicaid program.

1. Regulations to be implemented.

- K.A.R. 129-6-30. Implementation of provisions specific to the ACA.
- K.A.R. 129-6-34. Definitions; covered groups.
- K.A.R. 129-6-35. Application process.
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- K.A.R. 129-6-41. Assistance planning for MAGI-based coverage groups.
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- K.A.R. 129-6-50. Determined eligibles; general eligibility factors.
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- K.A.R. 129-6-55. Residence, citizenship, and alienage.
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- K.A.R. 129-6-63. Assignment of rights to support or other third-party payments.
- K.A.R. 129-6-65. Automatic eligibles.

- K.A.R. 129-6-70. Medicaid determined eligibles; eligibility factors specific to qualifying families.
- K.A.R. 129-6-71. Medicaid determined eligibles; poverty-level pregnant women.
- K.A.R. 129-6-72. Medicaid determined eligibles; poverty-level children.
- K.A.R. 129-6-73. Medicaid determined eligibles; eligibility factors specific to pregnant women.
- K.A.R. 129-6-74. Medicaid determined eligibles; eligibility factors specific to children.
- K.A.R. 129-6-80. Medicaid determined eligibles; eligibility factors specific to children in foster care.
- K.A.R. 129-6-81. Medicaid determined eligibles; eligibility factors specific to children living in medicaid-accredited psychiatric hospitals, intermediate care facilities, or residential treatment facilities.
- K.A.R. 129-6-82. Medicaid determined eligibles; eligibility factors specific to HCBS.
- K.A.R. 129-6-83. Medicaid determined eligibles; eligibility factors specific to PACE.
- K.A.R. 129-6-84. Medicaid determined eligibles; eligibility factors specific to work opportunities reward Kansans (WORK).
- K.A.R. 129-6-85. Medicaid determined eligibles; eligibility factors specific to the aged, blind, or disabled (ABD).
- K.A.R. 129-6-86. Poverty-level, low income, and expanded low income medicare beneficiaries; determined eligibles.
- K.A.R. 129-6-87. Poverty-level working disabled individuals; determined eligibles.
- K.A.R. 129-6-88. Disabled individuals with earned income; determined eligibles.
- K.A.R. 129-6-89. Individuals with breast or cervical cancer; determined eligibles.
- K.A.R. 129-6-91. Youth formerly in foster care; determined eligibles.
- K.A.R. 129-6-94. Non-medicaid determined eligibles; eligibility factors specific to persons living in nursing facilities for mental health.
- K.A.R. 129-6-95. Non-medicaid determined eligibles; eligibility factors specific to the medikan program.
- K.A.R. 129-6-96. Continuous eligibility for children and certain adult eligibles.
- K.A.R. 129-6-97. Emergency medical services for certain noncitizens.
- K.A.R. 129-6-103. Determined eligibles; income standards.
- K.A.R. 129-6-106. General requirements for consideration of resources, including real property, personal property, and income.
- K.A.R. 129-6-107. Property exemption.
- K.A.R. 129-6-108. Real property.
- K.A.R. 129-6-109. Personal property.
- K.A.R. 129-6-110. Income.
- K.A.R. 129-6-111. Applicable income.
- K.A.R. 129-6-112. Income exempt from consideration as income and as a cash asset for MAGI-excepted groups.
- K.A.R. 129-6-113. Income exempt as applicable income for MAGI-excepted groups.
- K.A.R. 129-6-120. Eligibility before the month of application.
- K.A.R. 129-6-140. Correction and discontinuance of assistance.
- K.A.R. 129-6-150. Estate recovery.
- K.A.R. 129-6-151. Presumptive eligibility.
- K.A.R. 129-6-152. Presumptive eligibility to be determined by qualified entities.
- K.A.R. 129-6-153. Presumptive eligibility when determined by qualified hospitals.

2. Regulations to be revoked.

- K.A.R. 30-6-34. Program.
- K.A.R. 30-6-35. Application process.
- K.A.R. 30-6-36. Redetermination of eligibility process.
- K.A.R. 30-6-39. Responsibilities of applicants and recipients.
- K.A.R. 30-6-40. Agency responsibility to applicants and recipients.
- K.A.R. 30-6-41. Assistance planning.
- K.A.R. 30-6-50. Determined eligibles; general eligibility factors.
- K.A.R. 30-6-51. Assistance eligibility, general.
- K.A.R. 30-6-52. Act in own behalf.
- K.A.R. 30-6-53. Financial eligibility.
- K.A.R. 30-6-54. Citizenship, alienage, and residence.
- K.A.R. 30-6-55. Cooperation.
- K.A.R. 30-6-56. Transfer of assets.
- K.A.R. 30-6-60. Living in a public institution.
- K.A.R. 30-6-63. Assignment of rights to support or other third party payments.
- K.A.R. 30-6-65. Automatic eligibles.
- K.A.R. 30-6-70. Medicaid determined eligibles; eligibility factors specific to temporary assistance for families (TAF).
- K.A.R. 30-6-78. Medicaid (title XIX) determined eligibles – eligibility factors specific to aid to pregnant women (APW).
- K.A.R. 30-6-80. Medicaid (title XIX) determined eligibles – eligibility factors specific to children in foster care (FFP-FC).
- K.A.R. 30-6-81. Medicaid (title XIX) determined eligibles – eligibility factors specific to children living in title XIX accredited psychiatric hospitals or intermediate care facilities.
- K.A.R. 30-6-82. Technology-assisted child; determined eligibles.
- K.A.R. 30-6-85. Medicaid (title XIX) determined eligibles – eligibility factors specific to the aged, blind, or disabled (AABD).
- K.A.R. 30-6-86. Poverty-level and low-income medicare beneficiaries; determined eligibles.
- K.A.R. 30-6-87. Poverty level working disabled individuals; determined eligibles.
- K.A.R. 30-6-88. Disabled individuals with earned income; determined eligibles.
- K.A.R. 30-6-89. Individuals with breast or cervical cancer; determined eligibles.
- K.A.R. 30-6-91. Youth formerly in foster care; determined eligibles.
- K.A.R. 30-6-94. Medical assistance (non-title XIX) determined eligible; eligibility factors specific to persons living in nursing facilities for mental health (NF-MH).
- K.A.R. 30-6-95. Medical assistance (non-title XIX) determined eligible; eligibility factors specific to non-title XIX foster care (non-FFP-FC).
- K.A.R. 30-6-103. Determined eligibles; protected income levels.
- K.A.R. 30-6-106. General requirements for consideration of resources, including real property, personal property, and income.
- K.A.R. 30-6-107. Property exemption.
- K.A.R. 30-6-108. Real property.
- K.A.R. 30-6-109. Personal property.
- K.A.R. 30-6-110. Income.
- K.A.R. 30-6-111. Applicable income.
- K.A.R. 30-6-112. Income exempt from consideration as income and as a cash asset.
- K.A.R. 30-6-113. Income exempt as applicable income.
- K.A.R. 30-6-120. Eligibility prior to the month of application.
- K.A.R. 30-6-140. Payment amounts.

- K.A.R. 30-6-150. Estate recovery.
- K.A.R. 129-6-38. Rights of applicants and recipients.
- K.A.R. 129-6-77. Poverty-level pregnant women and children;determined eligibles.

3. Brief description of each regulation and what is intended to be accomplished by adoption.

K.A.R. 129-6-30. Implementation of provisions specific to the ACA.

This new regulation is being promulgated to apply new Medicaid eligibility provisions required by the Patient Protection and Affordable Care Act (ACA) to eligibility determinations made on or after November 1, 2013. The regulations containing these provisions are also identified.

K.A.R. 129-6-34. Definitions; covered groups.

This new regulation is being promulgated to define terms used throughout this article for the Medicaid program such as "caretaker," "long term care," and "earned income." New or changed terms include "modified adjusted gross income or MAGI," and "tax dependent." The regulation also defines the medical assistance coverage groups in Kansas including both MAGI-based groups and MAGI-excepted groups, in accordance with ACA requirements.

K.A.R. 129-6-35. Application process.

This new regulation adopts current policy that was previously contained in K.A.R. 30-6-35 and includes new requirements for applying to the medical assistance program by use of a department-approved form and through the state application website. It has also been modified to recognize electronic and telephonic signatures.

K.A.R. 129-6-36. Redetermination of eligibility process.

This new regulation adopts and modifies current policy that was previously contained in K.A.R. 30-6-36 and includes requirements for the recipient regarding redetermination of eligibility on an annual or an as-needed basis. The recipient shall either review and respond to information provided by the department or complete and return information regarding the recipient's current situation.

K.A.R. 129-6-39. Responsibilities of applicants and recipients.

This regulation has been amended to make only technical clarifications to current policy previously contained in K.A.R. 30-6-39.

K.A.R. 129-6-41. Assistance planning for MAGI-based coverage groups.

This new regulation adopts a change in policy regarding the composition of the assistance plan for the family, as required by federal law. The assistance plan shall now be determined based on who is included in a person's tax household. For persons who are not claimed as a tax dependent by any other person and who are expected to file a tax return, the household shall include the person and his or her tax dependents, except as otherwise indicated in this regulation. For persons claimed as a tax dependent by another taxpayer, the household shall include the taxpayer and the taxpayer's dependents, except as otherwise indicated in this regulation. Finally, for persons who are not claimed as a tax dependent and do not expect to file a tax return, the household shall include the person's spouse, children, and parents and siblings, if the person is under 21. For married couples, each spouse shall be included in the household of the other.

K.A.R. 129-6-42. Assistance planning for MAGI-excepted coverage groups.

This new regulation adopts current policy previously reflected in K.A.R. 30-6-41 regarding composition of the assistance plan for persons in independent living and for persons in long term care arrangements. For independent living arrangements, the assistance plan shall normally include all members of the family group for whom assistance is requested. Exceptions to this include SSI recipients who have separate assistance plans and children who are not disabled or blind whose assistance plan consist of all children in the family group and any legally responsible relatives. For long term care arrangements, each individual shall have a separate assistance plan with limited exceptions.

K.A.R. 129-6-50. Determined eligibles; general eligibility factors.

This new regulation adopts current policy previously reflected in K.A.R. 30-6-50 regarding the applicability of general eligibility factors in the medical assistance programs.

K.A.R. 129-6-51. General eligibility requirements.

This new regulation adopts current policy previously reflected in K.A.R. 30-6-51. Eligibility shall continue to be based on information provided by the individual. The use of electronic data matches in the eligibility process is expanded with additional entities. Eligibility shall only continue if all applicable eligibility requirements are met.

K.A.R. 129-6-52. Act in own behalf.

The new regulation incorporates current policy previously reflected in K.A.R. 30-6-52 regarding the requirement that each applicant and recipient have the legal capacity to apply for and receive assistance in one's own behalf. This includes emancipated minors but those who are unemancipated must have another responsible party to act in their behalf except as noted in this regulation. Also included are new definitions for "medical facilitator" and "medical representative," both of which can be authorized to act in a person's behalf in certain circumstances.

K.A.R. 129-6-53. Financial eligibility for MAGI-based coverage groups.

This new regulation adopts changes in policy regarding how financial eligibility is determined for a family. Such eligibility shall be based on the income of the tax household which includes the sum of the modified adjusted gross income (or MAGI) of each household member. The methods used to determine MAGI shall follow the rules specified in the Internal Revenue Code, with certain exclusions. Income exclusions include lump sum income and scholarships or other grants used for educational purposes. Although eligibility is based on household income, certain persons are excluded from the computation including a person who is not required to file a tax return and lives in the household of that person's parents. No other income deductions are allowed in the computation. There continues to be no resource test for family groups, including children and pregnant women. Finally, current policy regarding continuous eligibility for children is also incorporated in this regulation.

K.A.R. 129-6-54. Financial eligibility for MAGI-excepted coverage groups.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-53 regarding the determination of financial eligibility including the determination of eligibility base periods for both independent and long term care living arrangements. The process for determining spenddown in independent living arrangements and client obligation for persons in long term care is described. In addition, for long term care, total gross income must not exceed 300% of the one person payment standard in the Supplemental Security Income (SSI) program. Allowable medical expenses which can be applied to a spenddown or client obligation are defined and once the expenses meet or exceed the spenddown or client obligation, financial eligibility is met.

K.A.R. 129-6-55. Residence, citizenship, and alienage.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-54 regarding the requirement that each applicant or recipient be a resident of the State of Kansas for eligibility purposes. Rules regarding the establishment of residency for both non-institutionalized and institutionalized individuals are included and how the capability of the individual to state intent can affect residency. This regulation also incorporates current policy regarding the requirement that each applicant or recipient be a citizen or legally recognized non-citizen of the United States for eligibility purposes. This includes eligibility for such non-citizens as refugees, asylees, and lawful permanent residents. Specific federal citations have been included which define the various qualifying non-citizen groups. Policies regarding non-citizens are also affected by whether the individual entered the United States before or after August 22, 1996, in accordance with federal law. New policy is being implemented to require a match with the Social Security data base for citizenship information before requesting hard copy documents. Otherwise, policies regarding acceptable documentation of citizenship or non-citizen status remain unchanged.

K.A.R. 129-6-56. Cooperation.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-55 regarding the applicant's and recipient's cooperation in meeting certain eligibility requirements. Included are the requirements to cooperate by supplying all information necessary to determine eligibility, providing a social security number, establishing the paternity of a child born out-of-wedlock, and pursuing third party resources.

K.A.R. 129-6-57. Transfer of assets.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-56 regarding the impact of transferring assets on eligibility for medical assistance and includes additional changes resulting from implementation of the Deficit Reduction Act of 2005. Transfers in which the fair market value of the asset is not received shall result in ineligibility for coverage of long term care services for a period of time based on the uncompensated value of the asset transferred and the average private pay nursing facility rate in Kansas. The look back date is defined as the earliest date in which a transfer penalty can be assessed. For transfers which occur before February 8, 2006 the look back date can be up to 60 months in the case of a transfer involving a trust and 36 months for all other transfers. For transfers which occur on or after February 8, 2006, the look back period is up to 60 months for all transfers. Certain transfers are exempted under this policy and provisions have been established to waive ineligibility in cases of undue hardship.

K.A.R. 129-6-60. Public institution.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-60 regarding the effect of residing in a public institution. Public institution is defined as an institution that is under government control such as a state psychiatric institution or a correctional facility. Persons residing in such institutions are not eligible except as otherwise noted in this regulation.

K.A.R. 129-6-63. Assignment of rights to support and other third party payments.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-63 regarding the requirement that each applicant or recipient assign the rights to medical support or other third party payments for medical care, on behalf of any individual for whom medical assistance is claimed, to the Secretary.

K.A.R. 126-6-65. Automatic eligibles.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-65 regarding individuals who are eligible for medical assistance without meeting further requirements. This

includes persons who receive SSI benefits, newborn children born to women who were Medicaid eligible at the time of birth, and children receiving foster care or adoption support assistance.

K.A.R. 129-6-70. Medicaid determined eligibles; eligibility factors specific to qualifying families.

This new regulation is being promulgated to implement current policy regarding coverage of families who meet the minimal income standards reflected in this regulation. Such families must consist of a caretaker and the children of the caretaker who are under age 19, including a pregnant woman and her unborn child. Such coverage shall continue for a period of time in instances of loss of eligibility due to increased spousal support or earnings, as indicated in this regulation.

K.A.R. 129-6-71. Medicaid determined eligibles; poverty-level pregnant women.

This new regulation is being promulgated to implement current policy regarding coverage of pregnant women who meet the poverty level standard reflected in this regulation. Coverage continues for two consecutive months following the month the pregnancy ends.

K.A.R. 129-6-72. Medicaid determined eligibles; poverty-level children.

This new regulation is being promulgated to implement current policy regarding coverage of children up to age 19 who meet the poverty level standards reflected in this regulation, depending upon the age of the child. Certain children ages 6 to 19 are also subject to the requirement that they not be covered by a group health plan or other health insurance coverage to be eligible. Coverage continues until the child reaches the maximum age limit or, if receiving inpatient hospital care, until the hospitalization ends.

K.A.R. 129-6-73. Medicaid determined eligibles; eligibility factors specific to pregnant women.

This new regulation is being promulgated to implement current policy regarding medically needy coverage of pregnant women who do not the eligibility criteria of the poverty-level group described in K.A.R. 129-6-71. Coverage continues for two consecutive months following the month the pregnancy ends.

K.A.R. 129-6-74. Medicaid determined eligibles; eligibility factors specific to children.

This new regulation is being promulgated to implement current policy regarding medically needy coverage of children up to age 19 who do not meet the eligibility criteria of the poverty-level group described in K.A.R. 129-6-72.

K.A.R. 129-6-80. Medicaid determined eligibles; eligibility factors specific to children in foster care.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-80 and 30-6-95 regarding coverage of children in foster care who are placed in an approved living arrangement and have a written court order placing care, custody, and control of the child in accordance with this regulation.

K.A.R. 129-6-81. Medicaid determined eligibles; eligibility factors specific to children living in medicaid-accredited psychiatric hospitals, intermediate care facilities, or residential treatment facilities.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-81 regarding coverage of children receiving inpatient psychiatric care in a state psychiatric institution or a residential treatment facility.

K.A.R. 129-6-82. Medicaid determined eligibles; eligibility factors specific to HCBS. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-82 regarding coverage of individuals who are assessed as in need of long term care services and choose home and community based services within an approved waiver.

K.A.R. 129-6-83. Medicaid determined eligibles; eligibility factors specific to PACE. This new regulation is being promulgated to implement current policy for the Program of All-Inclusive Care for the Elderly (PACE). Individuals who are assessed in need of long term care services, are 55 years of age or older, and reside in a PACE service area.

K.A.R. 129-6-84. Medicaid determined eligibles; eligibility factors specific to work opportunities reward Kansans (WORK). This new regulation is being promulgated to implement current policy regarding coverage of disabled persons who are working and authorized by the Secretary to need WORK services in order to live and work in the community. The person must be employed in a competitive and integrated work setting where work is performed in the competitive labor market on a full or part time basis with compensation at or above minimum wage but not less than the customary wage and level of benefits for similar work performed by a non-disabled person. The person must also accept and agree to program requirements.

K.A.R. 129-6-85. Medicaid determined eligibles; eligibility factors specific to the aged, blind, and disabled (ABD). This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-85 regarding coverage of individuals who are aged, blind or disabled based on social security administration (SSA) criteria.

K.A.R. 129-6-86. Poverty-level, low income, and expanded low- income Medicare beneficiaries. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-86 regarding coverage of individuals who are entitled to Medicare Part A benefits and meet specified income and resource guidelines. Coverage is limited to payment of allowable Medicare premiums, deductibles, and co-insurance.

K.A.R. 129-6-87. Poverty-level working disabled individuals; determined eligibles. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-87 regarding coverage of individuals who are working and entitled to Medicare Part A benefits. They must also meet specified income and resource guidelines. Coverage is limited to payment of Part A premiums only. This program is referred to in policy as the Qualified Working Disabled program.

K.A.R. 129-6-88. Disabled individuals with earned income; determined eligibles. This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-88 regarding coverage of disabled individuals who are working and who meet specified income and resource guidelines. Persons whose income is at least 100% of the federal poverty-level income guidelines must pay a premium for their coverage. This program is referred to in policy as the Working Healthy Program.

K.A.R. 129-6-89. Individuals with breast or cervical cancer; determined eligibles.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-89 regarding coverage of individuals screened for breast or cervical cancer who are uninsured and who are under age 65.

K.A.R. 129-6-91. Youth formerly in foster care; determined eligibles.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-91 regarding coverage of children in the custody of the Department for Children and Families or the Department of Corrections and who are 18 or older. It also incorporates a new policy establishing a maximum age of 26 for coverage as now required by federal law.

K.A.R. 129-6-94. Non-Medicaid determined eligibles; eligibility factors specific to persons living in nursing facilities for mental health.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-94 regarding coverage of persons between the ages of 21 and 65 who have a severe and persistent mental illness and receiving inpatient treatment in a nursing facility for mental health.

K.A.R. 129-6-95. Non-Medicaid determined eligibles; eligibility factors specific to the medikan program.

This new regulation is being promulgated to implement policy regarding the Medikan program for persons who are not eligible for Medicaid. The program is being delinked from the General Assistance program operated by DCF. The Medikan program serves persons between the ages of 18 and 65 and who have a severe impairment that significantly limits physical or mental ability to do basic work activity and is expected to last at least 12 months or result in death. Assistance is limited to 12 months in a lifetime.

K.A.R. 129-6-96. Continuous eligibility for children and certain adult eligibles.

This new regulation is being promulgated to implement current policy regarding continuous medical coverage for children under the age of 19 who becomes eligible for Medicaid. Eligibility shall continue for 12 months under this provision. This regulation has been further amended to provide this same coverage to adults who are eligible under the provisions of K.A.R. 129-6-70. Eligibility shall also continue for 12 months.

K.A.R. 129-6-97. Emergency medical service for certain noncitizens.

This new regulation is being promulgated to implement current policy regarding coverage of emergency medical services to noncitizens who do not meet the qualifying noncitizen provisions of K.A.R. 129-6-55, as required by federal law. Coverage is limited to treatment of an emergency medical condition as defined in this regulation.

K.A.R. 129-6-103. Determined eligibles; income standards.

This new regulation is being promulgated to implement and amend current policy previously reflected in K.A.R. 30-6-103 regarding income standards used to determine eligibility across all of the medical programs. Poverty level standards for pregnant women and children have been modified as a result of the MAGI rules applied to this group. Also now incorporated are the standards to be used in the medikan program and the eligibility standard used for persons in long term care arrangements which is based on 300% of the SSI payment standard for an individual. The HCBS standard is also being updated to reflect changes currently in place.

K.A.R. 129-6-106. General requirements for consideration of resources, including real property, personal property, and income.

This new regulation is being promulgated to implement and amend current policy previously reflected in K.A.R. 30-6-106 regarding treatment of resources. There is no resource eligibility test for the MAGI-based coverage groups and the rules contained in this regulation are only applicable to the MAGI-excepted groups, including all aged, blind, and disabled groups. Policies regarding division of income and resources for a married couple when one of the spouses require long term care are incorporated in this regulation, including determination of the income and resource allowances provided the spouse who remains in the community.

K.A.R. 129-6-107. Property exemption.

This new regulation is being promulgated to implement current policy previously reflected in K.A.R. 30-6-107 regarding resource standards as well as higher standards which were put into place as a result of MIPPA. Ownership of nonexempt resources continues to not impact eligibility as long as the value of the resources does not exceed \$2000 for one person or \$3000 for two or more persons. However, higher standards are applicable to certain groups including poverty-level Medicare beneficiaries under K.A.R. 129-6-86 and working disabled individuals under K.A.R. 129-6-87.

K.A.R. 129-6-108. Real property.

This new regulation is being promulgated to implement and further amend current policy previously reflected in K.A.R. 30-6-108 regarding consideration of real property and real property that is exempted for eligibility purposes. This regulation now includes a provision regarding substantial home equity. As required by the DRA Individuals applying for long term care on or after January 1, 2006 shall be ineligible for payment of long term care services if the individual has equity interest in a home of more than \$500,000 unless the individual's spouse, disabled child, or child under the age of 21 continues to live in the home. The \$500,000 limit shall be increased annually based on the percentage increase in the consumer price index for all urban consumers based on all items and the US city average, rounded to the nearest \$1000.

K.A.R. 129-6-109. Personal property.

This new regulation is being promulgated to implement and further amend current policy previously reflected in K.A.R. 30-6-109 regarding consideration of personal property and personal property that is exempted for eligibility purposes. In addition, new provisions have been added regarding treatment of trusts and annuities. As required by the DRA, for irrevocable trusts established after August 10, 1993, if there are circumstances under which payment can be made, the portion of the trust that can be made available shall be counted as an available resource. Any portion that cannot be made available shall be considered under the transfer of resource provisions in K.A.R. 129-6-57. This applies to trusts established by the individual or a person acting in behalf of the individual. Certain trusts are exempted from these provisions including trusts established for disabled individuals. Provisions for waiving the requirements due to undue hardship are also included. For irrevocable trusts established on or before August 10, 1993, only the amount of the trust that can be made available is countable provided the individual is a beneficiary and the trustees can exercise any discretion in making the trust available. Otherwise, the trust is not countable but shall be considered under the transfer of resources provisions in K.A.R. 129-6-57.

For annuities, all revocable and irrevocable annuities shall be considered an available resource, excluding retirement annuities such as civil service and railroad retirement annuities. Rules for determining the value of annuities as well as acceptable evidence for determining an annuity is unavailable have also been included.

Other clarifications have been added regarding exempted personal property including consideration of life insurance and burial plans and insurance.

K.A.R. 129-6-110. Income.

This new regulation adopts and amends current policy previously reflected in K.A.R. 30-6-110 concerning treatment of income rules. For MAGI-based coverage groups, a prospective monthly income amount is to be obtained based on a projection of income to be received. In cases of changes to income, an estimate of those changes is to be used to determine a new prospective monthly amount. Annual tax information is still to be used in determining a prospective monthly amount for self-employment purposes but the option of a standard 25% deduction for income producing expenses is eliminated and actual expenses are considered. For MAGI-excepted coverage groups, income for persons in independent living shall be determined prospectively for both prior and current eligibility based on income received or reasonably expected to be received. Income from self-employment and intermittent income shall be averaged. Self-employment budgeting is the same as for non-MAGI groups, including the elimination of the 25% expense option. The same rules apply to persons in long term care except that for prior eligibility, income other than self-employment actually received in the prior 3 months is considered.

K.A.R. 129-6-111. Applicable income.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-111 regarding the determination of applicable income and has been further amended to reflect use of the modified adjusted gross income methodologies for MAGI-based coverage groups. Applicable income shall now be based on these methodologies. An amount equivalent to five percentage points of the federal poverty level for the applicable family size is to be deducted from the total household income, when determining eligibility for the highest income standard for the person. For MAGI-excepted coverage groups, current rules continue to apply except that self-employment income shall be determined based on MAGI methodologies where annual tax information from the most recent tax year is used to determine a monthly prospective amount. All other rules regarding income exemptions and deductions continue to apply.

K.A.R. 129-6-112. Income exempt from consideration as income and as a cash asset for MAGI-excepted coverage groups.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-112 regarding income that is exempt in the determination of eligibility. These rules now only apply to the MAGI-excepted coverage groups. Examples of exempted income include Social Security death benefits, federal disaster and emergency assistance payments, foster care and adoption support payments, and federal housing assistance. Such income is also exempted as a cash asset in the month following the month of receipt.

K.A.R. 129-6-113. Income exempt as applicable income for MAGI-excepted coverage groups.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-113 regarding income exempt as applicable income in the determination of eligibility. These rules now only apply to the MAGI-excepted coverage groups. Examples include in-kind income, income of an SSI recipient, tax refunds and rebates, lump sum income, and vendor payments.

K.A.R. 129-6-120. Eligibility before the month of application.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-120 regarding coverage for the 3 months prior to the month of application. Such prior eligibility shall be determined at the request of the applicant and applies to both automatic and determined eligible coverage groups.

K.A.R. 129-6-140. Correction and discontinuance of assistance.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-140 regarding overpayments and discontinuance of assistance. Overpayments are to be paid back either voluntarily or through administrative actions. In cases of medical assistance program fraud, the person shall be ineligible to participate in the program for one year. This regulation also requires that assistance shall be discontinued when the recipient no longer meets one or more of the eligibility requirements.

K.A.R. 129-6-150. Estate recovery.

This new regulation incorporates current policy previously reflected in K.A.R. 30-6-150 and implemented through federal and state law regarding estate recovery. Further clarification has been added to cross reference the provisions of state law found in K.S.A. 39-709 which controls the process in Kansas. By applying for and receiving assistance, each individual shall agree to the department's use of liens, claims against the recipient's estate, agreements with heirs, and any other collection methods for recovery of assistance paid out on the person's behalf. Recovery action shall be taken for both correctly as well as incorrectly paid assistance except that recovery will not occur in instances in which the person's spouse or disabled or minor children survives for at least 6 months following the individual's death. In the case of a surviving spouse, estate recovery action shall be taken against the estate of the surviving spouse.

K.A.R. 129-6-151. Presumptive eligibility.

This current regulation has been amended to include pregnant women who are at least 18 years of age and to add an additional qualifying criteria for children by excluding those residing in a public institution per K.A.R. 129-6-60. Other technical changes have been made to the regulation.

K.A.R. 129-6-152. Presumptive eligibility when determined by qualified entities other than qualified hospitals.

This current regulation has been amended to add a new title based on new provisions contained in K.A.R. 129-6-153 and to modify the description of a qualified entity to adopt the federal requirements at 42 C.F.R. 435.1101 and 435.1103. Other technical administrative changes have also been made.

K.A.R. 129-6-153. Presumptive eligibility when determined by qualified hospitals.

This new regulation implements new policy. It allows certain hospitals to make presumptive eligibility determinations as required by federal law. The hospital must be a Medicaid provider, enter into a formal agreement with the Secretary to conduct presumptive determinations, and meet performance standards including an accuracy rate of at least 90% in the determinations made. Determinations shall be made for pregnant women, children, and low income families. The hospital shall perform the same duties as required of other qualified entities per K.A.R. 129-6-152 and be recertified on an annual basis. Certification can be terminated for noncompliance with the agreement or in meeting performance standards.

4. Are these regulations mandated by federal law?

Yes, all newly implemented policies in these regulations are mandatory under federal law.

5. Do the proposed regulations exceed the requirements of applicable Federal law?

Newly implemented policies do not exceed the requirements of applicable Federal law.

6. Description of costs:

(a) Costs to the agency:

For newly implemented policies, costs for both medical services and administration will be incurred by the agency.

The following service costs are expected to be incurred with newly implemented policies:

129-6-35: Expands acceptable application modes to include web-based applications from the Federally Facilitated Exchange and telephonic signatures. Total estimated cost for FY 15 is \$1,000,000, all funds.

129-6-91: Expands coverage to young adults formerly in foster care up to age 26. Total estimated cost for FY15 is \$250,000, all funds.

129-6-110: Eliminates the option of using a standard 25% income-producing expense for self-employment cases with all Medicaid populations. Actual income producing costs are used. Total estimated cost for FY15 is \$50,000, all funds.

129-6-151: Implements presumptive eligibility for pregnant women. Total estimated cost for FY15 is \$550,000, all funds.

129-6-153: Implements presumptive eligibility option for hospitals. Total estimated cost for FY15 is \$700,000, all funds.

The following administrative expenses will also be incurred by KDHE-DHCF for newly implemented policies:

\$1.694 million for changes to the Medicaid Management Information System (MMIS) in FY14 and \$616,000 to operate the MMIS in FY15

(b) Costs to persons who will bear the costs and those who will be affected and are subject to the proposed rules and regulations or the enforcement:

The newly implemented policies will not result in additional costs to KanCare beneficiaries.

(c) Costs to other government agencies or units:

The newly implemented policies will not result in costs to other government agencies or units

- 7. Description of any less costly or less intrusive methods that were considered by the agency for the purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations.**

Adoption of a subset of temporary regulations was considered but rejected. This Article is a set of inter-related rules and regulations necessary to administer the KanCare program. Retaining some of the regulations in Article 30-6 would be confusing to the general public and other accessing the regulations.