

State of Kansas

Department of Health and Environment

Division of Health Care Finance

Notice of Hearing on Proposed Administrative Regulation

A public hearing will be conducted at 9 a.m. on May 17, 2023, in Room 9E, 900-N of the Landon State Office Building, 900 S.W. Jackson, Topeka, to receive comments concerning the amendment to K.A.R. 129-6-88 that proposes to remove certain premiums charged to Working Healthy Medicaid consumers. The Kansas Department of Health and Environment is the Kansas Medicaid agency. The Division of Health Care Finance administers the Kansas Medicaid programs.

This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulation as stated in K.S.A. 77-421(a)(3). All interested parties may submit written comments before the hearing to Dorothy Noblit, KDHE, Division of Health Care Finance, Room 900-N, Landon State Office Building, 900 S.W. Jackson, Topeka, KS, 66612-1220, or by email at dorothy.noblit@ks.gov. The Division of Health Care Finance will give all interested parties a reasonable opportunity to present their views at the hearing, but it may be necessary to request each participant to limit any oral presentation to five minutes.

A copy of the regulation and the economic impact statement may be obtained by contacting Dorothy Noblit at 785-296-8903.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days before the hearing by contacting Dorothy Noblit at 785-296-8903 or by calling the Kansas Relay Center at 800-766-3777.

A summary of the regulation and the economic impacts follows:

Proposed Amended Regulation: K.A.R. 129-6-88 Disabled individuals with earned income; determined eligibles. This proposed regulation changes the premiums to be charged to Medicaid consumers participating in the Working Healthy programs. Working Healthy programs are programs that provide medical

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coverage through Medicaid for disabled individuals who are still working. Often, the disabled are working in positions, such as part-time positions, that do not provide health or medical coverage. Currently, a premium is imposed upon a Working Healthy consumer when the consumer's household income exceeds 100% of the federal poverty level income. The proposed change raises the floor for imposing a premium to 266% of poverty level income. For 2022, the federal poverty level income for a single person was \$13,590.

Federal Mandate: The regulation is not mandated by federal law. The Centers for Medicare and Medicaid Services (CMS) has approved this change. CMS is the federal oversight agency for state Medicaid programs.

Economic Impact: The primary impact will be loss of premiums to the Kansas Medicaid program. Currently, the agency receives \$813,984 in Working Healthy premiums. By raising the floor for imposition of premiums, the agency projects that it will lose \$744,516 in premiums paid to the agency. There would not be economic impacts on the Working Healthy consumers or on the medical providers providing services to the Working Healthy consumers.

Affected Parties: Kansas Medicaid program and Working Healthy Medicaid recipients.

Sarah Fertig, Kansas Medicaid Director
Division of Health Care Finance

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129-6-88. Disabled individuals with earned income; determined eligibles. (a) Each applicant and each recipient shall meet the general eligibility requirements of K.A.R. 129-6-50 and the following specific eligibility requirements:

- (1) Each individual shall be at least 16 years old but less than 65 years old.
- (2) Each individual shall meet the blindness or disability requirements of K.A.R. 129-6-85.
- (3) Each individual shall have earned income that is subject to federal insurance contributions act (FICA) taxes.

(b) Financial eligibility shall be based on a percentage of the official federal poverty-level income guidelines as ~~established~~ specified in K.A.R. 129-6-103(a)(11), which shall be used as the income standard for the number of persons in the assistance plan and any other persons whose income is considered. Monthly applicable income to be considered in the eligibility base period shall be compared against the poverty level for the base period. For an individual to be eligible under this regulation, the monthly applicable income shall not exceed the poverty level established for the base period. If the individual also owns nonexempt real or personal property with a resource value in excess of \$15,000, which shall include any nonexempt resources of all family group members, that individual shall not be eligible under this regulation.

(c) For each individual whose monthly applicable income is at least ~~100 percent of the 226~~ percent but not greater than 300 percent of the official federal poverty-level income guidelines for the applicable family size, a monthly premium amount shall be ~~required~~ assessed. This premium amount shall not exceed 7.5 percent of the monthly applicable income based on the official federal poverty-level income indicated for the applicable family size. Failure to pay the premium shall result in ineligibility.

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(d) Each individual who is temporarily unemployed but intends to return to work shall continue to be eligible for coverage for not more than four months if all other eligibility factors are met. (Authorized by and implementing K.S.A. 2012 ~~Supp.~~ 65-1,254 and 75-7403; effective, T-129-10-31-13, Nov. 1, 2013; effective Feb. 28, 2014; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Dept. of Health and Environment
Agency

Dorothy Noblit
Agency Contact

296-8903
Contact Phone Number

K.A.R. 129-6-88
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

Kansas Administrative Regulation (K.A.R.) 129-6-88 involves the assessment of monthly premium payments for Kansas Medicaid beneficiaries receiving medical assistance services under three Medicaid programs: Working Healthy, Work Opportunities Reward Kansans (WORK), and Supports and Training for Employing People Successfully (STEPS). The proposed revisions of K.A.R. 129-6-88 change the sliding scale used to determine the monthly premium amounts for beneficiaries of the Working Healthy, WORK and STEPS programs. The proposed revisions reduce the number of Working Healthy, WORK and STEPS beneficiaries who will be assessed a monthly premium.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The requirement for certain beneficiaries of Kansas Medicaid's Working Healthy, WORK and STEPS programs to pay a monthly premium is consistent with and does not exceed the requirements of applicable federal law. Applicable federal law includes the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), the Balanced Budget Act, and the Social Security Act. The Kansas Medicaid program created the Working Healthy program after receipt of a grant made possible by the TWWIIA. Creation of the eligibility groups for Working Healthy and WORK was made possible by section 4733 of the Balanced Budget Act (section 1902(a)(10)(A)(ii)(XIII) of the Social Security Act). Under section 4733, States may, but are not required to, require eligible individuals to pay premiums or other cost-sharing charges. If States require such payments, the amount must be set on a sliding scale based on income. The STEPS program, authorized under the Kansas Medicaid program's 1115 waiver, is a pilot program approved by the Kansas Medicaid program's federal partner, the Centers for Medicare and Medicaid Services (CMS).

The Kansas Medicaid program elected to require monthly premiums of eligible beneficiaries in its Working Healthy, WORK and STEPS programs. Current regulatory language in K.A.R. 129-6-88 imposes a monthly premium on each Working Healthy, WORK and STEPS beneficiary whose monthly applicable income is at least 100% of the official federal poverty-level income guidelines. Current language states the premium may not exceed 7.5% of the monthly applicable income. Proposed revisions to K.A.R. 129-6-88 impose a monthly premium for each Working Healthy, WORK and STEPS beneficiary whose monthly applicable income is at least 226% but not greater than 300% of the official federal poverty-level income guidelines for the applicable family size. Additional proposed revisions state the premium amount shall not exceed 7.5% of the monthly applicable income based on the poverty level indicated for the applicable family size.

The Working Healthy program and WORK program were developed to be consistent with the State Plan for the Kansas Medicaid program while having its own State Plan with CMS. CMS does not require the Working Healthy, WORK or STEPS programs to be consistent with or collaborate with comparable programs in contiguous states.

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Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed revisions to K.A.R. 129-6-88 will enhance the growth of the Working Healthy, WORK and STEPS programs by removing an incentive to choose the often more costly Home- and Community-Based Services (HCBS) over the Working Healthy, WORK and STEPS programs. Historically, Working Healthy, WORK and STEPS premiums were significantly lower in cost than the cost sharing (spend-down and client obligation) associated with HCBS programs and made employment a lower-cost incentive for people to consider employment. The recent increase in the protected income limit for HCBS beneficiaries (K.A.R. 129-6-103) has made Working Healthy, WORK and STEPS enrollment a more expensive option for employed Kansans with disabilities and reduces the incentive for beneficiaries to go to work rather than choose HCBS services.

The Kansas Department of Aging and Disability Services (KDADS) offers HCBS programs to some Working Healthy, WORK and STEPS beneficiaries who are on HCBS waiting lists. Several beneficiaries have chosen to move to HCBS services because they would have a \$0 client obligation under HCBS and be charged a monthly Working Healthy, WORK or STEPS premium (\$83 in one case) to remain employed and with Working Healthy, WORK or STEPS services.

Potential new Working Healthy, WORK, and STEPS beneficiaries receive counseling from Working Healthy Benefits Specialists. Part of this discussion with potential beneficiaries includes information about HCBS cost sharing costs versus Working Healthy, WORK or STEPS premiums so that potential beneficiaries may make an informed decision. When a beneficiary would pay a higher Working Healthy, WORK or STEPS premium rather than a lower or no shared cost for HCBS services, employment is no longer an incentive for that beneficiary. This has the potential to impact our ability to grow our programs and incentivize employment for Kansans with disabilities.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The proposed revised regulation will have no economic effect on businesses, sectors, public utility ratepayers, and local governments. The proposed revisions will have an effect on individuals who may become beneficiaries of the Kansas Medicaid agency's Working Healthy, WORK and STEPS programs by reducing the number of beneficiaries assessed a cost sharing monthly premium. The proposed revisions will have an effect on the state economy as a whole by providing an incentive to become beneficiaries of these programs rather than the more costly HCBS programs.

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- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

None.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

Not applicable, as there are no costs associated with this revision to the regulation.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

Not applicable, as there are no costs created by this revision to the regulation.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0.00

Costs to Local Governmental Units – \$0.00

Costs to Members of the Public – \$0.00

Total Annual Costs – \$0.00

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Not applicable

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

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Based on February 2022 annual premiums billed, projected fiscal impact would be the following: Total annual premium billing for Working Healthy, WORK and STEPS of \$813,984.00, less the \$69,468.00 amount that continues to be billed annually, would result in a decrease of \$744,516.00 in annual premiums that would no longer be billed upon approval of proposed revisions to 129-6-88. If proposed revisions to K.A.R. 129-6-88 are approved prior to April 1, 2023, the effective date for the implementation would be April 1, 2023.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

Additional level of effort costs will be impacted but are difficult to determine and an estimate would be speculative for the following:

- Churning of premiums (closing due to non-payment and then reopening when paid) causes additional work for eligibility and Working Healthy staff. This will eliminate much of this additional work as churning is seen the most with those who have lower-cost premiums.
- Premiums that are not received are sent to State Debt Set-off for collections. This additional work impacts Working Healthy staff time, as well as other State programs that provide collection services.
- Beneficiaries who choose HCBS services instead of Working Healthy, WORK or STEPS often are using higher-cost services.
- The State contractor, Gainwell, currently administers the premium billing system for the Working Healthy and Family Medical programs. The cost is not separated, but this will lower the effort required of Gainwell as fewer beneficiaries will need statements and tracking of payments.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed revised regulation will not impact the revenue of or impose any new or different functions or responsibilities on any Kansas cities, counties, or school districts. Accordingly, KDHE-DHCF has not consulted with the League of Kansas Municipalities, the Kansas Association of Counties, or the Kansas Association of School Boards, in developing the revisions to this regulation.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Stakeholder contact regarding the issue was gathered from current and potential program beneficiaries by direct contact through benefits counseling by KDHE staff. KDADS, a

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sister agency who helps administer a portion of Kansas Medicaid, was also consulted and had no objections to this revision.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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