

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 1 p.m. on June 6, 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. 129-6-35 that clarifies who can apply for a deceased Medicaid applicant in Kansas. 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. 129-6-35. Application process. This proposed regulation clarifies who may file an application for Kansas Medicaid benefits when the applicant is deceased. This clarification will align Kansas regulatory language with federal Medicaid regulations concerning an authorized

representative for a decedent and who may file a Medicaid application that has to be accepted by a state Medicaid program.

Federal Mandate: The proposed regulation follows federal Medicaid regulation, but it is not mandated by federal law.

Economic Impact: The Division of Health Care Finance, Kansas Department of Health and Environment, did not foresee an economic impact on applicants for Medicaid services. While speculative, there may be a reduction in administrative litigation costs for the agency by clarifying who could apply for a deceased applicant.

Affected Parties: Kansas Medicaid program and deceased applicants and their families.

Sarah Fertig, Kansas Medicaid Director
Division of Health Care Finance

129-6-35. Application process. (a)(1) An application for medical assistance shall be submitted by an applicant, an adult who is in the applicant's household or family, or another person authorized to act on the applicant's behalf, ~~except that an application on behalf of a person mandated to receive tuberculosis care or on behalf of a deceased person may be made by any responsible person.~~

(2) Each application on behalf of a deceased applicant shall be submitted by one of the following individuals:

(A) A parent of the decedent if the decedent is a minor;

(B) the surviving spouse of the decedent;

(C) an adult child of the decedent;

(D) an adult in the decedent's tax household; or

(E) an executor or administrator, including temporary, of the decedent's estate.

(b)(1) An application for medical assistance shall be ~~made~~ submitted using a department-approved form. The applicant or person authorized to act on behalf of the applicant shall sign the application. Electronic signatures, including telephonically recorded signatures, and handwritten signatures transmitted by any other means of electronic transmission shall be acceptable. If any person signs by mark, the names and addresses of two witnesses shall be required. Each application on behalf of a deceased person shall be made within three months of the month of the person's death.

(2) Whenever assistance is requested for a family member following approval of assistance for other family members, the month of application for that family member shall be the month of the request, if all other eligibility requirements are met.

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(3) Each application shall be submitted electronically on the state's application web site or the federally facilitated exchange web site, by telephone, in person, by mail, by electronic mail, or by fax.

(c)(1) For each application submitted online, the date of receipt of the application shall be the date the application is received from the state's application web site or the date the application is transmitted from the federally facilitated exchange web site.

(2) If the department denies an application within 90 days of the department's receipt of a signed application for medical assistance that is dependent upon a finding of disability and the applicant reapplies or provides required information within this 90-day period, the application shall be reactivated. If the department denies any other signed application within 45 days of the department's receipt of the application and the applicant reapplies or provides required information within this 45-day period, the application shall be reactivated. (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 Department of Health and Environment
Agency

Dorothy Noblit
Agency Contact

296-8903
Contact Phone Number

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

DOB APPROVAL STAMP (If Required)

Section I

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

This regulation involves the application process for Kansas Medicaid. The specific changes proposed to K.A.R. 129-6-35 (a) clarify who can apply for Kansas Medicaid when the applicant is alive or dead. Prior regulatory language had allowed a “responsible person” to apply. The regulation did not define “responsible person”. To cure the ambiguity, subsection (a)(1) allows the applicant, an adult who is in the applicant's household or family, or another person authorized to act on the applicant's behalf to file an application for the applicant. This, generally, conforms with 42 C.F.R. 435.907, a federal Medicaid regulation dealing with applications. However, federal Medicaid law does not clearly identify who can apply for a deceased Medicaid applicant. Subpart (a)(2) clarifies that oversight for Kansas Medicaid by allowing a parent of the decedent if the decedent was a minor, a surviving spouse of the decedent, an adult child of the decedent, an adult in the decedent's tax household or an executor or administrator of the decedent's probate estate to file a Kansas Medicaid application on behalf of a deceased Kansas Medicaid applicant.

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.)*

Federal Medicaid does not specify who can file an application for a deceased recipient other than an authorized representative under state law. See 42 C.F.R. 435.923. Further, a Medicaid program has to accept an application from an adult who is in the applicant's tax household even if the applicant is dead if the application is filed within 90 days of the applicant's death. See 42 C.F.R. 435.907 and 435.915. To complicate, current Kansas regulatory language identified a “responsible person” as having authority to file an application for a decedent. This phrase is not used in surrounding states or in federal Medicaid law. To cure the ambiguity and prior inconsistent regulatory language over applications from decedents, Kansas Medicaid proposes to use the entities identified by 42 C.F.R. 435.907 and 435.923 along with adult children of the decedent as entities who can file for the decedent. Nebraska, Missouri and Oklahoma use the language from 42 C.F.R. 435.907 (with some editing) so Kansas is consistent with those contiguous states. In a case litigating the filing of an application for a decedent, Maryland Medicaid won since their regulations named specifically executors or administrators as being able to file an application. See Maryland Code 10.01.04.12B

DOB APPROVAL STAMP (if Required)

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 revised regulation will not restrict growth since it is not aimed at business activities or economic growth.

- 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.

- 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.

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- ☐ 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.

Any changes would be speculative. The main impact would be on cases involving a deceased applicant. By clarifying the application standards for a decedent, this should reduce subsequent administrative litigation and reduce costs for the program.

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.

See above. Any estimate would be speculative. The main public impact might be on families who are facing medical bills for a deceased family member. This regulation clarifies the application standard for a decedent which might make the process easier to navigate.

- 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, if 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).

Since the change was to the entities who could file on behalf of Kansas Medicaid recipients, stakeholder contact was limited to welfare advocacy groups. Comment was solicited by email and letters. KDADS, a sister agency who helps administer a portion of Kansas Medicaid, was also consulted.

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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.

DOB APPROVAL STAMP (If Required)