

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 October 4, 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. 129-6-86 that clarifies a change for qualifying for Kansas Medicaid benefits by recipients who are low-income Medicare beneficiaries. 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. 129-6-86. Poverty-level, low-income, and expanded low-income medicare beneficiaries; determined eligibles. This proposed regulation clarifies a federal change for low-income Medicare

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beneficiaries to receive Kansas Medicaid benefits. Under new federal provisions, a low-income Medicare beneficiary who, also, receives Medicare Part B immunosuppressive drug benefits may qualify for Kansas Medicaid benefits without enrollment in Medicare Part A. Other low-income Medicare beneficiaries would still need to enroll in Medicare Part A.

Federal Mandate: The proposed regulation is due to changes in federal Medicaid 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.

Affected Parties: Kansas Medicaid program and low-income Medicare beneficiaries who are, also, enrolled in the Kansas Medicaid program.

Sarah Fertig, Kansas Medicaid Director
Division of Health Care Finance

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129-6-86. Poverty-level, low-income, and expanded low-income medicare beneficiaries; determined eligibles. (a) Each applicant or recipient shall meet the general eligibility requirements of K.A.R. 129-6-50 and the following specific eligibility requirements:

(1) Medicare part A beneficiary. Each individual shall be entitled to medicare part A benefits, except individuals who receive the medicare part B immunosuppressive drug benefit.

(2) Financial eligibility. A percentage of the official federal poverty-level income guidelines as established in K.A.R. 129-6-103 shall be used as the income standard for the number of persons in the assistance plan and any other persons whose income is considered. The total applicable income to be considered in the eligibility base period shall be compared against the poverty level for the base period. However, the amount of an annual social security cost-of-living adjustment shall be disregarded in determining eligibility during the first quarter of the year for which the adjustment is provided.

For an individual to be eligible, the total applicable income shall not exceed the poverty level established for the base period. The individual also shall not own nonexempt real or personal property with a resource value in excess of the allowable amounts specified in K.A.R. 129-6-107(b)(1) for the number of persons whose nonexempt resources are considered available to the individual.

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(b) Medical assistance provided. Medical assistance under this regulation for each poverty-level medicare beneficiary meeting the poverty-level income guidelines of K.A.R. 129-6-103(a)(7) shall be limited to the payment of allowable medicare premiums, deductibles, and coinsurance. Medical assistance for each low-income medicare beneficiary meeting the poverty-level income guidelines of K.A.R. 129-6-103(a)(9) shall be limited to the payment of medicare part B premiums only. Medical assistance for each expanded low-income medicare beneficiary meeting the poverty-level income guidelines of K.A.R. 129-6-103(a)(10) shall be limited to the payment of medicare part B premiums only, and the person shall not seek coverage under any other type of medical assistance. (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 129-6-86
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).

The proposed amendment to Kansas Administrative Regulation (K.A.R.) 129-6-86 implements a revision to section 402 of the Social Security Act made by Congress in the Consolidated Appropriations Act, 2023 (CAA). The CCA was signed into law December 29, 2022. The CCA's revision mandates that the Medicaid program provide Medicare Part B-ID immunosuppressant drug coverage to eligible individuals applying for the Medicaid program's Medicare Savings Plan (MSP) program. Under the Medicaid program's current MSP eligibility rules, MSP beneficiaries are required to be recipients of Medicare Part A. The CCA's revision nullifies that requirement and permits eligibility for MSP applicants for the Medicare Part B-ID drug coverage as long as the applicants meet financial eligibility requirements, have a diagnosis of end-stage renal disease (ESRD), have exhausted the full 36 months of Medicare coverage following their kidney transplant, and are not enrolled with or receiving medical coverage through any other group (group health plan, TRICARE, Medicaid, etc.). This benefit will provide Medicare Part B-ID drug coverage solely for immunosuppressant drugs.

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 proposed amendment to K.A.R. 129-6-86 is consistent with and does not exceed the applicable federal law. The amendment creates an exception to the Medicaid program's current requirement for Medicare Part A coverage required for MSP beneficiaries in order to allow Medicare Part B-ID beneficiaries to qualify for the Medicaid program's MSP program.

The agencies of contiguous states would be required to make the same amendment to their regulation(s) that require Medicare Part B-ID beneficiaries eligible for MSP coverage to have Medicare Part A coverage. The CCA's revisions make recipients of Medicare Part B-ID drug benefits ineligible for Medicare Part A benefits.

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 amendment to K.A.R. 129-6-86 is not expected to significantly enhance or restrict business activities and growth of the Medicaid program's MSP program. The amendment changes one eligibility requirement for the Medicaid program's MSP program. That change removes the requirement for beneficiaries receiving Medicare Part B-ID's drug benefit to be a beneficiary of Medicare's Part A program.

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The possibility exists that the Medicaid program may experience movement of current MSP-covered individuals to the MSP Medicare Part B-ID drug benefit coverage group after current MSP-covered individuals exhaust 36 months of the Medicare program's Part A and Part B ESRD benefit. A review of beneficiaries in the Kansas Medicaid coverage programs between 2018 and 2021 identified four beneficiaries who could meet the eligibility criteria for the Medicare Part B-ID drug benefit, but these beneficiaries were dual beneficiaries (beneficiaries of Medicare and Medicaid). These individuals would not be eligible to receive drug benefit coverage under the Medicare Part B-ID program while covered by Medicaid. If these individuals experience a change resulting in Medicaid ineligibility, they could then apply for Medicare Part B-ID coverage. While the possibility of movement exists for these dual beneficiaries, the effect of that movement is projected to be negligible. A review in January of 2023 of Medicaid beneficiaries nation-wide indicated that there are currently 57 beneficiaries with ESRD enrolled in the Medicare Part B-ID drug benefit coverage group, none of whom reside in Kansas.

- 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.

- 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;

Projected benefits or costs incurred as a result of the proposed regulatory change and potential movement of four beneficiaries meeting the Part B-ID eligibility criteria would be negligible. See response in Section III.A.

- 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.

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- 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.

Not applicable.

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.

- 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.

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- 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).

The proposed revision to this regulation will not affect businesses, associations, local governments, state agencies, institutions, or members of the public other than individuals who may apply for the Medicare Part B-ID program.

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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