Proposed

State of Kansas
Department of Health and Environment

Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Health Care Finance, will conduct a public hearing at 9:00 a.m. Thursday, December 3, 2020, to consider the adoption of proposed permanent regulation K.A.R. 129-6-103. Due to continuing concerns over COVID-19, the hearing will be held by teleconference hearing instead of an in-person hearing. To participate in the teleconference hearing, a participant should call 1-866-620-7326 and enter conference code 8141969688#.

Summary of Regulation

K.A.R. 129-6-103 Determined eligibles; income standards. The regulation amends the Kansas Medicaid income eligibility standard for Kansas Medicaid members receiving Home- and Community-based Services (HCBS). The proposed amendment to K.A.R. 129-6-103 updates the protected income level (PIL) from $727 per month to $1,177 per month.

Economic Impact

A Medicaid protected income level is the amount of income that a Medicaid member may retain and still be eligible for Medicaid. In 2019, the Kansas Legislature changed the HCBS PIL to $1,177 per month in Chapter 68, 2019 Kansas Session Laws (the omnibus appropriations legislation). In 2020, the Kansas Legislature re-affirmed the HCBS PIL level of $1,177 per month in Chapter 5, 2020 Kansas Session Laws (the omnibus appropriations legislation). Since this involved Kansas Medicaid, KDHE sought and the Centers for Medicare and Medicaid Services (CMS) approved the HCBS PIL change to $1,177 per month effective September 1, 2019. As a result, KDHE does not anticipate any economic impact on businesses, communities or local

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government. KDHE anticipates an indirect economic benefit to Kansas Medicaid HCBS recipients since they may have more personal income to spend. A detailed economic impact is provided in the economic impact statement that is available from the agency contact person listed below.

Notice and Contact

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing by postal service to Dorothy Noblit, Kansas Department of Health and Environment, Division of Health Care Finance, 900 SW Jackson, Suite 900, Landon State Office Bldg., Topeka, Kansas 66612, by email to Dorothy.noblit@ks.gov or by fax to 785-559-4272. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. It is requested that each individual giving oral comments also provide a written copy of their comments for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding economic impact statement may be obtained from the KDHE website or by contacting the contact person noted at the address, email or fax number above. Questions pertaining to the proposed regulation should be directed to the contact noted above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation, economic impact statement, and environmental benefit statement in an accessible format. Requests for accommodation to

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participate in the hearing should be made at least five working days in advance of the hearing by contacting the contact person noted above.

Lee A. Norman, M.D.

Secretary

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129-6-103. Determined eligibles; income standards. (a) Independent living arrangements.

(1) The income standard for each person in an independent living arrangement shall be based on the total number of persons in the assistance plan as defined in K.A.R. 129-6-41 or 129-6-42.

(2) The income standards for independent living may also be used if an applicant or recipient meets either of the following conditions:

(A) Enters a medicaid-approved facility, except that this paragraph shall not apply if only one spouse in a married couple enters an institutional living arrangement; or

(B) is absent from the home for medical care for a period not to exceed the month in which the person left the home and the two months following to allow for maintaining the applicant's or recipient's independent living arrangements.

(3) Except as specified in paragraphs (a)(4) through (13), the following table shall be used to determine the income standard for persons in an independent living arrangement.

Persons in Independent Living

(per month)

1	2	3
$475	$475	$480

The income standard for additional persons shall be the sum of the basic standard for a similar public assistance family and the maximum state shelter standard in accordance with K.A.R. 30-4-101.

(4) In determining eligibility for pregnant women under K.A.R. 129-6-71 and for infants under K.A.R. 129-6-72(b), the income standard shall be 166 percent of the official federal

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poverty-level income guidelines.

(5) In determining eligibility for young children under K.A.R. 129-6-72(c), the income standard shall be 149 percent of the official federal poverty-level income guidelines.

(6) In determining eligibility for older children under K.A.R. 129-6-72(d), the income standard shall be 133 percent of the official federal poverty-level income guidelines.

(7) In determining eligibility for poverty-level medicare beneficiaries under K.A.R. 129-6-86, the income standard shall be 100 percent of the official federal poverty-level income guidelines.

(8) In determining eligibility for working disabled individuals under K.A.R. 129-6-87, the income standard shall be 200 percent of the official federal poverty-level income guidelines.

(9) In determining eligibility for low-income medicare beneficiaries under K.A.R. 129-6-86, the income standard shall be 120 percent of the official federal poverty-level income guidelines.

(10) In determining eligibility for expanded low-income medicare beneficiaries under K.A.R. 129-6-86, the income standard shall be 120 to 135 percent of the official federal poverty-level income guidelines, subject to available federal funding.

(11) In determining eligibility for disabled individuals with earned income under K.A.R. 129-6-88, the income standard shall be 300 percent of the official federal poverty-level income guidelines.

(12) In determining eligibility for persons in the medikan program under K.A.R. 129-6-95, the income standard shall be $250 for a single individual and $325 for a married couple.

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(13) In determining eligibility for persons in long-term care arrangements in accordance with K.A.R. 129-6-54(d)(1), the income standard shall be 300 percent of the payment standard for one person in the SSI program. For calendar year 2013, the income standard shall be $2,130, and this amount shall be increased at the beginning of each calendar year by any cost-of-living adjustment made to the SSI payment standard.

(b) Institutional living arrangements. For each person residing in an institutional setting, the monthly income standard for purposes of determining the client obligation shall be $62, except as specified in paragraph (a)(2).

(c) Home- and community-based services arrangements. For each person in the HCBS program, including any person in the PACE program who is in a noninstitutional living arrangement in accordance with K.A.R. 129-6-83(b), the monthly income standard for purposes of determining the client obligation shall be ~~$727~~ $1,177. (Authorized by and implementing K.S.A. ~~2013 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
For the Kansas Division of the Budget

Kansas Department of Health and Environment	Susan Vogel	296-1291
Agency	Agency Contact	Contact Phone Number

K.A.R. 129-6-103
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

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

This regulation involves Kansas Medicaid and the income eligibility standard used for Kansas Medicaid members receiving Home- and Community-Based Services (HCBS) due to a "§1915 (c)" waiver granted by the Centers for Medicare and Medicaid Services (CMS.) The proposed amendment to K.A.R. 129-6-103 updates the protected income level (PIL) for the Kansas HCBS population from $727 / month to $1,177 / month. For SFY 2020, Section 81 (h) of Chapter 68, 2019 Kansas Session Laws (the omnibus appropriations legislation), changed the HCBS PIL to $1,177 / month. To support that change, the Division of Health Care Finance, the KDHE Division that administers the Kansas Medicaid program, asked for and received from CMS an approved amendment to the Kansas HCBS waivers granting a PIL increase to $1,177 / month. This was effective September 1, 2019. Also, in August 2019 and effective September 1, 2019, the Kansas Medicaid program adopted policy changing the protected income for a HCBS member to $1,177 / month. In 2020, the Kansas Legislature enrolled SB 66 (the omnibus appropriations for SFY 2021.) Section 70 (g) of 2020 SB 66 authorized a $1,177 PIL increase for Kansas Medicaid HCBS members.

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

Medicaid is a joint state – federal program. For Kansas, federal Medicaid sources provide approximately 61% of all funds with the balance provided by Kansas sources. However, to receive federal funds, Kansas had to agree to follow federal Medicaid directions and requirements, including receiving consent for changes to Kansas Medicaid programs. For Kansas to increase the HCBS PIL, Kansas Medicaid sought and received CMS approval for the HCBS PIL increase to $1,177 / month effective September 1, 2019. That approval has not been rescinded.

III. Agency analysis specifically addressing following:

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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. KDHE-DHCF anticipates that this change will enhance Medicaid members' income since there would be more income retained by the HCBS Medicaid member. .

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 and regulation and on the state economy as a whole;**

The proposed revised regulation will have no economic effect on businesses, other than indirect benefit since a HCBS member may have more income to spend. There would not be an impact on the state economy as a whole since there would not be any additional implementation costs for additional staff or additional programs.

C. **Businesses that would be directly affected by the proposed rule and regulation;**

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, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

$0.00

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

$0.00

Do the above total implementation and compliance costs exceed $3.0 million over any two-year period?

YES ☐ NO ☒

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

Not applicable.

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Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed $3.0 million over any two-year period 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.

YES ☐ NO ☒

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).**

The change in Protected Income Limit (PIL) covered by this proposed regulation was born from grassroots advocacy efforts. There was much discussion on this topic during the November 2018 Bethell KanCare Oversight Committee hearings, as many advocates presented their plea to the committee to increase the PIL for the first time in a decade. This committee made this one of their end of year recommendations to the full legislature. At the beginning of the 2019 session, SB10 was pre-filed because of the Bethell committee's recommendation. During the 2019 legislative session, several of the budget sub-committees heard from the public on the positive impact of this change. As a result, the 2019 legislature added funding to the budget bill in a proviso, requiring KDHE to increase the PIL. KDHE is now updating the regulations to ensure the PIL remains at the legislatively determined level, and matches the language in the CMS-approved amendments to the HCBS waivers.

I. **For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

Not applicable, as this is not an environmental rule or regulation.

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