

HOUSE BILL No. 2116

By Committee on Children and Seniors

1-22

1 AN ACT concerning children and minors; relating to child care assistance
2 eligibility and requirements; exempting certain adults from the 20-
3 hour-per-week work requirement; amending K.S.A. 2020 Supp. 39-709
4 and repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 39-709 is hereby amended to read as
8 follows: 39-709. (a) *General eligibility requirements for assistance for*
9 *which federal moneys are expended.* Subject to the additional requirements
10 below, assistance in accordance with plans under which federal moneys
11 are expended may be granted to any needy person who:

12 (1) Has insufficient income or resources to provide a reasonable
13 subsistence compatible with decency and health. Where a husband and
14 wife or cohabiting partners are living together, the combined income or
15 resources of both shall be considered in determining the eligibility of
16 either or both for such assistance unless otherwise prohibited by law. The
17 secretary, in determining need of any applicant for or recipient of
18 assistance shall not take into account the financial responsibility of any
19 individual for any applicant or recipient of assistance unless such applicant
20 or recipient is such individual's spouse, cohabiting partner or such
21 individual's minor child or minor stepchild if the stepchild is living with
22 such individual. The secretary in determining need of an individual may
23 provide such income and resource exemptions as may be permitted by
24 federal law. For purposes of eligibility for temporary assistance for needy
25 families, for food assistance and for any other assistance provided through
26 the Kansas department for children and families under which federal
27 moneys are expended, the secretary for children and families shall
28 consider one motor vehicle owned by the applicant for assistance,
29 regardless of the value of such vehicle, as exempt personal property and
30 shall consider any equity in any boat, personal water craft, recreational
31 vehicle, recreational off-highway vehicle or all-terrain vehicle, as defined
32 by K.S.A. 8-126, and amendments thereto, or any additional motor vehicle
33 owned by the applicant for assistance to be a nonexempt resource of the
34 applicant for assistance except that any additional motor vehicle used by
35 the applicant, the applicant's spouse or the applicant's cohabiting partner
36 for the primary purpose of earning income may be considered as exempt

1 personal property in the secretary's discretion.

2 (2) Is a citizen of the United States or is an alien lawfully admitted to
3 the United States and who is residing in the state of Kansas.

4 (b) *Temporary assistance for needy families.* Assistance may be
5 granted under this act to any dependent child, or relative, subject to the
6 general eligibility requirements as set out in subsection (a), who resides in
7 the state of Kansas or whose parent or other relative with whom the child
8 is living resides in the state of Kansas. Such assistance shall be known as
9 temporary assistance for needy families. Where the husband and wife or
10 cohabiting partners are living together, both shall register for work under
11 the program requirements for temporary assistance for needy families in
12 accordance with criteria and guidelines prescribed by rules and regulations
13 of the secretary.

14 (1) As used in this subsection, "family group" or "household" means
15 the applicant or recipient for TANF, child care subsidy or employment
16 services and all individuals living together in which there is a relationship
17 of legal responsibility or a qualifying caretaker relationship. This will
18 include a cohabiting boyfriend or girlfriend living with the person legally
19 responsible for the child. The family group shall not be eligible for TANF
20 if the family group contains at least one adult member who has received
21 TANF, including the federal TANF assistance received in any other state,
22 for 24 calendar months beginning on and after October 1, 1996, unless the
23 secretary determines a hardship exists and grants an extension allowing
24 receipt of TANF until the 36-month limit is reached. No extension beyond
25 36 months shall be granted. Hardship provisions for a recipient include:

26 (A) Is a caretaker of a disabled family member living in the
27 household;

28 (B) has a disability which precludes employment on a long-term basis
29 or requires substantial rehabilitation;

30 (C) needs a time limit extension to overcome the effects of domestic
31 violence/sexual assault;

32 (D) is involved with prevention and protection services (PPS) and has
33 an open social service plan; or

34 (E) is determined by the 24th month to have an extreme hardship other
35 than what is designated in criteria listed in subparagraphs (A) through (D).
36 This determination will be made by the executive review team.

37 (2) All adults applying for TANF shall be required to complete a
38 work program assessment as specified by the Kansas department for
39 children and families, including those who have been disqualified for or
40 denied TANF due to non-cooperation, drug testing requirements or fraud.
41 Adults who are not otherwise eligible for TANF, such as ineligible aliens,
42 relative/non-relative caretakers and adults receiving supplemental security
43 income are not required to complete the assessment process. During the

1 application processing period, applicants must complete at least one
2 module or its equivalent of the work program assessment to be considered
3 eligible for TANF benefits, unless good cause is found to be exempt from
4 the requirements. Good cause exemptions shall only include:

5 (A) The applicant can document an existing certification verifying
6 completion of the work program assessment;

7 (B) the applicant has a valid offer of employment or is employed a
8 minimum of 20 hours a week;

9 (C) the applicant is a parenting teen without a GED or high school
10 diploma;

11 (D) the applicant is enrolled in job corps;

12 (E) the applicant is working with a refugee social services agency; or

13 (F) the applicant has completed the work program assessment within
14 the last 12 months.

15 (3) The department for children and families shall maintain a
16 sufficient level of dedicated work program staff to enable the agency to
17 conduct work program case management services to TANF recipients in a
18 timely manner and in full accordance with state law and agency policy.

19 (4) TANF mandatory work program applicants and recipients shall
20 participate in work components that lead to competitive, integrated
21 employment. Components are defined by the federal government as being
22 either primary or secondary. In order to meet federal work participation
23 requirements, households need to meet at least 30 hours of participation
24 per week, at least 20 hours of which need to be primary and at least 10
25 hours may be secondary components in one parent households where the
26 youngest child is six years of age or older. Participation hours shall be 55
27 hours in two parent households (35 hours per week if child care is not
28 used). The maximum assignment is 40 hours per week per individual. For
29 two parent families to meet the federal work participation rate both parents
30 must participate in a combined total of 55 hours per week, 50 hours of
31 which must be in primary components, or one or both parents could be
32 assigned a combined total of 35 hours per week (30 hours of which must
33 be primary components) if department for children and families paid child
34 care is not received by the family. Single parent families with a child under
35 age six meet the federal participation requirement if the parent is engaged
36 in work or work activities for at least 20 hours per week in a primary work
37 component. The following components meet federal definitions of primary
38 hours of participation: Full or part-time employment, apprenticeship, work
39 study, self-employment, job corps, subsidized employment, work
40 experience sites, on-the-job training, supervised community service,
41 vocational education, job search and job readiness. Secondary components
42 include: Job skills training, education directly related to employment such
43 as adult basic education and English as a second language, and completion

1 of a high school diploma or GED.

2 (5) A parent or other adult caretaker personally providing care for a
3 child under the age of three months in their TANF household is exempt
4 from work participation activities until the month the child turns three
5 months of age. Such three-month limitation shall not apply to a parent or
6 other adult caretaker who is personally providing care for a child born
7 significantly premature, with serious medical conditions or with a
8 disability as defined by the secretary, in consultation with the secretary of
9 health and environment, and adopted in the rules and regulations. The
10 three-month period is defined as two consecutive months starting with the
11 month after childbirth. The exemption for caring for a child under three
12 months cannot be claimed:

13 (A) By either parent when two parents are in the home and the
14 household meets the two-parent definition for federal reporting purposes;

15 (B) by one parent or caretaker when the other parent or caretaker is in
16 the home, and available, capable and suitable to provide care and the
17 household does not meet the two-parent definition for federal reporting
18 purposes;

19 (C) by a person age 19 or younger when such person is pregnant or a
20 parent of a child in the home and the person does not possess a high school
21 diploma or its equivalent. Such person shall become exempt the month
22 such person turns age 20; or

23 (D) by any person assigned to a work participation activity for
24 substance use disorders.

25 (6) TANF work experience placements shall be reviewed after 90
26 days and are limited to six months per 24-month lifetime limit. A client's
27 progress shall be reviewed prior to each new placement regardless of the
28 length of time they are at the work experience site.

29 (7) TANF participants with disabilities shall engage in required
30 employment activities to the maximum extent consistent with their
31 abilities. TANF participants shall provide current documentation by a
32 qualified medical practitioner that details the abilities to engage in
33 employment and any limitations in work activities along with the expected
34 duration of such limitations. Disability is defined as a physical or mental
35 impairment constituting or resulting in a substantial impediment to
36 employment for such individual.

37 (8) Non-cooperation is the failure of the applicant or recipient to
38 comply with all requirements provided in state and federal law, federal and
39 state rules and regulations and agency policy. The period of ineligibility
40 for TANF benefits based on non-cooperation with work programs shall be
41 as follows:

42 (A) For a first penalty, three months and full cooperation with work
43 program activities;

1 (B) for a second penalty, six months and full cooperation with work
2 program activities;

3 (C) for a third penalty, one year and full cooperation with work
4 program activities; and

5 (D) for a fourth or subsequent penalty, 10 years.

6 (9) Individuals that have not cooperated with TANF work programs
7 shall be ineligible to participate in the food assistance program. The
8 comparable penalty shall be applied to only the individual in the food
9 assistance program who failed to comply with the TANF work
10 requirement. The agency shall impose the same penalty to the member of
11 the household who failed to comply with TANF requirements. The penalty
12 periods are three months, six months, one year, or 10 years.

13 (10) Non-cooperation is the failure of the applicant or recipient to
14 comply with all requirements provided in state and federal law, federal and
15 state rules and regulations and agency policy. The period of ineligibility
16 for child care subsidy or TANF benefits based on parents' non-cooperation
17 with child support services shall be as follows:

18 (A) For the first penalty, three months and cooperation with child
19 support services prior to regaining eligibility;

20 (B) for a second penalty, six months and cooperation with child
21 support services prior to regaining eligibility;

22 (C) for a third penalty, one year and cooperation with child support
23 services prior to regaining eligibility; and

24 (D) for a fourth penalty, 10 years.

25 (11) Individuals that have not cooperated without good cause with
26 child support services shall be ineligible to participate in the food
27 assistance program. The period of disqualification ends once it has been
28 determined that such individual is cooperating with child support services.

29 (12) (A) Any individual who is found to have committed fraud or is
30 found guilty of the crime of theft pursuant to K.S.A. 39-720, *and*
31 *amendments thereto*, and K.S.A. 2020 Supp. 21-5801, and amendments
32 thereto, in either the TANF or child care program shall render all adults in
33 the family unit ineligible for TANF assistance. Adults in the household
34 who were determined to have committed fraud or were convicted of the
35 crime of theft pursuant to K.S.A. 39-720, *and amendments thereto*, and
36 K.S.A. 2020 Supp. 21-5801, and amendments thereto, shall render
37 themselves and all adult household members ineligible for their lifetime
38 for TANF, even if fraud was committed in only one program. Households
39 who have been determined to have committed fraud or were convicted of
40 the crime of theft pursuant to K.S.A. 39-720, *and amendments thereto*, and
41 K.S.A. 2020 Supp. 21-5801, and amendments thereto, shall be required to
42 name a protective payee as approved by the secretary or the secretary's
43 designee to administer TANF benefits or food assistance on behalf of the

1 children. No adult in a household may have access to the TANF cash
2 assistance benefit.

3 (B) Any individual that has failed to cooperate with a fraud
4 investigation shall be ineligible to participate in the TANF cash assistance
5 program and the child care subsidy program until the department for
6 children and families determines that such individual is cooperating with
7 the fraud investigation. The department for children and families shall
8 maintain a sufficient level of fraud investigative staff to enable the
9 department to conduct fraud investigations in a timely manner and in full
10 accordance with state law and department rules and regulations or policies.

11 (13) (A) Food assistance shall not be provided to any person
12 convicted of a felony offense occurring on or after July 1, 2015, which
13 includes as an element of such offense the manufacture, cultivation,
14 distribution, possession or use of a controlled substance or controlled
15 substance analog. For food assistance, the individual shall be permanently
16 disqualified if they have been convicted of a state or federal felony offense
17 occurring on or after July 1, 2015, involving possession or use of a
18 controlled substance or controlled substance analog.

19 (B) Notwithstanding the provisions of subparagraph (A), an
20 individual shall be eligible for food assistance if the individual enrolls in
21 and participates in a drug treatment program approved by the secretary,
22 submits to and passes a drug test and agrees to submit to drug testing if
23 requested by the department pursuant to a drug testing plan.

24 An individual's failure to submit to testing or failure to successfully
25 pass a drug test shall result in ineligibility for food assistance until a drug
26 test is successfully passed. Failure to successfully complete a drug
27 treatment program shall result in ineligibility for food assistance until a
28 drug treatment plan approved by the secretary is successfully completed,
29 the individual passes a drug test and agrees to submit to drug testing if
30 requested by the department pursuant to a drug testing plan.

31 (C) The provisions of subparagraph (B) shall not apply to any
32 individual who has been convicted for a second or subsequent felony
33 offense as provided in subparagraph (A).

34 (14) No TANF cash assistance shall be used to purchase alcohol,
35 cigarettes, tobacco products, lottery tickets, concert tickets, professional or
36 collegiate sporting event tickets or tickets for other entertainment events
37 intended for the general public or sexually oriented adult materials. No
38 TANF cash assistance shall be used in any retail liquor store, casino,
39 gaming establishment, jewelry store, tattoo parlor, massage parlor, body
40 piercing parlor, spa, nail salon, lingerie shop, tobacco paraphernalia store,
41 vapor cigarette store, psychic or fortune telling business, bail bond
42 company, video arcade, movie theater, swimming pool, cruise ship, theme
43 park, dog or horse racing facility, parimutuel facility, or sexually oriented

1 business or any retail establishment which provides adult-oriented
2 entertainment in which performers disrobe or perform in an unclothed
3 state for entertainment, or in any business or retail establishment where
4 minors under age 18 are not permitted. No TANF cash assistance shall be
5 used for purchases at points of sale outside the state of Kansas.

6 (15) (A) The secretary for children and families shall place a
7 photograph of the recipient, if agreed to by such recipient of public
8 assistance, on any Kansas benefits card issued by the Kansas department
9 for children and families that the recipient uses in obtaining food, cash or
10 any other services. When a recipient of public assistance is a minor or
11 otherwise incapacitated individual, a parent or legal guardian of such
12 recipient may have a photograph of such parent or legal guardian placed
13 on the card.

14 (B) Any Kansas benefits card with a photograph of a recipient shall
15 be valid for voting purposes as a public assistance identification card in
16 accordance with the provisions of K.S.A. 25-2908, and amendments
17 thereto.

18 (C) As used in this paragraph and its subparagraphs, "Kansas benefits
19 card" means any card issued to provide food assistance, cash assistance or
20 child care assistance, including, but not limited to, the vision card, EBT
21 card and Kansas benefits card.

22 (D) The Kansas department for children and families shall monitor all
23 recipient requests for a Kansas benefits card replacement and, upon the
24 fourth such request in a 12-month period, send a notice alerting the
25 recipient that the recipient's account is being monitored for potential
26 suspicious activity. If a recipient makes an additional request for
27 replacement subsequent to such notice, the department shall refer the
28 investigation to the department's fraud investigation unit.

29 (16) The secretary for children and families shall adopt rules and
30 regulations:

31 (A) In determining eligibility for the child care subsidy program,
32 including an income of a cohabiting partner in a child care household; and

33 (B) in determining and maintaining eligibility for non-TANF child
34 care, requiring that -all included adults shall be employed a minimum of
35 20 hours per week or more as defined by the secretary or meet the
36 following specific qualifying exemptions:

37 (i) Adults who are not capable of meeting the requirement due to a
38 documented physical or mental condition;

39 (ii) adults who are former TANF recipients who need child care for
40 employment after their TANF case has closed and earned income is a
41 factor in the closure in the two months immediately following TANF
42 closure;

43 (iii) adult parents included in a case in which the only child receiving

1 benefits is the child of a minor parent who is working on completion of
2 high school or obtaining a GED;

3 (iv) adults who are participants in a food assistance employment and
4 training program; ~~or~~

5 (v) adults who are participants in an early head start child care
6 partnership program and are working or in school or training; *or*

7 (vi) *adults who are caretakers of a child in custody of the secretary in*
8 *out-of-home placement needing child care.*

9 The department for children and families shall provide child care for
10 the pursuit of any degree or certification if the occupation has at least an
11 average job outlook listed in the occupational outlook of the U.S.
12 department of labor, bureau of labor statistics. For occupations with less
13 than an average job outlook, educational plans shall require approval of
14 the secretary or secretary's designee. Child care may also be approved if
15 the student provides verification of a specific job offer that will be
16 available to such student upon completion of the program. Child care for
17 post-secondary education shall be allowed for a lifetime maximum of 24
18 months per adult. The 24 months may not have to be consecutive. Students
19 shall be engaged in paid employment for a minimum of 15 hours per
20 week. In a two-parent adult household, child care would not be allowed if
21 both parents are adults and attending a formal education or training
22 program at the same time. The household may choose which one of the
23 parents is participating as a post-secondary student. The other parent shall
24 meet another approvable criteria for child care subsidy.

25 (17) (A) The secretary for children and families is prohibited from
26 requesting or implementing a waiver or program from the U.S. department
27 of agriculture for the time limited assistance provisions for able-bodied
28 adults aged 18 through 49 without dependents in a household under the
29 food assistance program. The time on food assistance for able-bodied
30 adults aged 18 through 49 without dependents in the household shall be
31 limited to three months in a 36-month period if such adults are not meeting
32 the requirements imposed by the U.S. department of agriculture that they
33 must work for at least 20 hours per week or participate in a federally
34 approved work program or its equivalent.

35 (B) Each food assistance household member who is not otherwise
36 exempt from the following work requirements shall: Register for work;
37 participate in an employment and training program, if assigned to such a
38 program by the department; accept a suitable employment offer; and not
39 voluntarily quit a job of at least 30 hours per week.

40 (C) Any recipient who has not complied with the work requirements
41 under subparagraph (B) shall be ineligible to participate in the food
42 assistance program for the following time period and until the recipient
43 complies with such work requirements:

- 1 (i) For a first penalty, three months;
- 2 (ii) for a second penalty, six months; and
- 3 (iii) for a third penalty and any subsequent penalty, one year.

4 (18) Eligibility for the food assistance program shall be limited to
5 those individuals who are citizens or who meet qualified non-citizen status
6 as determined by U.S. department of agriculture. Non-citizen individuals
7 who are unable or unwilling to provide qualifying immigrant
8 documentation, as defined by the U.S. department of agriculture, residing
9 within a household shall not be included when determining the household's
10 size for the purposes of assigning a benefit level to the household for food
11 assistance or comparing the household's monthly income with the income
12 eligibility standards. The gross non-exempt earned and unearned income
13 and resources of disqualified individuals shall be counted in its entirety as
14 available to the remaining household members.

15 (19) The secretary for children and families shall not enact the state
16 option from the U.S. department of agriculture for broad-based categorical
17 eligibility for households applying for food assistance according to the
18 provisions of 7 C.F.R. § 273.2(j)(2)(ii).

19 (20) No federal or state funds shall be used for television, radio or
20 billboard advertisements that are designed to promote food assistance
21 benefits and enrollment. No federal or state funding shall be used for any
22 agreements with foreign governments designed to promote food
23 assistance.

24 (21) (A) The secretary for children and families shall not apply gross
25 income standards for food assistance higher than the standards specified in
26 7 U.S.C. § 2015(c) unless expressly required by federal law. Categorical
27 eligibility exempting households from such gross income standards
28 requirements shall not be granted for any non-cash, in-kind or other
29 benefit unless expressly required by federal law.

30 (B) The secretary for children and families shall not apply resource
31 limits standards for food assistance that are higher than the standards
32 specified in 7 U.S.C. § 2015(g)(1) unless expressly required by federal
33 law. Categorical eligibility exempting households from such resource
34 limits shall not be granted for any non-cash, in-kind or other benefit unless
35 expressly required by federal law.

36 (c) (1) On and after January 1, 2017, the department for children and
37 families shall conduct an electronic check for any false information
38 provided on an application for TANF and other benefits programs
39 administered by the department. For TANF cash assistance, food
40 assistance and the child care subsidy program, the department shall verify
41 the identity of all adults in the assistance household.

42 (2) The department of administration shall provide monthly to the
43 Kansas department for children and families the social security numbers or

1 alternate taxpayer identification numbers of all persons who claim a
2 Kansas lottery prize in excess of \$5,000 during the reported month. The
3 Kansas department for children and families shall verify if individuals
4 with such winnings are receiving TANF cash assistance, food assistance or
5 assistance under the child care subsidy program and take appropriate
6 action. The Kansas department for children and families shall use data
7 received under this subsection solely, and for no other purpose, to
8 determine if any recipient's eligibility for benefits has been affected by
9 lottery prize winnings. The Kansas department for children and families
10 shall not publicly disclose the identity of any lottery prize winner,
11 including recipients who are determined to have illegally received
12 benefits.

13 (d) *Temporary assistance for needy families; assignment of support*
14 *rights and limited power of attorney.* By applying for or receiving
15 temporary assistance for needy families such applicant or recipient shall be
16 deemed to have assigned to the secretary on behalf of the state any
17 accrued, present or future rights to support from any other person such
18 applicant may have in such person's own behalf or in behalf of any other
19 family member for whom the applicant is applying for or receiving aid. In
20 any case in which an order for child support has been established and the
21 legal custodian and obligee under the order surrenders physical custody of
22 the child to a caretaker relative without obtaining a modification of legal
23 custody and support rights on behalf of the child are assigned pursuant to
24 this section, the surrender of physical custody and the assignment shall
25 transfer, by operation of law, the child's support rights under the order to
26 the secretary on behalf of the state. Such assignment shall be of all
27 accrued, present or future rights to support of the child surrendered to the
28 caretaker relative. The assignment of support rights shall automatically
29 become effective upon the date of approval for or receipt of such aid
30 without the requirement that any document be signed by the applicant,
31 recipient or obligee. By applying for or receiving temporary assistance for
32 needy families, or by surrendering physical custody of a child to a
33 caretaker relative who is an applicant or recipient of such assistance on the
34 child's behalf, the applicant, recipient or obligee is also deemed to have
35 appointed the secretary, or the secretary's designee, as an attorney-in-fact
36 to perform the specific act of negotiating and endorsing all drafts, checks,
37 money orders or other negotiable instruments representing support
38 payments received by the secretary in behalf of any person applying for,
39 receiving or having received such assistance. This limited power of
40 attorney shall be effective from the date the secretary approves the
41 application for aid and shall remain in effect until the assignment of
42 support rights has been terminated in full.

43 (e) *Requirements for medical assistance for which federal moneys or*

1 *state moneys or both are expended.* (1) When the secretary has adopted a
2 medical care plan under which federal moneys or state moneys or both are
3 expended, medical assistance in accordance with such plan shall be
4 granted to any person who is a citizen of the United States or who is an
5 alien lawfully admitted to the United States and who is residing in the state
6 of Kansas, whose resources and income do not exceed the levels
7 prescribed by the secretary. In determining the need of an individual, the
8 secretary may provide for income and resource exemptions and protected
9 income and resource levels. Resources from inheritance shall be counted.
10 A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and
11 amendments thereto, shall constitute a transfer of resources. The secretary
12 shall exempt principal and interest held in irrevocable trust pursuant to
13 K.S.A. 16-303(c), and amendments thereto, from the eligibility
14 requirements of applicants for and recipients of medical assistance. Such
15 assistance shall be known as medical assistance.

16 (2) For the purposes of medical assistance eligibility determinations
17 on or after July 1, 2004, if an applicant or recipient owns property in joint
18 tenancy with some other party and the applicant or recipient of medical
19 assistance has restricted or conditioned their interest in such property to a
20 specific and discrete property interest less than 100%, then such
21 designation will cause the full value of the property to be considered an
22 available resource to the applicant or recipient. Medical assistance
23 eligibility for receipt of benefits under the title XIX of the social security
24 act, commonly known as medicaid, shall not be expanded, as provided for
25 in the patient protection and affordable care act, public law 111-148, 124
26 stat. 119, and the health care and education reconciliation act of 2010,
27 public law 111-152, 124 stat. 1029, unless the legislature expressly
28 consents to, and approves of, the expansion of medicaid services by an act
29 of the legislature.

30 (3) (A) Resources from trusts shall be considered when determining
31 eligibility of a trust beneficiary for medical assistance. Medical assistance
32 is to be secondary to all resources, including trusts, that may be available
33 to an applicant or recipient of medical assistance.

34 (B) If a trust has discretionary language, the trust shall be considered
35 to be an available resource to the extent, using the full extent of discretion,
36 the trustee may make any of the income or principal available to the
37 applicant or recipient of medical assistance. Any such discretionary trust
38 shall be considered an available resource unless: (i) At the time of creation
39 or amendment of the trust, the trust states a clear intent that the trust is
40 supplemental to public assistance; and (ii) the trust: (a) Is funded from
41 resources of a person who, at the time of such funding, owed no duty of
42 support to the applicant or recipient of medical assistance; or (b) is funded
43 not more than nominally from resources of a person while that person

1 owed a duty of support to the applicant or recipient of medical assistance.

2 (C) For the purposes of this paragraph, "public assistance" includes,
3 but is not limited to, medicaid, medical assistance or title XIX of the social
4 security act.

5 (4) (A) When an applicant or recipient of medical assistance is a party
6 to a contract, agreement or accord for personal services being provided by
7 a nonlicensed individual or provider and such contract, agreement or
8 accord involves health and welfare monitoring, pharmacy assistance, case
9 management, communication with medical, health or other professionals,
10 or other activities related to home health care, long term care, medical
11 assistance benefits, or other related issues, any moneys paid under such
12 contract, agreement or accord shall be considered to be an available
13 resource unless the following restrictions are met: (i) The contract,
14 agreement or accord must be in writing and executed prior to any services
15 being provided; (ii) the moneys paid are in direct relationship with the fair
16 market value of such services being provided by similarly situated and
17 trained nonlicensed individuals; (iii) if no similarly situated nonlicensed
18 individuals or situations can be found, the value of services will be based
19 on federal hourly minimum wage standards; (iv) such individual providing
20 the services will report all receipts of moneys as income to the appropriate
21 state and federal governmental revenue agencies; (v) any amounts due
22 under such contract, agreement or accord shall be paid after the services
23 are rendered; (vi) the applicant or recipient shall have the power to revoke
24 the contract, agreement or accord; and (vii) upon the death of the applicant
25 or recipient, the contract, agreement or accord ceases.

26 (B) When an applicant or recipient of medical assistance is a party to
27 a written contract for personal services being provided by a licensed health
28 professional or facility and such contract involves health and welfare
29 monitoring, pharmacy assistance, case management, communication with
30 medical, health or other professionals, or other activities related to home
31 health care, long term care, medical assistance benefits or other related
32 issues, any moneys paid in advance of receipt of services for such
33 contracts shall be considered to be an available resource.

34 (5) Any trust may be amended if such amendment is permitted by the
35 Kansas uniform trust code.

36 (f) *Eligibility for medical assistance of resident receiving medical*
37 *care outside state.* A person who is receiving medical care including long-
38 term care outside of Kansas whose health would be endangered by the
39 postponement of medical care until return to the state or by travel to return
40 to Kansas, may be determined eligible for medical assistance if such
41 individual is a resident of Kansas and all other eligibility factors are met.
42 Persons who are receiving medical care on an ongoing basis in a long-term
43 medical care facility in a state other than Kansas and who do not return to

1 a care facility in Kansas when they are able to do so, shall no longer be
2 eligible to receive assistance in Kansas unless such medical care is not
3 available in a comparable facility or program providing such medical care
4 in Kansas. For persons who are minors or who are under guardianship, the
5 actions of the parent or guardian shall be deemed to be the actions of the
6 child or ward in determining whether or not the person is remaining
7 outside the state voluntarily.

8 (g) *Medical assistance; assignment of rights to medical support and*
9 *limited power of attorney; recovery from estates of deceased recipients.* (1)

10 (A) Except as otherwise provided in K.S.A. 39-786 and 39-787, and
11 amendments thereto, or as otherwise authorized on and after September
12 30, 1989, under section 303 of the federal medicare catastrophic coverage
13 act of 1988, whichever is applicable, by applying for or receiving medical
14 assistance under a medical care plan in which federal funds are expended,
15 any accrued, present or future rights to support and any rights to payment
16 for medical care from a third party of an applicant or recipient and any
17 other family member for whom the applicant is applying shall be deemed
18 to have been assigned to the secretary on behalf of the state. The
19 assignment shall automatically become effective upon the date of approval
20 for such assistance without the requirement that any document be signed
21 by the applicant or recipient. By applying for or receiving medical
22 assistance the applicant or recipient is also deemed to have appointed the
23 secretary, or the secretary's designee, as an attorney in fact to perform the
24 specific act of negotiating and endorsing all drafts, checks, money orders
25 or other negotiable instruments, representing payments received by the
26 secretary in on behalf of any person applying for, receiving or having
27 received such assistance. This limited power of attorney shall be effective
28 from the date the secretary approves the application for assistance and
29 shall remain in effect until the assignment has been terminated in full. The
30 assignment of any rights to payment for medical care from a third party
31 under this subsection shall not prohibit a health care provider from directly
32 billing an insurance carrier for services rendered if the provider has not
33 submitted a claim covering such services to the secretary for payment.
34 Support amounts collected on behalf of persons whose rights to support
35 are assigned to the secretary only under this subsection and no other shall
36 be distributed pursuant to K.S.A. 39-756(d), and amendments thereto,
37 except that any amounts designated as medical support shall be retained by
38 the secretary for repayment of the unreimbursed portion of assistance.
39 Amounts collected pursuant to the assignment of rights to payment for
40 medical care from a third party shall also be retained by the secretary for
41 repayment of the unreimbursed portion of assistance.

42 (B) Notwithstanding the provisions of subparagraph (A), the
43 secretary of health and environment, or the secretary's designee, is hereby

1 authorized to and shall exercise any of the powers specified in
2 subparagraph (A) in relation to performance of such secretary's duties
3 pertaining to medical subrogation, estate recovery or any other duties
4 assigned to such secretary in article 74 of chapter 75 of the Kansas Statutes
5 Annotated, and amendments thereto.

6 (2) The amount of any medical assistance paid after June 30, 1992,
7 under the provisions of subsection (e) is: (A) A claim against the property
8 or any interest therein belonging to and a part of the estate of any deceased
9 recipient or, if there is no estate, the estate of the surviving spouse, if any,
10 shall be charged for such medical assistance paid to either or both; and (B)
11 a claim against any funds of such recipient or spouse in any account under
12 K.S.A. 9-1215, 17-2263 or 17-2264, and amendments thereto. There shall
13 be no recovery of medical assistance correctly paid to or on behalf of an
14 individual under subsection (e) except after the death of the surviving
15 spouse of the individual, if any, and only at a time when the individual has
16 no surviving child who is under 21 years of age or is blind or permanently
17 and totally disabled. Transfers of real or personal property by recipients of
18 medical assistance without adequate consideration are voidable and may
19 be set aside. Except where there is a surviving spouse, or a surviving child
20 who is under 21 years of age or is blind or permanently and totally
21 disabled, the amount of any medical assistance paid under subsection (e) is
22 a claim against the estate in any guardianship or conservatorship
23 proceeding. The monetary value of any benefits received by the recipient
24 of such medical assistance under long-term care insurance, as defined by
25 K.S.A. 40-2227, and amendments thereto, shall be a credit against the
26 amount of the claim provided for such medical assistance under this
27 subsection. The secretary of health and environment is authorized to
28 enforce each claim provided for under this subsection. The secretary of
29 health and environment shall not be required to pursue every claim, but is
30 granted discretion to determine which claims to pursue. All moneys
31 received by the secretary of health and environment from claims under this
32 subsection shall be deposited in the social welfare fund. The secretary of
33 health and environment may adopt rules and regulations for the
34 implementation and administration of the medical assistance recovery
35 program under this subsection.

36 (3) By applying for or receiving medical assistance under the
37 provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, and
38 amendments thereto, such individual or such individual's agent, fiduciary,
39 guardian, conservator, representative payee or other person acting on
40 behalf of the individual consents to the following definitions of estate and
41 the results therefrom:

42 (A) If an individual receives any medical assistance before July 1,
43 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,

1 and amendments thereto, which forms the basis for a claim under
2 paragraph (2), such claim is limited to the individual's probatable estate as
3 defined by applicable law; and

4 (B) if an individual receives any medical assistance on or after July 1,
5 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
6 and amendments thereto, which forms the basis for a claim under
7 paragraph (2), such claim shall apply to the individual's medical assistance
8 estate. The medical assistance estate is defined as including all real and
9 personal property and other assets in which the deceased individual had
10 any legal title or interest immediately before or at the time of death to the
11 extent of that interest or title. The medical assistance estate includes,
12 without limitation assets conveyed to a survivor, heir or assign of the
13 deceased recipient through joint tenancy, tenancy in common,
14 survivorship, transfer-on-death deed, payable-on-death contract, life estate,
15 trust, annuities or similar arrangement.

16 (4) The secretary of health and environment or the secretary's
17 designee is authorized to file and enforce a lien against the real property of
18 a recipient of medical assistance in certain situations, subject to all prior
19 liens of record and transfers for value to a bona fide purchaser of record.
20 The lien must be filed in the office of the register of deeds of the county
21 where the real property is located within one year from the date of death of
22 the recipient and must contain the legal description of all real property in
23 the county subject to the lien.

24 (A) After the death of a recipient of medical assistance, the secretary
25 of health and environment or the secretary's designee may place a lien on
26 any interest in real property owned by such recipient.

27 (B) The secretary of health and environment or the secretary's
28 designee may place a lien on any interest in real property owned by a
29 recipient of medical assistance during the lifetime of such recipient. Such
30 lien may be filed only after notice and an opportunity for a hearing has
31 been given. Such lien may be enforced only upon competent medical
32 testimony that the recipient cannot reasonably be expected to be
33 discharged and returned home. A six-month period of compensated
34 inpatient care at a nursing home or other medical institution shall
35 constitute a determination by the department of health and environment
36 that the recipient cannot reasonably be expected to be discharged and
37 returned home. To return home means the recipient leaves the nursing or
38 medical facility and resides in the home on which the lien has been placed
39 for a continuous period of at least 90 days without being readmitted as an
40 inpatient to a nursing or medical facility. The amount of the lien shall be
41 for the amount of assistance paid by the department of health and
42 environment until the time of the filing of the lien and for any amount paid
43 thereafter for such medical assistance to the recipient. After the lien is filed

1 against any real property owned by the recipient, such lien will be
2 dissolved if the recipient is discharged, returns home and resides upon the
3 real property to which the lien is attached for a continuous period of at
4 least 90 days without being readmitted as an inpatient to a nursing or
5 medical facility. If the recipient is readmitted as an inpatient to a nursing or
6 medical facility for a continuous period of less than 90 days, another
7 continuous period of at least 90 days shall be completed prior to
8 dissolution of the lien.

9 (5) The lien filed by the secretary of health and environment or the
10 secretary's designee for medical assistance correctly received may be
11 enforced before or after the death of the recipient by the filing of an action
12 to foreclose such lien in the Kansas district court or through an estate
13 probate court action in the county where the real property of the recipient
14 is located. However, it may be enforced only:

15 (A) After the death of the surviving spouse of the recipient;

16 (B) when there is no child of the recipient, natural or adopted, who is
17 20 years of age or less residing in the home;

18 (C) when there is no adult child of the recipient, natural or adopted,
19 who is blind or disabled residing in the home; or

20 (D) when no brother or sister of the recipient is lawfully residing in
21 the home, who has resided there for at least one year immediately before
22 the date of the recipient's admission to the nursing or medical facility, and
23 has resided there on a continuous basis since that time.

24 (6) The lien remains on the property even after a transfer of the title
25 by conveyance, sale, succession, inheritance or will unless one of the
26 following events occur:

27 (A) The lien is satisfied. The recipient, the heirs, personal
28 representative or assigns of the recipient may discharge such lien at any
29 time by paying the amount of the lien to the secretary of health and
30 environment or the secretary's designee;

31 (B) the lien is terminated by foreclosure of prior lien of record or
32 settlement action taken in lieu of foreclosure; or

33 (C) the value of the real property is consumed by the lien, at which
34 time the secretary of health and environment or the secretary's designee
35 may force the sale for the real property to satisfy the lien.

36 (7) If the secretary for aging and disability services or the secretary of
37 health and environment, or both, or such secretary's designee has not filed
38 an action to foreclose the lien in the Kansas district court in the county
39 where the real property is located within 10 years from the date of the
40 filing of the lien, then the lien shall become dormant, and shall cease to
41 operate as a lien on the real estate of the recipient. Such dormant lien may
42 be revived in the same manner as a dormant judgment lien is revived under
43 K.S.A. 60-2403 et seq., and amendments thereto.

1 (8) Within seven days of receipt of notice by the secretary for
2 children and families or the secretary's designee of the death of a recipient
3 of medical assistance under this subsection, the secretary for children and
4 families or the secretary's designee shall give notice of such recipient's
5 death to the secretary of health and environment or the secretary's
6 designee.

7 (9) All rules and regulations adopted on and after July 1, 2013, and
8 prior to July 1, 2014, to implement this subsection shall continue to be
9 effective and shall be deemed to be duly adopted rules and regulations of
10 the secretary of health and environment until revised, amended, revoked or
11 nullified pursuant to law.

12 (h) *Placement under the revised Kansas code for care of children or*
13 *revised Kansas juvenile justice code; assignment of support rights and*
14 *limited power of attorney.* In any case in which the secretary for children
15 and families pays for the expenses of care and custody of a child pursuant
16 to K.S.A. 2020 Supp. 38-2201 et seq. or 38-2301 et seq., and amendments
17 thereto, including the expenses of any foster care placement, an
18 assignment of all past, present and future support rights of the child in
19 custody possessed by either parent or other person entitled to receive
20 support payments for the child is, by operation of law, conveyed to the
21 secretary. Such assignment shall become effective upon placement of a
22 child in the custody of the secretary or upon payment of the expenses of
23 care and custody of a child by the secretary without the requirement that
24 any document be signed by the parent or other person entitled to receive
25 support payments for the child. When the secretary pays for the expenses
26 of care and custody of a child or a child is placed in the custody of the
27 secretary, the parent or other person entitled to receive support payments
28 for the child is also deemed to have appointed the secretary, or the
29 secretary's designee, as attorney in fact to perform the specific act of
30 negotiating and endorsing all drafts, checks, money orders or other
31 negotiable instruments representing support payments received by the
32 secretary on behalf of the child. This limited power of attorney shall be
33 effective from the date the assignment to support rights becomes effective
34 and shall remain in effect until the assignment of support rights has been
35 terminated in full.

36 (i) No person who voluntarily quits employment or who is fired from
37 employment due to gross misconduct as defined by rules and regulations
38 of the secretary or who is a fugitive from justice by reason of a felony
39 conviction or charge or violation of a condition of probation or parole
40 imposed under federal or state law shall be eligible to receive public
41 assistance benefits in this state. Any recipient of public assistance who
42 fails to timely comply with monthly reporting requirements under criteria
43 and guidelines prescribed by rules and regulations of the secretary shall be

1 subject to a penalty established by the secretary by rules and regulations.

2 (j) If the applicant or recipient of temporary assistance for needy
3 families is a mother of the dependent child, as a condition of the mother's
4 eligibility for temporary assistance for needy families the mother shall
5 identify by name and, if known, by current address the father of the
6 dependent child except that the secretary may adopt by rules and
7 regulations exceptions to this requirement in cases of undue hardship. Any
8 recipient of temporary assistance for needy families who fails to cooperate
9 with requirements relating to child support services under criteria and
10 guidelines prescribed by rules and regulations of the secretary shall be
11 subject to a penalty established by the secretary.

12 (k) By applying for or receiving child care benefits or food
13 assistance, the applicant or recipient shall be deemed to have assigned,
14 pursuant to K.S.A. 39-756, and amendments thereto, to the secretary on
15 behalf of the state only accrued, present or future rights to support from
16 any other person such applicant may have in such person's own behalf or
17 in behalf of any other family member for whom the applicant is applying
18 for or receiving aid. The assignment of support rights shall automatically
19 become effective upon the date of approval for or receipt of such aid
20 without the requirement that any document be signed by the applicant or
21 recipient. By applying for or receiving child care benefits or food
22 assistance, the applicant or recipient is also deemed to have appointed the
23 secretary, or the secretary's designee, as an attorney in fact to perform the
24 specific act of negotiating and endorsing all drafts, checks, money orders
25 or other negotiable instruments representing support payments received by
26 the secretary in behalf of any person applying for, receiving or having
27 received such assistance. This limited power of attorney shall be effective
28 from the date the secretary approves the application for aid and shall
29 remain in effect until the assignment of support rights has been terminated
30 in full. An applicant or recipient who has assigned support rights to the
31 secretary pursuant to this subsection shall cooperate in establishing and
32 enforcing support obligations to the same extent required of applicants for
33 or recipients of temporary assistance for needy families.

34 (l) (1) A program of drug screening for applicants for cash assistance
35 as a condition of eligibility for cash assistance and persons receiving cash
36 assistance as a condition of continued receipt of cash assistance shall be
37 established, subject to applicable federal law, by the secretary for children
38 and families on and before January 1, 2014. Under such program of drug
39 screening, the secretary for children and families shall order a drug
40 screening of an applicant for or a recipient of cash assistance at any time
41 when reasonable suspicion exists that such applicant for or recipient of
42 cash assistance is unlawfully using a controlled substance or controlled
43 substance analog. The secretary for children and families may use any

1 information obtained by the secretary for children and families to
2 determine whether such reasonable suspicion exists, including, but not
3 limited to, an applicant's or recipient's demeanor, missed appointments and
4 arrest or other police records, previous employment or application for
5 employment in an occupation or industry that regularly conducts drug
6 screening, termination from previous employment due to unlawful use of a
7 controlled substance or controlled substance analog or prior drug screening
8 records of the applicant or recipient indicating unlawful use of a controlled
9 substance or controlled substance analog.

10 (2) Any applicant for or recipient of cash assistance whose drug
11 screening results in a positive test may request that the drug screening
12 specimen be sent to a different drug testing facility for an additional drug
13 screening. Any applicant for or recipient of cash assistance who requests
14 an additional drug screening at a different drug testing facility shall be
15 required to pay the cost of drug screening. Such applicant or recipient who
16 took the additional drug screening and who tested negative for unlawful
17 use of a controlled substance and controlled substance analog shall be
18 reimbursed for the cost of such additional drug screening.

19 (3) Any applicant for or recipient of cash assistance who tests
20 positive for unlawful use of a controlled substance or controlled substance
21 analog shall be required to complete a substance abuse treatment program
22 approved by the secretary for children and families, secretary of labor or
23 secretary of commerce, and a job skills program approved by the secretary
24 for children and families, secretary of labor or secretary of commerce.
25 Subject to applicable federal laws, any applicant for or recipient of cash
26 assistance who fails to complete or refuses to participate in the substance
27 abuse treatment program or job skills program as required under this
28 subsection shall be ineligible to receive cash assistance until completion of
29 such substance abuse treatment and job skills programs. Upon completion
30 of both substance abuse treatment and job skills programs, such applicant
31 for or recipient of cash assistance may be subject to periodic drug
32 screening, as determined by the secretary for children and families. Upon a
33 second positive test for unlawful use of a controlled substance or
34 controlled substance analog, a recipient of cash assistance shall be ordered
35 to complete again a substance abuse treatment program and job skills
36 program, and shall be terminated from cash assistance for a period of 12
37 months, or until such recipient of cash assistance completes both substance
38 abuse treatment and job skills programs, whichever is later. Upon a third
39 positive test for unlawful use of a controlled substance or controlled
40 substance analog, a recipient of cash assistance shall be terminated from
41 cash assistance, subject to applicable federal law.

42 (4) If an applicant for or recipient of cash assistance is ineligible for
43 or terminated from cash assistance as a result of a positive test for

1 unlawful use of a controlled substance or controlled substance analog, and
2 such applicant for or recipient of cash assistance is the parent or legal
3 guardian of a minor child, an appropriate protective payee shall be
4 designated to receive cash assistance on behalf of such child. Such parent
5 or legal guardian of the minor child may choose to designate an individual
6 to receive cash assistance for such parent's or legal guardian's minor child,
7 as approved by the secretary for children and families. Prior to the
8 designated individual receiving any cash assistance, the secretary for
9 children and families shall review whether reasonable suspicion exists that
10 such designated individual is unlawfully using a controlled substance or
11 controlled substance analog.

12 (A) In addition, any individual designated to receive cash assistance
13 on behalf of an eligible minor child shall be subject to drug screening at
14 any time when reasonable suspicion exists that such designated individual
15 is unlawfully using a controlled substance or controlled substance analog.
16 The secretary for children and families may use any information obtained
17 by the secretary for children and families to determine whether such
18 reasonable suspicion exists, including, but not limited to, the designated
19 individual's demeanor, missed appointments and arrest or other police
20 records, previous employment or application for employment in an
21 occupation or industry that regularly conducts drug screening, termination
22 from previous employment due to unlawful use of a controlled substance
23 or controlled substance analog or prior drug screening records of the
24 designated individual indicating unlawful use of a controlled substance or
25 controlled substance analog.

26 (B) Any designated individual whose drug screening results in a
27 positive test may request that the drug screening specimen be sent to a
28 different drug testing facility for an additional drug screening. Any
29 designated individual who requests an additional drug screening at a
30 different drug testing facility shall be required to pay the cost of drug
31 screening. Such designated individual who took the additional drug
32 screening and who tested negative for unlawful use of a controlled
33 substance and controlled substance analog shall be reimbursed for the cost
34 of such additional drug screening.

35 (C) Upon any positive test for unlawful use of a controlled substance
36 or controlled substance analog, the designated individual shall not receive
37 cash assistance on behalf of the parent's or legal guardian's minor child,
38 and another designated individual shall be selected by the secretary for
39 children and families to receive cash assistance on behalf of such parent's
40 or legal guardian's minor child.

41 (5) If a person has been convicted under federal or state law of any
42 offense which is classified as a felony by the law of the jurisdiction and
43 which has as an element of such offense the manufacture, cultivation,

1 distribution, possession or use of a controlled substance or controlled
2 substance analog, and the date of conviction is on or after July 1, 2013,
3 such person shall thereby become forever ineligible to receive any cash
4 assistance under this subsection unless such conviction is the person's first
5 conviction. First-time offenders convicted under federal or state law of any
6 offense which is classified as a felony by the law of the jurisdiction and
7 which has as an element of such offense the manufacture, cultivation,
8 distribution, possession or use of a controlled substance or controlled
9 substance analog, and the date of conviction is on or after July 1, 2013,
10 such person shall become ineligible to receive cash assistance for five
11 years from the date of conviction.

12 (6) Except for hearings before the Kansas department for children
13 and families or, the results of any drug screening administered as part of
14 the drug screening program authorized by this subsection shall be
15 confidential and shall not be disclosed publicly.

16 (7) The secretary for children and families may adopt such rules and
17 regulations as are necessary to carry out the provisions of this subsection.

18 (8) Any authority granted to the secretary for children and families
19 under this subsection shall be in addition to any other penalties prescribed
20 by law.

21 (9) As used in this subsection:

22 (A) "Cash assistance" means cash assistance provided to individuals
23 under the provisions of article 7 of chapter 39 of the Kansas Statutes
24 Annotated, and amendments thereto, and any rules and regulations adopted
25 pursuant to such statutes.

26 (B) "Controlled substance" means the same as in K.S.A. 2020 Supp.
27 21-5701, and amendments thereto, and 21 U.S.C. § 802.

28 (C) "Controlled substance analog" means the same as in K.S.A. 2020
29 Supp. 21-5701, and amendments thereto.

30 Sec. 2. K.S.A. 2020 Supp. 39-709 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its
32 publication in the ~~statute book~~ ***Kansas register***.