

SENATE BILL No. 440

By Committee on Public Health and Welfare

2-14

1 AN ACT concerning public assistance; relating to cash assistance;
2 allowing certain activities to fulfill work participation requirements
3 thereunder; amending K.S.A. 2019 Supp. 39-709 and repealing the
4 existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 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~~ that precludes employment on a long-term
29 basis 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~~ shall 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~~ *shall* 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~~ *shall* meet at least 30 hours of
24 participation per week, at least 20 hours of which need to be primary and
25 at least 10 hours may be secondary components in one parent households
26 where the youngest child is six years of age or older. Participation hours
27 shall be 55 hours in two parent households ~~, or 35 hours per week if child~~
28 ~~care is not used~~). The maximum assignment is 40 hours per week per
29 individual. For two parent families to meet the federal work participation
30 rate both parents ~~must~~ *shall* participate in a combined total of 55 hours per
31 week, 50 hours of which ~~must~~ *shall* be in primary components, or one or
32 both parents could be assigned a combined total of 35 hours per week ~~, 30~~
33 ~~hours of which~~ ~~must~~ *shall* be primary components), if department for
34 children and families paid child care is not received by the family. Single
35 parent families with a child under age six meet the federal participation
36 requirement if the parent is engaged in work or work activities for at least
37 20 hours per week in a primary work component. The following
38 components meet federal definitions of primary hours of participation: Full
39 or part-time employment, apprenticeship, work study, self-employment,
40 job corps, subsidized employment, work experience sites, on-the-job
41 training, supervised community service, vocational education, job search
42 and job readiness. Secondary components include: Job skills training,
43 education directly related to employment such as adult basic education and

1 English as a second language, and completion of a high school diploma or
2 GED. *A single parent of a child who is between three months and one year*
3 *of age may fulfill work participation requirements by engaging in in-home*
4 *parenting skills training.*

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

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

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

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

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

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

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

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

1 as follows:

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

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

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

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

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

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

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

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

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

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

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

32 (12) (A) Any individual who is found to have committed fraud or is
33 found guilty of the crime of theft pursuant to K.S.A. 39-720 and K.S.A.
34 2019 Supp. 21-5801, and amendments thereto, in either the TANF or child
35 care program shall render all adults in the family unit ineligible for TANF
36 assistance. Adults in the household who were determined to have
37 committed fraud or were convicted of the crime of theft pursuant to K.S.A.
38 39-720 and K.S.A. 2019 Supp. 21-5801, and amendments thereto, shall
39 render themselves and all adult household members ineligible for their
40 lifetime for TANF, even if fraud was committed in only one program.
41 Households who have been determined to have committed fraud or were
42 convicted of the crime of theft pursuant to K.S.A. 39-720 and K.S.A. 2019
43 Supp. 21-5801, and amendments thereto, shall be required to name a

1 protective payee as approved by the secretary or the secretary's designee to
2 administer TANF benefits or food assistance on behalf of the children. No
3 adult in a household may have access to the TANF cash assistance benefit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (iii) adult parents included in a case in which the only child receiving
2 benefits is the child of a minor parent who is working on completion of
3 high school or obtaining a GED;

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

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

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

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

35 (B) Each food assistance household member who is not otherwise
36 exempt from the following work requirements shall:

37 (i) Register for work;

38 (ii) participate in an employment and training program, if assigned to
39 such a program by the department;

40 (iii) accept a suitable employment offer; and

41 (iv) not voluntarily quit a job of at least 30 hours per week.

42 (C) Any recipient who has not complied with the work requirements
43 under subparagraph (B) shall be ineligible to participate in the food

1 assistance program for the following time period and until the recipient
2 complies with such work requirements:

3 (i) For a first penalty, three months;

4 (ii) for a second penalty, six months; and

5 (iii) for a third penalty and any subsequent penalty, one year.

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

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

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

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

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

39 (c) (1) ~~On and after January 1, 2017,~~ The department for children and
40 families shall conduct an electronic check for any false information
41 provided on an application for TANF and other benefits programs
42 administered by the department. For TANF cash assistance, food
43 assistance and the child care subsidy program, the department shall verify

1 the identity of all adults in the assistance household.

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

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

1 application for aid and shall remain in effect until the assignment of
2 support rights has been terminated in full.

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

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

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

37 (B) If a trust has discretionary language, the trust shall be considered
38 to be an available resource to the extent, using the full extent of discretion,
39 the trustee may make any of the income or principal available to the
40 applicant or recipient of medical assistance. Any such discretionary trust
41 shall be considered an available resource unless: (i) At the time of creation
42 or amendment of the trust, the trust states a clear intent that the trust is
43 supplemental to public assistance; and (ii) the trust: (a) Is funded from

1 resources of a person who, at the time of such funding, owed no duty of
2 support to the applicant or recipient of medical assistance; or (b) is funded
3 not more than nominally from resources of a person while that person
4 owed a duty of support to the applicant or recipient of medical assistance.

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

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

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

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

39 (f) *Eligibility for medical assistance of resident receiving medical*
40 *care outside state.* A person who is receiving medical care including long-
41 term care outside of Kansas whose health would be endangered by the
42 postponement of medical care until return to the state or by travel to return
43 to Kansas, may be determined eligible for medical assistance if such

1 individual is a resident of Kansas and all other eligibility factors are met.
2 Persons who are receiving medical care on an ongoing basis in a long-term
3 medical care facility in a state other than Kansas and who do not return to
4 a care facility in Kansas when they are able to do so, shall no longer be
5 eligible to receive assistance in Kansas unless such medical care is not
6 available in a comparable facility or program providing such medical care
7 in Kansas. For persons who are minors or who are under guardianship, the
8 actions of the parent or guardian shall be deemed to be the actions of the
9 child or ward in determining whether or not the person is remaining
10 outside the state voluntarily.

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

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

1 repayment of the unreimbursed portion of assistance.

2 (B) Notwithstanding the provisions of subparagraph (A), the
3 secretary of health and environment, or the secretary's designee, is hereby
4 authorized to and shall exercise any of the powers specified in
5 subparagraph (A) in relation to performance of such secretary's duties
6 pertaining to medical subrogation, estate recovery or any other duties
7 assigned to such secretary in article 74 of chapter 75 of the Kansas Statutes
8 Annotated, and amendments thereto.

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

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

1 the results therefrom:

2 (A) If an individual receives any medical assistance before July 1,
3 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
4 and amendments thereto, which forms the basis for a claim under
5 paragraph (2), such claim is limited to the individual's probatable estate as
6 defined by applicable law; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (7) If the secretary for aging and disability services or the secretary of
40 health and environment, or both, or such secretary's designee has not filed
41 an action to foreclose the lien in the Kansas district court in the county
42 where the real property is located within 10 years from the date of the
43 filing of the lien, then the lien shall become dormant, and shall cease to

1 operate as a lien on the real estate of the recipient. Such dormant lien may
2 be revived in the same manner as a dormant judgment lien is revived under
3 K.S.A. 60-2403 et seq., and amendments thereto.

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

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

15 (h) *Placement under the revised Kansas code for care of children or*
16 *revised Kansas juvenile justice code; assignment of support rights and*
17 *limited power of attorney.* In any case in which the secretary for children
18 and families pays for the expenses of care and custody of a child pursuant
19 to K.S.A. 2019 Supp. 38-2201 et seq. or 38-2301 et seq., and amendments
20 thereto, including the expenses of any foster care placement, an
21 assignment of all past, present and future support rights of the child in
22 custody possessed by either parent or other person entitled to receive
23 support payments for the child is, by operation of law, conveyed to the
24 secretary. Such assignment shall become effective upon placement of a
25 child in the custody of the secretary or upon payment of the expenses of
26 care and custody of a child by the secretary without the requirement that
27 any document be signed by the parent or other person entitled to receive
28 support payments for the child. When the secretary pays for the expenses
29 of care and custody of a child or a child is placed in the custody of the
30 secretary, the parent or other person entitled to receive support payments
31 for the child is also deemed to have appointed the secretary, or the
32 secretary's designee, as attorney in fact to perform the specific act of
33 negotiating and endorsing all drafts, checks, money orders or other
34 negotiable instruments representing support payments received by the
35 secretary on behalf of the child. This limited power of attorney shall be
36 effective from the date the assignment to support rights becomes effective
37 and shall remain in effect until the assignment of support rights has been
38 terminated in full.

39 (i) No person who voluntarily quits employment or who is fired from
40 employment due to gross misconduct as defined by rules and regulations
41 of the secretary or who is a fugitive from justice by reason of a felony
42 conviction or charge or violation of a condition of probation or parole
43 imposed under federal or state law shall be eligible to receive public

1 assistance benefits in this state. Any recipient of public assistance who
2 fails to timely comply with monthly reporting requirements under criteria
3 and guidelines prescribed by rules and regulations of the secretary shall be
4 subject to a penalty established by the secretary by rules and regulations.

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

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

37 (l) (1) A program of drug screening for applicants for cash assistance
38 as a condition of eligibility for cash assistance and persons receiving cash
39 assistance as a condition of continued receipt of cash assistance shall be
40 established, subject to applicable federal law, by the secretary for children
41 and families on and before January 1, 2014. Under such program of drug
42 screening, the secretary for children and families shall order a drug
43 screening of an applicant for or a recipient of cash assistance at any time

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

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

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

1 cash assistance, subject to applicable federal law.

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

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

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

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

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

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

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

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

24 (9) As used in this subsection:

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

29 (B) "Controlled substance" means the same as in K.S.A. 2019 Supp.
30 21-5701, and amendments thereto, and 21 U.S.C. § 802.

31 (C) "Controlled substance analog" means the same as in K.S.A. 2019
32 Supp. 21-5701, and amendments thereto.

33 Sec. 2. K.S.A. 2019 Supp. 39-709 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.