Agency 30

Department of Social and Rehabilitation Services

Articles

30-4. Public Assistance Program.
30-5. Provider Participation, Scope of Services, and Reimbursements for the Medicaid (Medical Assistance) Program.
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Article 4.—PUBLIC ASSISTANCE PROGRAM

30-4-90. Eligibility factors specific to the GA program. (a) To be eligible for GA, each applicant or recipient shall meet the applicable general eligibility requirements of K.A.R. 30-4-50 and the following specific eligibility requirements:

(1) Each applicant or recipient shall be ineligible for GA under any of the following circumstances:

(A) The applicant or recipient is eligible for a federal cash program.

(B) The applicant or recipient has been denied or rendered ineligible for a federal cash program due to a voluntary action on the part of the applicant or recipient.

(C) The applicant or recipient has been determined ineligible for or has been denied social security disability benefits, unless both of the following conditions are met:

(i) The individual is exercising appeal rights at any level through the appeals council. In this case, the individual may receive assistance until social security disability benefits are awarded or until the individual is denied either disability benefits or consideration by the appeals council.

(ii) Credible, competent medical evidence exists, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make the determination that the individual is disabled as defined in title XVI of the social security act and is unable to engage in employment.

(D) The applicant or recipient does not have a medically determinable severe impairment, as defined in title XVI of the social security act, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make this determination.

(2) Each applicant or recipient is disabled or has a medically determinable severe impairment, as defined in title XVI of the social security act, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make this determination.

(3) The needs of the applicant or recipient and the spouse of the applicant or recipient shall be included in the same assistance plan, if the applicant or recipient and the spouse are living together, except for persons who are not otherwise eligible. In determining eligibility, the needs of each of the following persons in the family group who are not otherwise eligible shall be excluded while the resources of those persons shall be included, unless the resources are specifically exempt:

(A) Any SSI recipient;

(B) any person denied assistance based on the provisions of K.A.R. 30-4-50 (c) or (d);

(C) any person who is ineligible due to a sanction; and

(D) any alien who is ineligible because of the citizenship and alienage requirements or sponsorship provisions.

(b)(1) A presumptive eligibility determination shall be made for each person who is being released from Osawatomie state hospital, rainbow mental health facility, Larned state security hospital, or Larned correctional mental health facility, in accordance with an approved discharge plan. Minimally, the presumptive determination shall be based on available information concerning the

person's income and resources. The general eligibility requirements of K.A.R. 30-4-50 may be waived until a formal eligibility determination is completed. The time limit specified in subsection (e) of this regulation shall be waived for the period during which assistance is provided in accordance with paragraph (b)(2) of this regulation.

(2) The assistance provided shall equal 100 percent of the applicable GA budgetary standards, and the requirements of K.A.R. 30-4-140 (a)(1) shall be waived. The assistance shall not extend beyond the month of discharge and the two following months, except that the assistance may be extended by the secretary beyond the three-month limitation for good cause.

(c) Each applicant or recipient who refuses to authorize the department to file for and claim reimbursement from the social security administration for the amount of GA provided to the individual, pending a determination of eligibility for the supplemental security income program, shall be ineligible for GA.

(d) Each applicant or recipient who fails or refuses to cooperate with legal counsel or any other entity assigned by the agency or retained by the applicant or recipient to aid, advise, assist, or represent the applicant or recipient with regard to applying for and securing social security disability benefits shall be ineligible for GA.

(e) Assistance under this regulation shall be limited to a lifetime maximum of 18 calendar months, or a time frame to be determined by the secretary. This determination shall be based on the level of appropriations received for the program.

(f) The lifetime maximum of 18 calendar months or the time frame established by the secretary shall not apply if the GA recipient is also receiving Medicaid benefits and one of the following conditions is met:

(1) The individual's initial application for social security disability benefits is still pending the initial determination or is currently on appeal. If the individual is otherwise eligible and is either awaiting the initial determination or exercising appeal rights at any level through the appeals council, the individual may receive assistance until social security disability benefits are awarded or until the individual is denied either disability benefits or consideration by the appeals council.

(2) The individual has reapplied for social security disability benefits and establishes by credible, competent medical evidence, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make such a determination, either that a new impairment exists or that the existing impairment has increased in severity since the individual originally applied for social security disability benefits. The individual may receive assistance until social security disability benefits are awarded or until the individual is denied either disability benefits or consideration by the appeals council.

(g) This regulation shall be effective on and after July 1, 2009. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 2008 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-84-8, March 29, 1983; amended May 1, 1983; amended, T-84-9, March 29, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Dec. 31, 1992; amended, T-30-2-15-93, Feb. 15, 1993; amended June 1, 1993; amended July 1, 1994; amended Jan. 1, 1997; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 2002; amended, T-30-5-27-04, July 1, 2004; amended Aug. 6, 2004; amended July 1, 2006; amended July 1, 2009.)

Article 5.—PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENTS FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM

30-5-118a. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended July 1, 1994; amended July 1, 1997; amended Jan. 1, 1999; revoked March 19, 2010.)

Article 45.—YOUTH SERVICES

30-45-20. Foster child educational assistance. Any individual meeting the definition of foster child in K.S.A. 75-53,112 (b), and amendments thereto, and wanting to receive the benefits of the foster child educational assistance act may

obtain an application form from any office of the department of social and rehabilitation services ("department") or from any Kansas educational institution, as defined in K.S.A. 75-53,112 and amendments thereto. The individual shall submit the completed application to the registrar's office at the educational institution where the applicant enrolls. The applicant's eligibility shall be verified by the department upon receipt of the application from the educational institution. Within 30 days after enrollment, the student shall notify the department of that student's enrollment status and intended program of study. (Authorized by K.S.A. 2008 Supp. 75-53,117; implementing K.S.A. 2008 Supp. 75-53,113 and K.S.A. 2008 Supp. 75-53,120; effective July 6, 2009.)

Article 46.—CHILD ABUSE AND NEGLECT

30-46-10. Definitions. For the purpose of the child abuse and neglect registry, the following definitions shall apply.

(a) "Abuse" means any act specified in K.S.A. 38-2202(x) or (cc), and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act occurred. This term shall include any act that occurred in Kansas, regardless of where the child is found or resides.

(b) "Alleged perpetrator" means the person identified in the initial report or during the investigation as the person suspected of perpetrating an act of abuse or neglect.

(c) "Child" means anyone under the age of 18 or anyone under the age of 21 and in the custody of the secretary pursuant to K.S.A. 38-2255 and amendments thereto.

(d) "Child abuse and neglect registry" means the list of names for individuals identified by the department as substantiated perpetrators.

(e) "Child care facility" has the meaning specified in K.S.A. 65-503 and amendments thereto.

(f) "Department" means the Kansas department of social and rehabilitation services.

(g) "Investigation" means the gathering and assessing of information to determine if a child has been harmed, as defined in K.S.A. 38-2202 (k) and amendments thereto, as the result of abuse or neglect, to identify the individual or individuals responsible, and to determine if the individual or individuals identified should reside, work, or regularly volunteer in a child care facility.

(h) "Mental or emotional abuse" has the meaning specified in K.S.A. 38-2202(x), and amendments thereto, and shall include any act, behavior, or omission that impairs or endangers a child's social or intellectual functioning. This term may include the following:

(1) Terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child's presence that demonstrates a flagrant disregard for the child;

(2) emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child; and

(3) corrupting a child, by teaching or rewarding the child for unlawful, antisocial, or sexually mature behavior.

(i) "Neglect" has the meaning specified in K.S.A. 38-2202(s), and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act or failure to act occurred. This term shall include any act or failure to act that occurred in Kansas, regardless of where the child is found or resides.

(j) "Sexual abuse" has the meaning specified in K.S.A. 38-2202(cc), and amendments thereto, and shall include contact solely between children only if the contact also involves force, intimidation, difference in maturity, or coercion.

(k) "Substantiated perpetrator" and "perpetrator" mean a person who has been validated by the secretary or designee, using clear and convincing evidence, to have committed an act of abuse or neglect, regardless of where the person resides and who should not be permitted to reside, work, or regularly volunteer in a child care facility. These terms shall replace the term "validated perpetrator." (Authorized by K.S.A. 39-708c; implementing K.S.A. 2008 Supp. 38-2226 and 38-2230; effective Jan. 2, 1989; amended Jan. 2, 1990; amended Oct. 1, 1993; amended Jan. 1, 1997; amended Oct. 3, 1997; amended July 9, 2004; amended July 6, 2009.)

30-46-17. Expungement of record of perpetrator from central registry. (a) Application for expungement.

(1) Any perpetrator of abuse or neglect may apply in writing to the secretary to have the perpetrator's record expunged from the central registry when three years have passed since the perpetrator's name was entered on the central

registry or when information is presented that was not available at the time of the finding of abuse or neglect.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the director of children and family services or the director's designee, the chief legal counsel of the department or the counsel's designee, and a representative of the public appointed by the secretary. The director of children and family services or the director's designee shall chair the panel.

(b) Review hearing.

(1) A review hearing shall be convened by the panel, at which time the applicant may present evidence supporting expungement of the applicant's name from the central registry. The applicant shall have the burden of providing the panel with the basis for granting the application. Evidence in support of or in opposition to the application may be presented by the regional office that conducted the original investigation. An application for expungement from a perpetrator shall be accepted no more than once every 12 months.

(2) Recommendations of the review panel shall be determined by majority vote. The following factors shall be considered by the panel in making its recommendation:

(A) The nature and severity of the act of abuse or neglect;

(B) the number of findings of abuse or neglect involving the applicant;

(C) if the applicant was a child at the time of the findings of abuse or neglect for which expungement is requested, the age of the applicant at the time of this occurrence;

(D) circumstances that no longer exist that contributed to the finding of abuse or neglect by the applicant; and

(E) actions taken by the applicant to prevent the reoccurrence of abuse or neglect.

(3) The review hearing shall be set within 30 days from the date the application for expungement is received by the department. A written notice shall be sent to the applicant and the regional office that made the finding by the director of children and family services or the director's designee at least 10 days before the hearing. The notice shall state the day, hour, and place of the hearing. Continuances may be granted only for good cause.

(4) A written recommendation to the secretary shall be rendered by the panel within 60 days from the date of the hearing. The recommendation to the secretary shall be submitted in writing and shall set forth the reasons for the recommendation.

(c) Expungement.

(1) Based upon findings and recommendations of the panel, a record may be expunged or expungement may be denied by the secretary.

(2) Any record may be expunged from the central registry by the secretary or the designee of the secretary when 18 years have passed since the most recent finding of abuse or neglect.

(3) Each record of a perpetrator who was under 18 at the time of abuse or neglect shall be expunged five years after the finding of abuse or neglect is entered in the central registry if the perpetrator has had none of the following after entry in the registry:

(A) A finding of abuse or neglect;

(B) juvenile offender adjudication for any act that, if committed by an adult, would be a class A person misdemeanor or any person felony; or

(C) criminal conviction for a class A person misdemeanor or any person felony.

(4) The decision of the secretary shall be in writing and shall set forth the reasons for the decision. Denial of the application shall be the final agency order. The applicant shall be informed of the right to appeal pursuant to the Kansas judicial review act. (Authorized by K.S.A. 39-708c and 65-516; implementing K.S.A. 65-516; effective Jan. 2, 1989; amended Jan. 1, 1990; amended July 1, 1997; amended July 9, 2004; amended July 6, 2009.)

Article 63.—DEVELOPMENTAL DISABILITIES—LICENSING PROVIDERS OF COMMUNITY SERVICES

30-63-10. License required; exceptions. (a) Each individual, group, association, corporation, local government department, or local quasi-government agency providing services to persons 18 years of age or older in need of services greater than those provided in a boarding care home as defined in K.S.A. 39-923(a) (8), and amendments thereto, shall be licensed in accordance with the provisions of this article, except when those services are provided in or by any of the following:

(1) In a medical care facility, as defined and required to be licensed in K.S.A. 65-425 et seq. and amendments thereto;

(2) in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility, or in a home plus setting, as defined and required to be licensed in K.S.A. 39-923 et seq. and amendments thereto;

(3) by a home health agency, as defined and provided for the licensing of in K.S.A. 65-5101 et seq. and amendments thereto; or

(4) in a manner so that the services constitute in-home services, funded under the federal home- and community-based services/mental retardation waiver or with state funding under terms like those of the federal home- and community-based services/mental retardation waiver, and are provided in compliance with all of the following conditions:

(A) The services are directed and controlled by an adult receiving services, the parent or parents of a minor child receiving services, or the guardian of an adult receiving services.

(B) The person or person's representative directing and controlling the services selects, trains, manages, and dismisses the individual or business entity providing the services and coordinates payment.

(C) The person or person's representative directing and controlling the services owns, rents, or leases the whole or a portion of the home in which services are provided.

(D) If any individual providing services also lives in the home in which services are provided, there is a written agreement specifying that the person receiving services will not be required to move from the home if there is any change in who provides services, and that any individual or business entity chosen to provide services will be allowed full and reasonable access to the home in order to provide services.

(E) The person receiving services does not receive services in a home otherwise requiring a license pursuant to these regulations.

(F) Any individual providing services is at least 16 years of age, or at least 18 years of age if a sibling of the person receiving services, unless an exception to this requirement has been granted by the commission, based upon the needs of the person receiving services.

(G) Any individual or business entity providing services receives at least 15 hours of prescribed training, or the person or person's representative directing and controlling the services has provided written certification to the community developmental disability organization (CDDO) that sufficient training to meet the person's needs has been provided.

(H) The person or person's representative directing and controlling the services has chosen case management from the CDDO or an agency affiliated with the CDDO. That case management may be limited, at the choice of the person or person's representative directing and controlling the services, to reviewing the services on a regular basis to ensure that the person's needs are met, annual reevaluation of continued eligibility for funding, and development of the person's plan of care.

(I) The person or person's representative directing and controlling the services cooperates with the CDDO's quality assurance committee and allows review of the services as deemed necessary by the committee to ensure that the person's needs are met. In addition, the person directing and controlling the services cooperates with the commission and allows monitoring of the person's services to ensure that the case manager and the CDDO's quality assurance committee have adequately reviewed and determined that the person's needs are met.

(J) The person or person's representative directing and controlling the services agrees to both of the following:

(i) If it is determined by the CDDO or the commission that the person receiving services is or could be at risk of imminent harm to the person's health, safety, or welfare, the person or person's representative directing and controlling the services shall correct the situation promptly.

(ii) If the situation is not so corrected, after notice and an opportunity to appeal, funding for the services shall not continue.

(b) Each license issued pursuant to this article shall be valid only for the provider named on the license. Each substantial change of control or ownership of either a corporation or other provider previously licensed pursuant to this article shall void that license and shall require a reapplication for licensure. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Oct. 1, 1998; amended Jan. 15, 2010.)

30-63-11. Two types of license; display. (a) Two types of license may be issued by the secretary pursuant to this article to operate as a pro-

vider. One type shall be a "full license," and the other type shall be a "limited license." Both types of license may be issued on a "temporary" or on a "with requirements" basis as specified in K.A.R. 30-63-12.

(b) Both licenses issued pursuant to this article shall be prepared by the commission.

(c) Each holder of a license shall prominently display the license in the holder's principal place of business.

(d) A full license shall apply to all providers except those providers specified in subsection (e).

(e) A "limited license" shall apply to providers who provide services only to either one or two specified persons to whom the provider is related or with whom the provider has a preexisting relationship. The services shall be provided in the home of the person being served. A provider operating with a limited license shall be afforded greater flexibility in the means by which that provider is required to comply with all of the requirements of this article if the services are provided in a manner that protects the health, safety, and welfare of the specific person being served, as determined by the commission. (Authorized by and K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

30-63-12. Licensing procedure; requirements; duration of license. (a) Each provider required to be licensed pursuant to this article shall submit an application for an appropriate license to the commissioner, on a form provided by the commission.

(b) For a full license, each applicant shall provide the following:

(1) Certification that the applicant's chief director of services, regardless of title, is qualified to develop and modify, if appropriate, a program of individualized services to be provided to persons as defined in K.A.R. 30-63-1, as evidenced by that individual's having either of the following:

(A) A bachelor's or higher degree in a field of human services awarded by an accredited college or university; or

(B) work experience in the area of human services at the rate of 1,040 hours of paid work experience substituted for a semester of higher education, which shall mean 15 undergraduate credit hours, with at least eight full-time semester's worth of either satisfactorily passed education or work experience;

(2) certification that the applicant's chief director of services, regardless of title, is qualified to supervise the delivery of a program of services to persons, as evidenced by that individual's having one of the following:

(A) At least one year of experience in a senior management-level position with a licensed provider;

(B) at least two years of experience as either a case manager or a services manager with supervisory authority over at least two other individuals providing direct services to persons; or

(C) at least five years of experience delivering direct care services to persons;

(3) three letters of reference concerning the applicant's chief director of services, regardless of title. Each letter written shall be by an individual knowledgeable both of the applicant and of the delivery of services to persons;

(4) evidence of completion of a background check meeting the requirements of the "SRS/CSS policy regarding background checks," dated September 8, 2009 and hereby adopted by reference, done on the applicant's chief director of services, regardless of title;

(5) a set of written policies and procedures specifying how the applicant intends to comply with the requirements of this article;

(6) a written business plan that shows how the applicant intends to market its services, to accommodate growth or retrenchment in the size of its operations without jeopardizing consumer health or safety issues, to respond to other risk factors as could be foreseeable in the specific case of that applicant, and to keep the operation fiscally solvent during the next three years, unless the application is for a renewal of a succession of licenses that the applicant has had for at least three years. In this case, the viability of the applicant's operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan despite how long the renewal applicant has been previously licensed; and

(7) if required of the applicant by the United States department of labor, a subminimum wage and hour certificate.

(c) For a limited license, each applicant shall provide the following:

(1) A description of the preexisting relationship

with the one or two persons proposed to be provided services;

(2) documentation that the individual who will be chiefly responsible for providing services is qualified to do so, as evidenced by that individual's having either of the following:

(A)(i) At least one year of work experience in providing services to a person; and

(ii) completion of the curriculum of studies designated by the commission and accessed through the commission's web site; or

(B) the qualifications specified in paragraph (b)(1);

(3) evidence of completion of a background check meeting the requirements of the background check policy adopted by reference in paragraph (b)(4), done on the individual who will be chiefly responsible for the operations of the applicant;

(4) a written plan that shows how the applicant intends to comply with the requirements of this article applicable to the specific circumstances of the one or two persons to whom those services are proposed to be provided; and

(5) a written business plan that shows how the applicant intends to keep the applicant's proposed provider operation fiscally solvent during the next three years, except as specified in this paragraph. If the application is for a renewal of a succession of licenses that the applicant has had for at least three years, the viability of the applicant's operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan, regardless how long the applicant has been previously licensed.

(d) Upon receipt of an application, the commission shall determine whether the applicant is in compliance with the requirements of subsection (b) or (c) and with this article.

(e) The applicant shall be notified in writing if the commission finds that the applicant is not in compliance with the requirements of subsection (b) or (c) or with this article.

(f) A temporary license or a temporary license with requirements may be issued by the secretary to allow an applicant to begin the operations of a new provider. A license with requirements may be issued by the secretary to allow a provider seeking renewal of a previously issued license to continue operations. A license with requirements shall be designated as contingent upon the provider's developing, submitting to the commission, and implementing an acceptable plan of corrective action intended to bring the provider into continuing compliance with the requirements of this article.

(1) Findings made by the commission with regard to the implementation of a plan of corrective action shall be given to the provider in writing.

(2) Failure of a provider to be in compliance with the requirements of this article or to implement an acceptable plan of corrective action may be grounds for denial of a license whether or not a temporary license or a license with requirements has been issued.

(g) Based upon findings made by the commission regarding compliance with or the implementation of an acceptable plan of corrective action, the commissioner shall determine whether to recommend issuance or denial of the full or limited license applied for. The applicant shall be notified in writing of any decision to recommend denial of an application for a license. The notice shall clearly state the reasons for a denial. The applicant may appeal this denial to the administrative appeals section pursuant to article seven of these regulations.

(h)(1) A full or limited license issued pursuant to this article shall remain in effect for not more than two years from the date of issuance. The exact date on which the license expires shall be stated upon the license. However, the license shall earlier expire under any of the following circumstances:

(A) The license is revoked for cause.

(B) The license is voided.

(C) For a temporary license or a license with requirements, the license is superseded by the issuance of a full or a limited license as applied for.

(D) The license is voluntarily surrendered by the provider.

(2) Each license term shall be determined by the commissioner based upon the commission's findings regarding the history and strength of the applicant's provider operations, including evidence of the provider's having earned certification from a nationally recognized agency or organization that specializes in certifying providers of services.

(i) Each license with requirements shall specify the length of time for which the license is valid, which shall not exceed one year. Successive licenses with requirements may be issued by the

secretary, but successive licenses with requirements shall not be issued for more than two years.

(j) Each temporary license shall be valid for six months. If, at the expiration of that six months, the licensee has not yet commenced providing services to any person but the licensee wishes to continue efforts to market the licensee's services, a successive temporary license may be issued for another six-month period. No further extensions of a temporary license shall be granted.

(k) A license previously issued shall be voided for any of the following reasons:

(1) Issuance by mistake;

(2) a substantial change of control or ownership, as provided for in K.A.R. 30-63-10(b); or

(3) for a limited license, the licensee's cessation of provision of services to the person or persons for whom the license was specifically sought and obtained.

(l) In order to renew a license, the licensee shall reapply for a license in accordance with this regulation.

(m) If a provider is licensed pursuant to this article on or before the effective date of the amendments to this regulation, the requirements specified in either paragraphs (b)(1) and (b)(2) or paragraph (c)(2) shall not apply to any renewal request of that licensee made during the one-year period following the effective date of these amendments. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)