

39-786. Division of aggregate resources authorized for purpose of determining medical assistance eligibility; conditions and limitations; written interspousal agreement; written statement of Kansas department for children and families; lien authorized, limitations; rules and regulations; increase in dollar amounts based on consumer price index. (a) For the purpose of determining medical assistance eligibility pursuant to K.S.A. 39-709, and amendments thereto, and the right to and obligation of medical support for the purposes of K.S.A. 39-709 and 39-719a, and amendments thereto, a qualified applicant or qualified recipient and such applicant's or recipient's spouse may divide their aggregate resources, whether owned jointly or singly, into separate shares as provided by this section. Subject to the provisions of subsection (g), if a qualified applicant or qualified recipient and such applicant's or recipient's spouse so divide their aggregate resources:

- (1) Only the separate nonexempt resources of the applicant or recipient shall be considered in determining eligibility for medical assistance: (A) If the applicant's or recipient's spouse is not applying for or receiving medical assistance, in the month following the month in which the applicant or recipient enters an institution to receive long-term care or begins to receive home and community based services, or at any time thereafter; or (B) if the applicant's or recipient's spouse is applying for or receiving medical assistance, in the seventh month following the month in which the applicant or recipient enters an institution to receive long-term care or begins to receive home and community based services, or at any time thereafter;
 - (2) the Kansas department for children and families, in determining the eligibility of the applicant or recipient for long-term institutional care or home and community based services, shall not take into account the separate nonexempt resources of the applicant's or recipient's spouse and shall not require proof of adequate consideration for any transfer made in dividing resources in accordance with this section;
 - (3) the resources received by the qualified applicant's or qualified recipient's spouse pursuant to this section shall not be considered to be available to the applicant or recipient for future medical support and the qualified applicant's or qualified recipient's spouse shall have no duty of future medical support of the qualified applicant or qualified recipient from such resources;
 - (4) except as otherwise provided in this section, neither the secretary nor the state may recover from the resources received by the qualified applicant's or qualified recipient's spouse pursuant to this section any amounts paid for future medical assistance provided to the qualified applicant or qualified recipient; and
 - (5) neither the secretary nor the state shall be subrogated to or assigned any future right of the qualified applicant or qualified recipient to medical support from the resources of the qualified applicant's or qualified recipient's spouse.
- (b) If a qualified applicant or qualified recipient and such applicant's or recipient's spouse choose to divide their aggregate resources pursuant to this section, the division shall be in such a manner that the qualified applicant's or qualified recipient's spouse owns singly aggregate nonexempt resources with a value which is the greater of: (A) \$12,000, subject to adjustment under subsection (i); or (B) the lesser of (i) the spousal share computed under subsection (c) or (ii) four times the amount described in clause (A).
- (c) There shall be computed, as of the beginning of a continuous period of long-term care of the qualified applicant or qualified recipient: (A) The total value of the nonexempt resources to the extent the qualified applicant or qualified recipient or such applicant's or recipient's spouse has an ownership interest; and (B) a spousal share which is equal to 1/2 of such total value.
- (d) A division of resources pursuant to this section shall be evidenced by a written interspousal agreement, signed by both spouses or their personal representatives, to divide the resources as provided by this section and to make any transfers necessary to carry out the division. In the case of a qualified applicant, a notice of intent to divide resources shall be filed with the secretary at the time of application. In the case of a qualified recipient, such notice shall be filed with the secretary at the time the recipient and the recipient's spouse desire to divide resources. The division shall apply to resources owned on the date the notice of intent is filed and the division shall be presumed to take place on that date if a copy of the agreement to divide resources and evidence, satisfactory to the secretary, of completion of any transfers necessary to effect the division are filed with the secretary within 90 days after the notice of intent is filed or within such additional time as permitted by the secretary, in the secretary's discretion, for good cause shown.
- (e) Once a qualified applicant for or qualified recipient of medical assistance has divided resources with a spouse pursuant to this section, such applicant or recipient may not thereafter again divide resources under this section with such spouse or any subsequent spouse.
- (f) The Kansas department for children and families shall furnish to each qualified applicant or qualified recipient and such applicant's or recipient's spouse, and any personal representative thereof, a clear and simple written statement that:
- (1) The total resources of the qualified applicant or qualified recipient and of the applicant's or recipient's spouse may be divided hereunder;
 - (2) upon such a division, the spouse's nonexempt resources will not be considered in determining eligibility of the applicant or recipient for long-term institutional care or home and community based services and the spouse shall not be required to use the resources received by the spouse pursuant to this section to provide future medical support to the qualified applicant or qualified recipient;
 - (3) a lien for medical assistance paid may be imposed against the property of the qualified applicant or qualified recipient and the property of the applicant's or recipient's spouse but only to the extent authorized under this section.
- (g) If a qualified recipient of medical assistance and such recipient's spouse have divided their resources as provided by this section, the secretary, may establish, enforce and foreclose a lien for any amount of medical assistance provided the recipient but only to the extent authorized under 42 U.S.C. § 1396p, as in effect on the effective date of this act.
- (h) The secretary shall adopt such rules and regulations as necessary to implement and enforce the provisions of this section.
- (i) The dollar amounts specified in subsection (b) and K.S.A. 39-787(a), and amendments thereto, shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers, all items, the United States city average, between September 1987, and the September before the calendar year involved.

History: L. 1988, ch. 143, § 2; L. 2014, ch. 115, § 96; July 1.