

## 2021 Kansas Statutes

**39-787. Division of aggregate income authorized for purpose of determining medical assistance eligibility; conditions and limitations; written interspousal agreement; written statement of secretary for children and families; rules and regulations.** (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 income, whether received jointly or singly, into separate shares as provided by this section so that the spouse retains the first \$9,000 plus any allowable excess shelter allowance up to a maximum total of \$14,400 of the aggregate nonexempt income. If a qualified applicant or qualified recipient and such applicant's or recipient's spouse so divide their aggregate income:

(1) Only the separate nonexempt income of the qualified applicant or qualified 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 or recipient and the applicant's or recipient's spouse share the same residence and 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 secretary 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 income of the applicant's or recipient's spouse and shall not require proof of adequate consideration for any assignment made in dividing income;

(3) of the annual income of the qualified applicant's or qualified recipient's spouse, only that portion exceeding \$9,000 plus any allowable excess shelter allowance up to a maximum total of \$14,400 shall be considered to be available to the qualified applicant or qualified recipient for future medical support and the qualified applicant's or qualified recipient's spouse shall have a duty of future medical support of the qualified applicant or qualified recipient only to the extent that such spouse's annual income exceeds \$9,000 plus any allowable excess shelter allowance up to a maximum total of \$14,400;

(4) neither the secretary nor the state may recover from the income of the qualified applicant's or qualified recipient's spouse, for future medical assistance provided to the qualified applicant or qualified recipient: (A) Any amount in any calendar year when the income of such spouse is less than \$9,000 plus any allowable excess shelter allowance up to a maximum total of \$14,400; or (B) an amount in any calendar year which would reduce such spouse's income to less than \$9,000 plus any allowable excess shelter allowance up to a maximum total of \$14,400 for such calendar year; and

(5) the secretary's subrogation rights on behalf of the state shall be subject to the limitation of subsection (a)(4).

(b) A division of income pursuant to this section shall be evidenced by a written interspousal agreement, signed by both spouses or their personal representatives, to divide income as provided by this section and to carry out the division. In the case of a qualified applicant, a notice of intent to divide income 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.

(c) The secretary 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 the total income of the qualified applicant or qualified recipient and of the applicant's or recipient's spouse may be divided hereunder and that, upon such a division, the spouse's income 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 be required to use only that portion of the spouse's annual income which exceeds \$9,000 plus any allowable excess shelter allowance up to a maximum total of \$14,400 to provide future medical support to the applicant or recipient.

(d) The secretary shall adopt such rules and regulations as necessary to implement and enforce the provisions of this section.

**History:** L. 1988, ch. 143, § 3; L. 2014, ch. 115, § 97; July 1.