



<b>Policy Memo</b>	
<b>KDHE-DHCF POLICY NO: 2015-11-01</b>	<b>From: Jeanine Schieferecke Senior Manager – Medicaid Eligibility</b>
<b>Date: November 25, 2015</b>	<b>KEESM Reference: 4312 KFMAM Reference: 3130</b>
<b>RE: Marriage Status</b>	<b>Program(s): All Medical Programs</b>

The purpose of this memo is to provide instructions to eligibility staff regarding marriage status for medical assistance purposes. These instructions and clarifications are effective with the issuance of this memo.

This update will be incorporated in the Kansas Economic and Employment Services Manual (KEESM) and Kansas Family Medical Assistance Manual (KFMAM) manuals during the next scheduled revisions.

**A. Background** – The United States Supreme Court decision in *Obergefell v. Hodges* dated June 26, 2015 requiring all states to recognize same sex marriages when they are validly licensed and performed in other states and jurisdictions. Kansas will now recognize same sex spouses when making a medical assistance eligibility determination.

**B. Application of Policy** – The following updates and clarifications apply to implementation of this policy.

**1. Definition of Marriage** – Kansas statute defines marriage as a civil contract between two consenting parties who are of opposite sex. However, effective with the U.S. Supreme Court decision, for the purpose of medical assistance eligibility determination, Kansas will also allow and recognize same sex marriages, treating opposite sex and same sex couples the same.

All individuals seeking a civil marriage union in Kansas must meet the following statutory requirements:

- (a) be at least 18 years old, or
  - (i) 15 years old with judicial consent, or
  - (ii) 16 – 17 years old with parental consent
- (b) are legally competent

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(c) are not already married to someone else

- 2. Common-law Marriage** – Kansas is one of the few states that recognize unregistered marriage unions established outside of the formal civil contract licensing process described above. These unions are known as a common-law marriage.

To be considered common-law married, the couple must meet all of the following conditions:

- (a) have the legal capacity to marry
  - (i) be at least 18 years old
  - (ii) are legally competent
  - (iii) are not already married to someone else
- (b) consider themselves to be presently married
- (c) hold themselves out to the public as married

Due to the court ruling mentioned above, both opposite sex and same sex couples may establish a common-law marriage in Kansas.

Note: Even though a couple may enter into a valid unlicensed common-law marriage without a formal civil contract, dissolution of the marriage established in this manner can only be accomplished through the formal divorce procedures established through the courts. There is no such thing as a common-law divorce.

**3. Domestic Partners** – Domestic partners, also known as life partners, are unmarried couples in long-term committed relationships. These individuals may be entitled to some of the same benefits as married people in some jurisdictions, such as employer-provided health insurance and the right of inheritance. Establishment of a domestic partnership is usually accomplished through a registry process in the jurisdictions where allowed. However, Kansas is not one of the jurisdictions that recognize domestic partners. Therefore, for medical assistance eligibility purposes, these individuals are deemed to be unrelated to each other. The mandate to recognize same sex marriage does not apply to individuals in a domestic partner relationship.

**4. Effective Date of Marriage** – This policy shall be applied to all pending applications, including those received prior to implementation of this policy. The date of the same sex marriage shall be deemed to be the date of the Obergefell decision, i.e, June 26, 2015. Any couple, same sex or opposite sex, self-attesting to marriage shall be presumed to be married in all months for which assistance is being requested by the applicant/recipient. However, if evidence has been presented or exists that the marriage occurred after the first month for which assistance is requested, the marriage start date would be obtained in order to properly determine eligibility for those months.

Example 1: A same sex married couple applies for medical assistance based on disability of one of the spouses. Prior medical assistance has also been requested. Since there is no indication as to when the marriage occurred, it is presumed that the couple has been married for all months in which eligibility has been requested, including the prior months.

Example 2: An opposite sex married couple applies for medical assistance, including a request for prior

medical. The couple reports on the application that there has been a household change in the last 3 months. They report they were married. In this instance, it would be appropriate to contact the applicant to obtain the date of marriage in order to properly determine eligibility for the prior period. Self-attestation by the applicant would satisfy this requirement.

- 5. Out-of-State Marriage** – All marriages established outside of Kansas shall be recognized in this state for eligibility purposes as long as the marriage was valid within the jurisdiction in which it was established. Eligibility staff are not responsible for determining if the marriage was valid in the out-of-state jurisdiction. Self-attestation by the applicant/recipient that he/she is married is sufficient verification that the union exists.
- 6. Verification** – Self-attestation of marriage, both formal and common-law, is accepted without verification. Eligibility staff shall not request copies of marriage licenses or any other proof that the couple is married. However, if the worker has reason to question the reported marriage or non-marriage, verification may be requested. This would occur where discrepant information exists which must be reconciled in order to make an eligibility determination. Consider the following examples:
  - Example 1: An applicant reports they are married to Spouse A. On a previous application received a few months earlier, the applicant reported being married to Spouse B. The applicant may be contacted in this situation to clarify their marriage situation with verification ultimately requested if warranted.
  - Example 2: A common-law married individual previously denied for assistance due to excess income from the spouse reapplies for assistance a few months later. On the new application, the individual reports they continue to cohabit, but are not married. The new application will be processed with the partners still considered to be a married couple.

However, because there is conflicting information, the consumer must be given the opportunity to provide verification of the change in relationship. Sufficient verification would include either a divorce document or proof that they were legally incapable of being common-law married at the time they reported the relationship to the agency.
  - Example 3: A 21 year old applicant reports being common-law married to their 17 year old spouse. Since an individual must be at least 18 years old to be common-law married in Kansas, the applicant's attestation is questioned. Further contact with the applicant is warranted to clarify marriage status. Verification of the marriage would be required.
  - Example 4: An unmarried adult is receiving assistance based on having a disability. At review, the recipient reports being married. Since the marriage was not previously reported, an overpayment may have occurred. Contact with the recipient to verify the date of marriage is warranted to correctly determine eligibility for past months. Self-attestation by the applicant would satisfy this requirement.
- 7. Family Relationships** – Similar to self-attestation of marriage indicated above, reported family relationships are also accepted without verification. Same sex couples reporting to be the parents of minor children in the home shall be accepted without further inquiry. If only one spouse claims to be the parent, the other spouse is classified as a step-parent. For eligibility purposes, there is no difference between same sex and opposite sex couples in this respect.
- 8. Transition** – There may be some same sex couples whose eligibility was determined prior to implementation of this new policy. Staff are not obligated to identify those situations and re-determine eligibility at this time. However, for individuals with current eligibility, those cases shall be updated

during the earlier of the next case action or the next scheduled review. Denied applications involving same sex couples need not be re-evaluated if processed prior to the effective date of this policy, unless the applicant makes contact within the application reactivation period. A change in eligibility based on implementation of this policy change shall not impact continuously eligible individuals. Individuals adversely affected shall retain coverage through the end of the current continuous eligibility period.

- 9. Processing in KEES** – The KEES eligibility system will fully support the coding of same sex married couples and correctly determine eligibility based on that relationship.

If you have any questions or concerns about the information in this memo, please contact one of the KDHE-DHCF Medical Eligibility Policy Staff listed below:

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