

Executive Reorganization Order No. 33

By Governor Kathleen Sebelius

Transmitted January 12, 2005

Section 1. (a) There is hereby established, within the Kansas department of administration, the division of health policy and finance. The head of the division shall be the director of health policy and finance, who shall be appointed by and serve at the pleasure of the governor. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the governor. Under the supervision of the governor, the director shall administer the division of health policy and finance.

(b)(1) The director shall hire, in accordance with the provisions of the Kansas civil service act, such employees as may be needed, in the judgment of the director, to carry out the powers and duties of the division, and all such employees shall be within the classified service unless otherwise specifically provided by law.

(2) Such employees shall act for and exercise the powers of the director to the extent that authority to do so is delegated by the director. Subject to the limitations of this order, the director may organize the division of health policy and finance in the manner the director deems most efficient.

(c) The division of health policy and finance and the director shall have the following powers and duties:

(1) The director shall coordinate health care planning, administration, and purchasing and analysis of health care data for the state of Kansas with respect to the following health care programs administered by the state of Kansas:

(A) developing, implementing, and administering programs that provide medical assistance, health insurance programs, or waivers granted thereunder for persons who are needy, uninsured, or both, and that are financed by federal funds or state funds, or both, including the following:

(i) the Kansas program of medical assistance established in accordance with title XIX of the social security act, 42 U.S.C. §1396 et seq., and amendments thereto (the medicaid act);

(ii) the health benefits program for children established under K.S.A. 38-2001 et seq., and amendments thereto, and developed and submitted in accordance with federal guidelines established under title XXI of the social security act (section 4901 of public law 105-33, 42 U.S.C. §1397aa et seq.), and amendments thereto; and

(iii) any program of medical assistance for needy persons financed by state funds only, to the extent appropriations are made for such a program;

(B) serving as the designated contact agency for the state of Kansas under K.S.A. 46-2507, and amendments thereto, with reference to federal health care reform measures; and

(C) administering any other health care programs delegated to the director by the governor or by memorandum of understanding with another state agency. Except to the extent required by its single state agency role as designated in paragraph (C)(2) below, the division of health policy and finance shall not be responsible for health care planning, administration, purchasing, and data with respect to the following: the mental health reform act, K.S.A. 39-1601 et seq., and amendments thereto; the developmental disabilities reform act, K.S.A. 39-1801 et seq., and amendments thereto; the mental health program of the state of Kansas as prescribed under K.S.A. 75-3304a, and amendments thereto; the addiction and prevention services prescribed under K.S.A. 65-4001 et seq., and amendments thereto; or any institution as that term is defined in K.S.A. 76-12a01, and amendments thereto.

(2)(A) The division of health policy and finance shall be designated as the single state agency with responsibility for supervising and administering the state plan for medical assistance under 42 U.S.C. §1396 et seq., and amendments thereto. The director shall develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing medical assistance and services to eligible individuals.

(B) The director shall undertake to cooperate with the federal government on any other federal program providing federal financial assistance and services for medical assistance not inconsistent with this order. The director is not required to develop a state plan for participation or cooperation in all federal social security act programs relating to medical assistance or other available federal programs that relate to medical assistance.

(3) The director shall have the power, but is not required, to develop a state plan with regard to medical assistance and services in which the federal government does not participate, within the limits of appropriations therefor.

(4)(A) Subject to the limitations of paragraph (C)(4)(B), the director may enter into a memorandum of understanding with one or more state or local agencies providing for the state or local agency to perform services for the division of health policy and finance or delegating to the state or local agency the administration of certain functions, services, or programs under any of the programs for which the division of health policy and finance is responsible.

(B) With respect to any plan or program that is subject to or financed in part under 42 U.S.C. §1396 et seq. and amendments thereto, the authority of the division of health policy and finance to exercise administrative discretion in the administration or supervision of the plan or program and to issue policies and rules and regulations on plan or program matters

shall not be delegated by the director, other than to officials and employees of the division.

To the extent that the director enters into a memorandum of understanding with a state or local agency under this paragraph (c)(4), the other state agency or local agency shall not have the authority to change or disapprove any administrative decision of the division of health policy and finance or to otherwise substitute its judgment for that of the division of health policy and finance with respect to the application of policies, rules, and regulations issued by the director for any plan or program that is subject to or financed in part under 42 U.S.C. §1396 et seq., and amendments thereto.

(5)
The director shall have the power and duty to establish general policies relating to these health care programs and to adopt rules and regulations therefor.

(6)
The director shall advise the governor and the legislature on all health care programs, policies, and plans for which the director is responsible under this order.

(7)
The director shall establish an adequate system of financial records. The director shall make periodic reports to the governor and shall make any reports required by federal agencies.

(8)
The director may assist other departments, agencies, and institutions of the state and federal government and of other states under interstate agreements, when so requested, by performing services in conformity with the purposes of this order.

(9)
All contracts of the division of health policy and finance shall be made in the name of the "director of health policy and finance." In that name, the director may sue and be sued. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriations act of this state.

(10)
After consulting with any agency that has responsibility under a memorandum of understanding with the division of health policy and finance for administration of any of the programs of the division, the director shall prepare annually, at the time and in the form directed by the governor, a budget covering the estimated receipts and expenditures of the division of health policy and finance for the coming year.

(11)
The director shall have authority to make grants of funds for the promotion of health care programs in the state of Kansas.

(12)
The director may receive grants, gifts, bequests, money, or aid of any character whatsoever, for purposes consistent with this section.

(13)
The director may enter into agreements with other states or the agency designated as the single state agency under 42 U.S.C. §1396 et seq., and amendments thereto,

for another state setting out the manner for determining the state of residence in disputed cases and the bearing or sharing of costs associated with those cases.

(14)

The director shall establish such advisory groups as are necessary to assist the division in carrying out its responsibilities under this section, including the following:

(A)

a consumer advisory board consisting of representatives of consumers of health care services provided under title XIX of the social security act, 42 U.S.C. §1396 et seq., and title XXI of the social security act, 42 U.S.C. §1397aa et seq., and amendments thereto, and representatives of these consumers' family members; and

(B)

a policy coordination board consisting of representatives from those state agencies with which the director enters into a memorandum of understanding under paragraph

(c)(4)

and representatives from any other state agencies, as determined by the director.

(15)

The director shall perform any other duties and services necessary to carry out the purposes of this section, not inconsistent with state law.

Sec. 2. (a) On the effective date of this order, the department of social and rehabilitation services is hereby renamed the department of human services, and the secretary

of social and rehabilitation services is hereby renamed the secretary of human services. The

department of human services shall be a continuation of the department of social

and rehabilitation services, and the secretary of human services shall be a continuation of the

secretary of social and rehabilitation services.

(b)

Except as otherwise provided by this order, all of the following powers, duties, and functions of the existing department of social and rehabilitation services and the existing

secretary of social and rehabilitation services are hereby transferred to and imposed upon the

division of health policy and finance within the department of administration and the director

of health policy and finance established by this order:

(1)

all of the powers, duties, and functions of the secretary of social and rehabilitation

services under chapter 39 of the Kansas statutes annotated, and amendments thereto, that

relate to development, implementation, and administration of programs that provide medical

assistance, health insurance programs, or waivers granted thereunder for persons who are

needy, uninsured, or both, and that are financed by federal funds or state funds or both,

including the following:

(A)

the Kansas program of medical assistance established in accordance with title XIX of the social security act, 42 U.S.C. §1396 et seq., and amendments thereto (the

medicaid act); and

(B) any program of medical assistance for needy persons financed by state funds

only;

(2)

all of the powers, duties, and functions of the secretary of social and rehabilitation services with respect to the health benefits program for children established under K.S.A. 382001 et seq., and amendments thereto, and developed and submitted in accordance with federal guidelines established under title XXI of the social security act (section 4901 of public law 105-33, 42 U.S.C. §1397aa et seq.), and amendments thereto; and

(3)

all of the powers, duties, and functions of the department and secretary of social and rehabilitation services associated with designation of the department of social and rehabilitation services as the single state agency under the medicaid act. The designation of the department of social and rehabilitation services as the single state agency for medicaid purposes is hereby transferred to the division of health policy and finance. Sec. 3. (a) The division of health policy and finance within the department of administration and the director of health policy and finance established by this order shall be the successor in every way to the powers, duties, and functions of the department and secretary of social and rehabilitation services in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 2. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the division of health policy and finance or the director of health policy and finance within the department of administration shall be deemed to have the same force and effect as if performed by the department or secretary of social and rehabilitation services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b)

Whenever the department of social and rehabilitation services or the secretary of social and rehabilitation services, or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, waiver, or other document and such reference is in regard to any of the powers, duties, or functions transferred to the division of health policy and finance or the director of health policy and finance pursuant to section 2 of this order, such reference or designation shall be deemed to apply to the division of health policy and finance or the director of health policy and finance, respectively.

(c)

All rules and regulations, orders, and directives of the secretary of social and rehabilitation services that relate to the functions transferred by section 2 of this order and that are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the director of health policy and finance until revised, amended, revoked, or nullified pursuant to law. Sec. 4. On the effective date of this order, the balances of all funds or accounts thereof appropriated or reappropriated for the department of social and

rehabilitation services relating to the powers, duties, and functions transferred by section 2 of this order are hereby transferred within the state treasury to the division of health policy and finance within the department of administration and shall be used only for the purpose for which the appropriation was originally made.

Sec. 5. The division of health policy and finance within the department of administration shall succeed to all property, property rights, and records that were used for or pertain to the performance of powers, duties, and functions transferred to the division pursuant to section 2. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 6. (a) Except with respect to the powers, duties, and functions that are transferred by section 2 of this order to the division of health policy and finance within the department of administration or to the director of health policy and finance, the department of human services and the secretary of human services shall be the successor in every way to the powers, duties, and functions of the department and secretary of social and rehabilitation services in which the same were vested prior to the effective date of this order. Every act performed in the exercise of such powers, duties, and functions by or under the authority of the department of human services or the secretary of human services shall be deemed to have the same force and effect as if performed by the department of social and rehabilitation services or the secretary of social and rehabilitation services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of social and rehabilitation services, or words of like effect, are referred to or designated by a statute, contract, plan, grant, waiver, or other document, and such reference or designation is in regard to any function, power, or other than those powers, duties, and functions that are transferred to the division of health policy and finance or its director under section 2 of this order, such reference or designation shall be deemed to apply to the department of human services.

(c) Whenever the secretary of social and rehabilitation services, or words of like effect, are referred to or designated by a statute, contract, plan, memorandum of understanding, grant, waiver, or other document, and such reference or designation is in regard to any function, power, or duty other than those powers, duties, and functions that are transferred to the division of health policy and finance or its director under section 2 of this order, such reference or designation shall be deemed to apply to the secretary of human services.

(d) All rules and regulations, orders, and directives of the secretary of social and

rehabilitation services that relate to functions other than those functions transferred to the division of health policy and finance or its director by section 2 of this order and that are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of human services until revised, amended, revoked, or nullified pursuant to law.

Sec. 7. (a) On the effective date of this order, the balances of all funds or accounts thereof appropriated or reappropriated for the department of social and rehabilitation services that relate to the powers, duties, and functions of the department of social and rehabilitation services, other than those powers, duties, and functions transferred by section 2 of this order to the division of health policy and finance within the department of administration, are hereby transferred within the state treasury to the department of human services and shall be used only for the purpose for which the appropriation was originally made.

(b) The department of human services shall succeed to all property, property rights, and records that were used for or pertain to the performance of powers, duties, and functions of the department of social and rehabilitation services, other than those powers, duties, and functions transferred by section 2 of this order to the division of health policy and finance

within the department of administration. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 8. (a)(1) All officers and employees of the department of social and rehabilitation services who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred to the division of health policy and finance or the director of health policy and finance by section 2 of this order are transferred to the department of administration on the effective date of this order or on a later date or dates determined by the secretary of social and rehabilitation services and the secretary of administration.

(2) All officers and employees of the department of social and rehabilitation services who are determined by the secretary of social and rehabilitation services and the secretary of administration to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by section 2 of this order, are transferred to the department of administration on the effective date of this order or on a later date or dates determined by the secretary of social and rehabilitation services and the secretary of administration.

(3) All classified employees transferred under this subsection (a) shall retain their

status as classified employees. Thereafter, the secretary of administration may convert vacant classified positions to positions that are not classified as otherwise provided by law.

(b) Officers and employees of the department of social and rehabilitation services transferred by this order shall retain all retirement benefits and leave balances and rights that had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs, or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of social and rehabilitation services prior to the date of transfer.

Sec. 9. The designation of the department of health and environment under K.S.A. 46-2507, and amendments thereto, as the contact agency for the state of Kansas with reference to federal health care reform measures is hereby transferred to and imposed upon the division of health policy and finance within the department of administration and the director of health policy and finance established by this order.

Sec. 10. (a) The division of health policy and finance within the department of administration and the director of health policy and finance established by this order shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 9. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the division of health policy and finance or the director of health policy and finance within the

department of administration shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment or the secretary of health and environment, or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, waiver, or other document and such reference is in regard to any of the powers, duties, or functions transferred to the division of health policy and finance or the director of health policy and finance pursuant to section 9 of this order, such reference or designation shall be deemed to apply to the division of health policy and finance or the director of health policy and finance, respectively.

(c) All rules and regulations, orders, and directives of the secretary of health and environment that relate to the functions transferred by section 9 of this order

and that are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the director of health policy and finance until revised, amended, revoked, or nullified pursuant to law.

Sec. 11. On the effective date of this order, the balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by section 9 of this order are hereby transferred within the state treasury to the division of health policy and finance within the department of administration and shall be used only for the purpose for which the appropriation was originally made.

Sec. 12. The division of health policy and finance within the department of administration shall succeed to all property, property rights, and records that were used for or pertain to the performance of powers, duties, and functions transferred to the division pursuant to section 9. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 13. Liability for accrued compensation or salaries of each officer and employee who is transferred to the department of administration under this order shall be assumed and paid by the department of administration on the effective date of this order or on the date of the transfer, whichever is later.

Sec. 14. When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

Sec. 15. (a) No suit, action, or other proceeding, judicial or administrative, that is lawfully commenced or that could have been lawfully commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall

abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action that is commenced or that could have been commenced by the state shall abate by the taking effect of this order.

Sec. 16. Except as otherwise specifically provided in this order, all of the provisions of this order shall take effect and have the force of general law on July 1, 2005, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so disapproved, this order

is to be
published as and with the acts of the legislature and the statutes of this state.
DONE AT The Capitol in Topeka
Under the Great Seal of the
State of Kansas this _____ day
of _____, 2005.

BY THE GOVERNOR
KATHLEEN SEBELIUS
RON E. THORNBURGH
Secretary of State
JANET A. CHUBB
Assistant Secretary of State
Document No. 27225V8