

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 9:00 A.M. on February 2, 2005, in Room 514-S of the Capitol.

All members were present except:
Representative Light- excused

Committee staff present:
Alan Conroy, Legislative Research Department
J. G. Scott, Legislative Research Department
Amy VanHouse, Legislative Research Department
Reagan Cussimano, Legislative Research Department
Audrey Dunkel, Legislative Research Department
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Administrative Analyst
Shirley Jepson, Committee Secretary

Conferees appearing before the committee:
Dr. Gary Daniels, Acting Secretary, Department of Social and Rehabilitation Services (SRS)

Others attending:
See attached list.

- Attachment 1 Testimony on **Executive Reorganization Order 33 (ERO 33)**, Dr. Gary Daniels, Acting Secretary, SRS
- Attachment 2 Legal overview of **ERO 33**, Jim Wilson, Revisor of Statutes
- Attachment 3 Summary of **ERO 33**, Audrey Dunkel, Legislative Research Department
- Attachment 4 Current organizational chart relating to **ERO 33**
- Attachment 5 Organizational chart on the reorganization as established by **ERO 33**
- Attachment 6 Chart distributed by the Governor's office during testimony before the Senate on **ERO 33**

Representative Bethell moved to introduce legislation pertaining to the Developmental Disability Reform Act regarding separation of community developmental disability organizations (CDDO's). The motion was seconded by Representative Landwehr. Motion carried.

Representative Bethell moved to introduce legislation pertaining to meningitis - requiring vaccination or signed waivers at colleges and universities. The motion was seconded by Representative Sawyer. Motion carried.

Representative Sharp moved to introduce legislation to reform the guardianship law. The motion was seconded by Representative Landwehr. Motion carried.

Representative Sharp moved to introduce legislation concerning protection of Kansans with disabilities. The motion was seconded by Representative Landwehr. Motion carried.

Representative Sharp moved to introduce legislation concerning special education accountability. The motion was seconded by Representative Landwehr. Motion carried.

Representative Landwehr moved to introduce legislation concerning the retirement and pensions relating to Kansas Public Employees Retirement System (KPERS) with regard to county detention officers. The motion was seconded by Representative Bethell. Motion carried.

HB 2192, HB 2193 and HB 2196 are referred to the Social Services Budget Committee.
HB 2194 and HB 2228 are referred to the General Government and Commerce Budget Committee.
HB 2226 is referred to Agriculture and Natural Resources Budget Committee.
HB 2227 is referred to Public Safety Budget Committee.

CONTINUATION SHEET

MINUTES OF THE House Appropriations Committee at 9:00 A.M. on February 2, 2005 in Room 514-S of the Capitol.

Chair Neufeld announced on Tuesday, February 1, 2005, his office received a required report from the Kansas Fire and Training Institute. The report is on file in his office for anyone to review.

Chair Neufeld appointed a sub-committee to review issues concerning the Kansas Public Employees Retirement System (KPERs). Members appointed were: Representative Neufeld, Representative McCreary, Representative Landwehr, Representative Schwartz, Representative Weber, Representative Feuerborn and Representative Gatewood.

Chair Neufeld recognized Dr. Gary Daniels, Acting Secretary, Department of Social and Rehabilitation Services (SRS), who presented testimony on the effects of **Executive Reorganization Order 33 (ERO 33)** (Attachment 1). Responding to questions from the Committee, Dr. Daniels indicated that the Department of Health Policy would probably be housed on the ninth floor of the Landon Building and that there should be a neutral budget effect concerning the transfer of duties. Responding to a question regarding the testimony pertaining to "real health care reform," Dr. Daniels stated that he preferred to delay an answer until Robert Day from the Governor's office could testify before the Committee. Because some providers are concerned about reduction of services as a result of the proposed consolidation, the Committee expressed concern and questioned whether health care reform and containment of costs have actually resulted in a reduction of services. Dr. Daniels stated that he would research these statements and report back to the Committee. Without more complete information, the Committee expressed concern with the creation of a new agency when information has not been supplied as to how it is to be proposed to improve services in the state of Kansas.

Responding to other questions from the Committee with regards to the past restructuring and consolidation within SRS, Dr. Daniels indicated that changes in the future will be less disruptive to the communities involved, noting also that SRS will continue to work in the different communities to improve service. SRS has 108 access points across the state where citizens can obtain service, including telephone numbers and a hot-line telephone number. Dr. Daniels stated that some of the present dissatisfaction comes from staff who have been displaced, case loads which are higher than in the past and from a need for staff to assume new responsibilities.

With regard to the closing of the SRS office in Anthony and a question from the Committee questioning the decline in the number of applications filed since that closing, Dr. Daniels stated that he would research data from Anthony and the Harper County area and report back to the Committee. Dr. Daniels also stated that he would provide information to the Committee on the \$8.2 million designated for capital improvements in the Governor's FY 2006 proposed budget recommendations for the proposed Department of Human Services.

Jim Wilson, First Assistant, Revisor of Statutes, provided information on the constitutional background, House rules and procedures pertaining to **ERO 33** (Attachment 2).

Audrey Dunkel, Legislative Research Department, provided a summary of components contained in **ERO 33** (Attachment 3); current organizational chart relating to **ERO 33** (Attachment 4); organizational chart on the reorganization as established by **ERO 33** (Attachment 5); and a chart distributed by the Governor's office during testimony before the Senate on **ERO 33** (Attachment 6). Responding to questions from the Committee, Ms. Dunkel stated that the healthcare database is not in the language of **ERO 33**; noting that the **ERO** is broad and would allow the director to pull in other agencies to handle certain aspects of the reorganization. The Committee questioned whether **ERO 33** would give the new agency control over local or non-governmental healthcare facilities. Responding to a question regarding intake and assessment, Ms. Dunkel stated that this information is not available at this time as the details have not been worked out.

During discussion, the Committee expressed considerable concern about not being able to obtain detailed information on the pertinent aspects of the reorganization; the time frame proposed in **ERO 33** for action by the Legislature on the reorganization order; and the inability to make arrangements for the appropriate parties to testify before the Committee in order to have discussion and action by the Committee before the deadline as stated in the legislation. Because of the massive changes to the healthcare system, the Committee felt it is important for the Legislature to be aware of all components and changes to the state's healthcare system.

The Chair asked if anyone in the gallery wished to address the Committee. Andy Sanchez, Kansas Association

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of Public Employees, expressed a concern with language in **ERO 33** pertaining to all new hirees being hired as "unclassified employees" which does not afford them the same rights as a "classified employee."

Representative Neufeld moved to introduce a resolution for disapproval of **Executive Reorganization Order 33 (ERO 33)**. The motion was seconded by Representative Bethell. Motion carried.

In response to questions, Chair Neufeld stated that the motion is for the purpose of having the resolution introduced and referred back to the Committee and not as a report of the recommendation of the Committee.

Representative Feuerborn moved to introduce a resolution for approval of **Executive Reorganization Order 33**. The motion was seconded by Representative Neufeld. Motion carried.

The meeting was adjourned at 10:30 a.m. The next meeting will be held at 9:00 a.m. on February 3, 2005, with continued discussion on **ERO 33**.



Melvin Neufeld, Chair

Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

House Appropriations Committee

February 2, 2005

Effects of ERO on SRS

Gary Daniels, Acting Secretary
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HOUSE APPROPRIATIONS

DATE 2-02-2005
ATTACHMENT 1

**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

House Committee on Appropriations
February 2, 2005

Effects of ERO 33 on SRS

Chairman Neufeld and members of the Appropriations Committee, I am Dr. Gary Daniels, Secretary of Social and Rehabilitation Services. Thank you for the opportunity to appear before you today to present information on how our agency will be affected by ERO 33.

The ERO takes effect on July 1, 2005. On that date, medical services including Medicaid, MediKan, and HealthWave will be transferred from SRS to the Division of Health Policy and Finance within the Department of Administration. The State Employee Health Plan, already located in the Department of Administration, will also move to the Division of Health Policy and Finance. Employees who work in or support the programs that are moving to the Division of Health Policy and Finance will transfer with the program. Likewise, employees who work in or support the programs that remain at SRS will remain at SRS.

We are currently identifying the staff who will transfer to the Division of Health Policy and Finance. Approximately 125 staff who work in or in support of the identified programs will transfer on July 1.

The transition team, made up of staff from the Department of Administration, the Governor's Office, and SRS also is building a detailed plan to ensure a smooth transition and seamless continued operation of these health care programs.

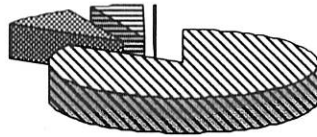
The Department of SRS will be renamed the Department of Human Services to more accurately reflect its focus on the provision of direct services to Kansans. Services remaining with the Department of Human Services include economic and employment support services, child support enforcement, vocational rehabilitation, child welfare services, mental health services, addiction and prevention services, and community supports and services including the management of the Physical Disability, Developmental Disability, Technology Dependent, and Traumatic Brain Injury Waivers. The new DHS also will manage two state hospitals for persons with physical and developmental disabilities and the three state psychiatric hospitals.

In conclusion, SRS views this ERO as serving two vital purposes. It will move the Medical Policy Section of SRS to a new business division that can place emphasis and focus on escalating health care costs. This new business division will allow the staff to use its aggregate health care purchasing power for real health care reform. This will

better serve many of the consumers our agency helps. Secondly, it will allow the future DHS to concentrate more on our person centered mission of protecting children and promoting adult self-sufficiency as well as sharpening our focus on programs that provide direct services to vulnerable Kansans.

I would be happy to answer any questions from the Committee.

**SRS Expenditures by Category
FY 2006 Governor's Budget Recommendation**



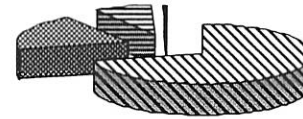
- ▣ Direct Assistance, Grants and Benefits \$2,349.0 million (83.9%)
- ▤ Direct Services Delivery \$268.9 million (9.6%)
- ▥ Administration \$175.1 million (6.2%)
- Capital Improvements \$8.2 million (0.3%)

Direct Assistance, Grants & Benefits (millions)

Medical Assistance & HW	\$1,526.3
Developmental & Physical Disability Services	\$353.2
Children & Family	\$167.3
Mental Health	\$74.6
Child Care & Employment	\$87.7
Cash Assistance	\$92.7
Substance Abuse	\$21.0
Rehabilitation Services	\$25.4
Other	\$0.7

Total \$2,801.2 million
(totals may not add due to rounding)

**Proposed Department of Human Services Expenditures
FY 2006 Governor's Budget Recommendation**



- ▣ Direct Assistance \$972.7 (71.4%)
- ▤ Direct Services Delivery \$268.9 million (19.7%)
- ▥ Administration \$113.1 (8.3%)
- Capital Improvements \$8.2 (0.6%)

Direct Assistance, Grants & Benefits (millions)

Developmental & Physical Disabilities	\$353.2
Children & Families	\$167.3
Mental Health	\$74.6
Child Care & Employment	\$87.7
Cash Assistance	\$92.7
Substance Abuse	\$21.0
Rehabilitation Services	\$25.4
Medical Services for MH, DD, PD, SA & CFS (Estimate)	\$150.0
Other	\$0.7

Total \$1,362.9 million
(totals may not add due to rounding)

4-1

MEMORANDUM

TO: Committee on Appropriations

FROM: Jim Wilson, First Assistant Revisor of Statutes

DATE: January 19, 2005

RE: Executive Reorganization Order 33

I. Constitutional Background.

- A. Article 1, section 6 of the Kansas Constitution authorizes the governor to reorganize state agencies within the executive branch of state government by issuing one or more executive reorganization orders and transmitting the same to the legislature within the first 30 calendar days of any regular session.
- B. An executive reorganization order transmitted to the legislature takes effect as general law on July 1 following its transmittal to the legislature unless within 60 calendar days and before adjournment of the legislative session either the senate or house of representatives adopts a resolution by a majority vote of the members disapproving the executive reorganization order.

II. House Rules concerning EROs.

- A. **Rule 4501. Referral of Executive Reorganization Orders.** Whenever an executive reorganization order is received from the Governor, it shall be referred to an appropriate committee by the Speaker.
- B. **Rule 4502. Committee Report on Executive Reorganization Orders.** The committee to which an executive reorganization order is referred shall report its recommendations upon every executive reorganization order referred to it, in the form of a House resolution, not later than the 60th calendar day of any regular session, and not later than 30 calendar days after it has received such referral whichever of the foregoing occurs first.
- C. **Rule 4503. Return in Event of Committee's Failure to Report.** In the event that a committee fails to report upon an executive reorganization order and upon all resolutions relating thereto referred to it within the time specified in Rule 4502, such committee shall be deemed to have returned the same to the House without recommendation thereon.
- D. **Rule 4504. Special Order of Business for ERO.** When a report or return of an executive reorganization order is made, it and all resolutions for approval or disapproval thereof shall be made the special order of business on a particular day

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ATTACHMENT 2

and hour specified by the Speaker but not later than the last day the executive reorganization order may be disapproved under section 6 of article 1 of the Constitution of Kansas. A resolution for approval or disapproval of an executive reorganization order shall be considered under the order of business Final Action and shall be subject to debate and final action by the House.

- E. **Rule 4505. Nonapplication to Bills.** This Article 45 shall not apply to bills amending or otherwise affecting executive reorganization orders.
- F. **Rule 4506. Nonaction When Moot.** The House shall act to approve or reject every executive reorganization order unless at the time set for such action the Senate shall have already rejected such executive reorganization order.

III. ERO Consideration Procedure.

- A. ERO 33 was transmitted to the House of Representatives and Senate on Wednesday, January 12, 2005, was printed in the Journal dated Wednesday, January 12, and was referred to the Committee on Appropriations on January 13. Under House rules the committee has 30 calendar days from referral, or until Saturday, February 12, 2005, to report its recommendations (Rule 4502). If the committee fails to report, it is deemed to have returned the matter to the House without recommendation (Rule 4503). The House then has until the 60th calendar day following transmittal to the House, or until Sunday, March 13, 2005, to take up the matter (Rule 4504).
- B. An ERO becomes effective when:
 - no action is taken by either house;
 - approval by one house and no action by the other house; or
 - approval by both houses.
- C. An ERO is disapproved when:
 - either house adopts a resolution disapproving the ERO.
- D. A committee or individual legislator may introduce a resolution concerning the approval or disapproval of an ERO. The report of the committee and all resolutions for approval or disapproval are made a special order of business on a day and hour specified by the speaker but not later than, in the case of ERO 33, Sunday, March 13, 2005 (Rule 4504).

IV. Codification of an Approved ERO.

- A. An ERO which becomes effective is published like the acts of the legislature and the statutes of the state.
- B. Any ERO which is to become effective may be amended or repealed in the same manner as statutes of the state are amended or repealed.

See attached, article 1, section 6 of the Kansas Constitution and ERO No. 33.

CONSTITUTION OF THE STATE OF KANSAS

Article 1.--EXECUTIVE

6. Reorganization of state agencies of executive branch.(a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders, each bearing an identifying number, and transmit the same to the legislature within the first thirty calendar days of any regular session. Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

(b) The governor shall transmit each executive reorganization order to both houses of the legislature on the same day, and each such order shall be accompanied by a governor's message which shall specify with respect to each abolition of a function included in the order the statutory authority for the exercise of the function. Every executive reorganization order shall provide for the transfer or other disposition of the records, property and personnel affected by the order. Every executive reorganization order shall provide for all necessary transfers of unexpended balances of appropriations of agencies affected by such order, and such changes in responsibility for and handling of special funds as may be necessary to accomplish the purpose of such order. Transferred balances of appropriations may be used only for the purposes for which the appropriation was originally made.

(c) Each executive reorganization order transmitted to the legislature as provided in this section shall take effect and have the force of general law on the July 1 following its transmittal to the legislature, unless within sixty calendar days and before the adjournment of the legislative session either the senate or the house of representatives adopts by a majority vote of the members elected thereto a resolution disapproving such executive reorganization order. Under the provisions of an executive reorganization order a portion of the order may be effective at a time later than the date on which the order is otherwise effective.

(d) An executive reorganization order which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any executive reorganization order which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.

Executive Reorganization Order No. 33

By Governor Kathleen Sebelius

1-12

10 Section 1. (a) There is hereby established, within the Kansas depart-
11 ment of administration, the division of health policy and finance. The
12 head of the division shall be the director of health policy and finance,
13 who shall be appointed by and serve at the pleasure of the governor. The
14 director shall be in the unclassified service under the Kansas civil service
15 act and shall receive an annual salary fixed by the governor. Under the
16 supervision of the governor, the director shall administer the division of
17 health policy and finance.

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

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

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

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

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

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

41 (ii) the health benefits program for children established under K.S.A.
42 38-2001 *et seq.*, and amendments thereto, and developed and submitted
43 in accordance with federal guidelines established under title XXI of the

1 social security act (section 4901 of public law 105-33, 42 U.S.C. §1397aa
2 *et seq.*), and amendments thereto; and

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

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

9 (C) administering any other health care programs delegated to the
10 director by the governor or by memorandum of understanding with an-
11 other state agency.

12 Except to the extent required by its single state agency role as desig-
13 nated in paragraph (c)(2) below, the division of health policy and finance
14 shall not be responsible for health care planning, administration, pur-
15 chasing, and data with respect to the following: the mental health reform
16 act, K.S.A. 39-1601 *et seq.*, and amendments thereto; the developmental
17 disabilities reform act, K.S.A. 39-1801 *et seq.*, and amendments thereto;
18 the mental health program of the state of Kansas as prescribed under
19 K.S.A. 75-3304a, and amendments thereto; the addiction and prevention
20 services prescribed under K.S.A. 65-4001 *et seq.*, and amendments
21 thereto; or any institution as that term is defined in K.S.A. 76-12a01, and
22 amendments thereto.

23 (2)(A) The division of health policy and finance shall be designated
24 as the single state agency with responsibility for supervising and admin-
25 istering the state plan for medical assistance under 42 U.S.C. §1396 *et*
26 *seq.*, and amendments thereto. The director shall develop state plans, as
27 provided under the federal social security act, whereby the state coop-
28 erates with the federal government in its program of assisting the states
29 financially in furnishing medical assistance and services to eligible
30 individuals.

31 (B) The director shall undertake to cooperate with the federal gov-
32 ernment on any other federal program providing federal financial assis-
33 tance and services for medical assistance not inconsistent with this order.
34 The director is not required to develop a state plan for participation or
35 cooperation in all federal social security act programs relating to medical
36 assistance or other available federal programs that relate to medical
37 assistance.

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

42 (4)(A) Subject to the limitations of paragraph (c)(4)(B), the director
43 may enter into a memorandum of understanding with one or more state

1 or local agencies providing for the state or local agency to perform services
2 for the division of health policy and finance or delegating to the state or
3 local agency the administration of certain functions, services, or programs
4 under any of the programs for which the division of health policy and
5 finance is responsible.

6 (B) With respect to any plan or program that is subject to or financed
7 in part under 42 U.S.C. §1396 *et seq.* and amendments thereto, the au-
8 thority of the division of health policy and finance to exercise administra-
9 tive discretion in the administration or supervision of the plan or program
10 and to issue policies and rules and regulations on plan or program matters
11 shall not be delegated by the director, other than to officials and em-
12 ployees of the division. To the extent that the director enters into a mem-
13 orandum of understanding with a state or local agency under this para-
14 graph (c)(4), the other state agency or local agency shall not have the
15 authority to change or disapprove any administrative decision of the di-
16 vision of health policy and finance or to otherwise substitute its judgment
17 for that of the division of health policy and finance with respect to the
18 application of policies, rules, and regulations issued by the director for
19 any plan or program that is subject to or financed in part under 42 U.S.C.
20 §1396 *et seq.*, and amendments thereto.

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

24 (6) The director shall advise the governor and the legislature on all
25 health care programs, policies, and plans for which the director is re-
26 sponsible under this order.

27 (7) The director shall establish an adequate system of financial re-
28 cords. The director shall make periodic reports to the governor and shall
29 make any reports required by federal agencies.

30 (8) The director may assist other departments, agencies, and insti-
31 tutions of the state and federal government and of other states under
32 interstate agreements, when so requested, by performing services in con-
33 formity with the purposes of this order.

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

41 (10) After consulting with any agency that has responsibility under a
42 memorandum of understanding with the division of health policy and
43 finance for administration of any of the programs of the division, the

1 director shall prepare annually, at the time and in the form directed by
2 the governor, a budget covering the estimated receipts and expenditures
3 of the division of health policy and finance for the coming year.

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

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

8 (13) The director may enter into agreements with other states or the
9 agency designated as the single state agency under 42 U.S.C. §1396 *et*
10 *seq.*, and amendments thereto, for another state setting out the manner
11 for determining the state of residence in disputed cases and the bearing
12 or sharing of costs associated with those cases.

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

16 (A) a consumer advisory board consisting of representatives of con-
17 sumers of health care services provided under title XIX of the social se-
18 curity act, 42 U.S.C. §1396 *et seq.*, and title XXI of the social security act,
19 42 U.S.C. §1397aa *et seq.*, and amendments thereto, and representatives
20 of these consumers' family members; and

21 (B) a policy coordination board consisting of representatives from
22 those state agencies with which the director enters into a memorandum
23 of understanding under paragraph (c)(4) and representatives from any
24 other state agencies, as determined by the director.

25 (15) The director shall perform any other duties and services neces-
26 sary to carry out the purposes of this section, not inconsistent with state
27 law.

28 Sec. 2. (a) On the effective date of this order, the department of social
29 and rehabilitation services is hereby renamed the department of human
30 services, and the secretary of social and rehabilitation services is hereby
31 renamed the secretary of human services. The department of human
32 services shall be a continuation of the department of social and rehabili-
33 tation services, and the secretary of human services shall be a continuation
34 of the secretary of social and rehabilitation services.

35 (b) Except as otherwise provided by this order, all of the following
36 powers, duties, and functions of the existing department of social and
37 rehabilitation services and the existing secretary of social and rehabilita-
38 tion services are hereby transferred to and imposed upon the division of
39 health policy and finance within the department of administration and
40 the director of health policy and finance established by this order:

41 (1) all of the powers, duties, and functions of the secretary of social
42 and rehabilitation services under chapter 39 of the Kansas statutes an-
43 notated, and amendments thereto, that relate to development, imple-

1 mentation, and administration of programs that provide medical assis-
2 tance, health insurance programs, or waivers granted thereunder for
3 persons who are needy, uninsured, or both, and that are financed by
4 federal funds or state funds or both, including the following:

5 (A) the Kansas program of medical assistance established in accord-
6 ance with title XIX of the social security act, 42 U.S.C. §1396 *et seq.*, and
7 amendments thereto (the medicaid act); and

8 (B) any program of medical assistance for needy persons financed by
9 state funds only;

10 (2) all of the powers, duties, and functions of the secretary of social
11 and rehabilitation services with respect to the health benefits program for
12 children established under K.S.A. 38- 2001 *et seq.*, and amendments
13 thereto, and developed and submitted in accordance with federal guide-
14 lines established under title XXI of the social security act (section 4901
15 of public law 105-33, 42 U.S.C. §1397aa *et seq.*), and amendments
16 thereto; and

17 (3) all of the powers, duties, and functions of the department and
18 secretary of social and rehabilitation services associated with designation
19 of the department of social and rehabilitation services as the single state
20 agency under the medicaid act. The designation of the department of
21 social and rehabilitation services as the single state agency for medicaid
22 purposes is hereby transferred to the division of health policy and finance.

23 Sec. 3. (a) The division of health policy and finance within the de-
24 partment of administration and the director of health policy and finance
25 established by this order shall be the successor in every way to the powers,
26 duties, and functions of the department and secretary of social and re-
27 habilitation services in which the same were vested prior to the effective
28 date of this order and that are transferred pursuant to section 2. Every
29 act performed in the exercise of such transferred powers, duties, and
30 functions by or under the authority of the division of health policy and
31 finance or the director of health policy and finance within the department
32 of administration shall be deemed to have the same force and effect as if
33 performed by the department or secretary of social and rehabilitation
34 services in which such powers, duties, and functions were vested prior to
35 the effective date of this order.

36 (b) Whenever the department of social and rehabilitation services or
37 the secretary of social and rehabilitation services, or words of like effect,
38 are referred to or designated by a statute, contract, memorandum of un-
39 derstanding, plan, grant, waiver, or other document and such reference
40 is in regard to any of the powers, duties, or functions transferred to the
41 division of health policy and finance or the director of health policy and
42 finance pursuant to section 2 of this order, such reference or designation
43 shall be deemed to apply to the division of health policy and finance or

1 the director of health policy and finance, respectively.

2 (c) All rules and regulations, orders, and directives of the secretary
3 of social and rehabilitation services that relate to the functions transferred
4 by section 2 of this order and that are in effect on the effective date of
5 this order shall continue to be effective and shall be deemed to be rules
6 and regulations, orders, and directives of the director of health policy and
7 finance until revised, amended, revoked, or nullified pursuant to law.

8 Sec. 4. On the effective date of this order, the balances of all funds
9 or accounts thereof appropriated or reappropriated for the department
10 of social and rehabilitation services relating to the powers, duties, and
11 functions transferred by section 2 of this order are hereby transferred
12 within the state treasury to the division of health policy and finance within
13 the department of administration and shall be used only for the purpose
14 for which the appropriation was originally made.

15 Sec. 5. The division of health policy and finance within the depart-
16 ment of administration shall succeed to all property, property rights, and
17 records that were used for or pertain to the performance of powers, du-
18 ties, and functions transferred to the division pursuant to section 2. Any
19 conflict as to the proper disposition of property, personnel, or records
20 arising under this order shall be determined by the governor, whose de-
21 cision shall be final.

22 Sec. 6. (a) Except with respect to the powers, duties, and functions
23 that are transferred by section 2 of this order to the division of health
24 policy and finance within the department of administration or to the di-
25 rector of health policy and finance, the department of human services
26 and the secretary of human services shall be the successor in every way
27 to the powers, duties, and functions of the department and secretary of
28 social and rehabilitation services in which the same were vested prior to
29 the effective date of this order. Every act performed in the exercise of
30 such powers, duties, and functions by or under the authority of the de-
31 partment of human services or the secretary of human services shall be
32 deemed to have the same force and effect as if performed by the de-
33 partment of social and rehabilitation services or the secretary of social
34 and rehabilitation services in which such powers, duties, and functions
35 were vested prior to the effective date of this order.

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

1 (c) Whenever the secretary of social and rehabilitation services, or
2 words of like effect, are referred to or designated by a statute, contract,
3 plan, memorandum of understanding, grant, waiver, or other document,
4 and such reference or designation is in regard to any function, power, or
5 duty other than those powers, duties, and functions that are transferred
6 to the division of health policy and finance or its director under section
7 2 of this order, such reference or designation shall be deemed to apply
8 to the secretary of human services.

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

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

25 (b) The department of human services shall succeed to all property,
26 property rights, and records that were used for or pertain to the perform-
27 ance of powers, duties, and functions of the department of social and
28 rehabilitation services, other than those powers, duties, and functions
29 transferred by section 2 of this order to the division of health policy and
30 finance within the department of administration. Any conflict as to the
31 proper disposition of property, personnel, or records arising under this
32 order shall be determined by the governor, whose decision shall be final.

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

41 (2) All officers and employees of the department of social and reha-
42 bilitation services who are determined by the secretary of social and re-
43 habilitation services and the secretary of administration to be engaged in

1 providing administrative, technical, or other support services that are es-
2 sential to the exercise and performance of the powers, duties, and func-
3 tions transferred by section 2 of this order, are transferred to the de-
4 partment of administration on the effective date of this order or on a later
5 date or dates determined by the secretary of social and rehabilitation
6 services and the secretary of administration.

7 (3) All classified employees transferred under this subsection (a) shall
8 retain their status as classified employees. Thereafter, the secretary of
9 administration may convert vacant classified positions to positions that are
10 not classified as otherwise provided by law.

11 (b) Officers and employees of the department of social and rehabil-
12 itation services transferred by this order shall retain all retirement ben-
13 efits and leave balances and rights that had accrued or vested prior to the
14 date of transfer. The service of each such officer and employee so trans-
15 ferred shall be deemed to have been continuous. Any subsequent trans-
16 fers, layoffs, or abolition of classified service positions under the Kansas
17 civil service act shall be made in accordance with the civil service laws
18 and any rules and regulations adopted thereunder. Nothing in this order
19 shall affect the classified status of any transferred person employed by
20 the department of social and rehabilitation services prior to the date of
21 transfer.

22 Sec. 9. The designation of the department of health and environment
23 under K.S.A. 46-2507, and amendments thereto, as the contact agency
24 for the state of Kansas with reference to federal health care reform meas-
25 ures is hereby transferred to and imposed upon the division of health
26 policy and finance within the department of administration and the di-
27 rector of health policy and finance established by this order.

28 Sec. 10. (a) The division of health policy and finance within the de-
29 partment of administration and the director of health policy and finance
30 established by this order shall be the successor in every way to the powers,
31 duties, and functions of the department and secretary of health and en-
32 vironment in which the same were vested prior to the effective date of
33 this order and that are transferred pursuant to section 9. Every act per-
34 formed in the exercise of such transferred powers, duties, and functions
35 by or under the authority of the division of health policy and finance or
36 the director of health policy and finance within the department of ad-
37 ministration shall be deemed to have the same force and effect as if
38 performed by the department or secretary of health and environment in
39 which such powers, duties, and functions were vested prior to the effec-
40 tive date of this order.

41 (b) Whenever the department of health and environment or the sec-
42 retary of health and environment, or words of like effect, are referred to
43 or designated by a statute, contract, memorandum of understanding, plan,

1 grant, waiver, or other document and such reference is in regard to any
2 of the powers, duties, or functions transferred to the division of health
3 policy and finance or the director of health policy and finance pursuant
4 to section 9 of this order, such reference or designation shall be deemed
5 to apply to the division of health policy and finance or the director of
6 health policy and finance, respectively.

7 (c) All rules and regulations, orders, and directives of the secretary
8 of health and environment that relate to the functions transferred by
9 section 9 of this order and that are in effect on the effective date of this
10 order shall continue to be effective and shall be deemed to be rules and
11 regulations, orders, and directives of the director of health policy and
12 finance until revised, amended, revoked, or nullified pursuant to law.

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

20 Sec. 12. The division of health policy and finance within the depart-
21 ment of administration shall succeed to all property, property rights, and
22 records that were used for or pertain to the performance of powers, du-
23 ties, and functions transferred to the division pursuant to section 9. Any
24 conflict as to the proper disposition of property, personnel, or records
25 arising under this order shall be determined by the governor, whose de-
26 cision shall be final.

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

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

37 Sec. 15. (a) No suit, action, or other proceeding, judicial or admin-
38 istrative, that is lawfully commenced or that could have been lawfully
39 commenced, by or against any state agency or program mentioned in this
40 order, or by or against any officer of the state in such officer's official
41 capacity or in relation to the discharge of such officer's official duties,
42 shall abate by reason of the governmental reorganization effected under
43 the provisions of this order. The court may allow any such suit, action, or

1 other proceeding to be maintained by or against the successor of any such
2 state agency or any officer affected.
3 (b) No criminal action that is commenced or that could have been
4 commenced by the state shall abate by the taking effect of this order.
5 Sec. 16. Except as otherwise specifically provided in this order, all of
6 the provisions of this order shall take effect and have the force of general
7 law on July 1, 2005, unless disapproved by either house of the Kansas
8 legislature as provided by subsection (c) of section 6 of article 1 of the
9 constitution of Kansas, and unless so disapproved, this order is to be
10 published as and with the acts of the legislature and the statutes of this
11 state.

12
13 DONE AT The Capitol in Topeka
14 Under the Great Seal of the
15 State of Kansas this ____ day
16 of _____, 2005.

17
18 BY THE GOVERNOR
19 KATHLEEN SEBELIUS

20
21 RON E. THORNBURGH
22 *Secretary of State*

23
24 JANET A. CHUBB
25 *Assistant Secretary of State*

2-14

February 2, 2005

SUMMARY OF EXECUTIVE REORGANIZATION ORDER NO. 33

Executive Reorganization Order (ERO) No. 33 establishes the Division of Health Policy and Finance within the Department of Administration. The Division will have a director, appointed by, and serving at the pleasure of, the Governor in the unclassified service. Responsibilities of the Director will include coordination of health care planning, administration, purchasing, and analysis of health care data for the state.

Section 1(c)(1)(A) places the following state programs under the jurisdiction of the Division of Health Policy and Finance:

- Title XIX (Medicaid);
- Title XXI (SCHIP); and
- Medical assistance programs for the needy funded by state only money (MediKan).

Section 1(c)(1)(B) makes the Division of Health Policy and Finance the contract agency for federal health care reform measures.

Section 1(c)(1)(c) excludes the following programs from the Division of Health Policy and Finance responsibility:

- Mental Health Reform Act (KSA 39-1601);
- State mental health program (KSA 75-3304a);
- Developmental Disabilities Reform Act (KSA 39-1801);
- Addiction and prevention services (KSA 65-4001); and
- State institutions (KSA 76-12a01).

Questions regarding the assignment of responsibility:

- Does the assignment of Medicaid to the Division include the Medicaid Management Information System (MMIS) and the Ticket to Work program?
- The exclusionary language only refers to the Mental Health (MH) and Developmental Disability (DD) waivers. Are all waivers truly excluded?
- Will the HCBS/Severe Emotional Disturbance (SED) waiver be separated from the Medicaid program?

Sections 1(c)(2)(A) and (B) designate the Division of Health Policy and Finance as the single state agency responsible for supervising and administering the state plan for medical assistance (Medicaid) and mandate the Director's cooperation with the federal government on other

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federal programs providing federal financial assistance and services for medical assistance, although it does not require the Director to develop a state plan for all federal Social Security Act or other programs relating to medical assistance.

Sections 1(c)(4)(A) and (B) allow the Director to enter into memoranda of understanding with state or local agencies to perform services for the Division or delegating administration of certain functions to a state or local agency. The Medicaid program is excluded from the delegation authority under section (B). In the event of a memorandum of understanding, the state or local agency would not be allowed to change or disapprove administrative decisions of the Director in the application of policies, rules, and regulations issued by the Director.

Section 1(c)(4)(B)(14) directs the Division to establish necessary advisory groups, including a consumer advisory board consisting of consumers of Title XIX (Medicaid) and Title XXI (SCHIP) services and representatives of the consumers family members and a policy coordination board of representatives of agencies with which the Division has memoranda of understanding and any other state agencies as determined by the Director.

Section 1(c)(4)(B)(15) changes the name of the Department of Social and Rehabilitation Services to the Department of Human Services.

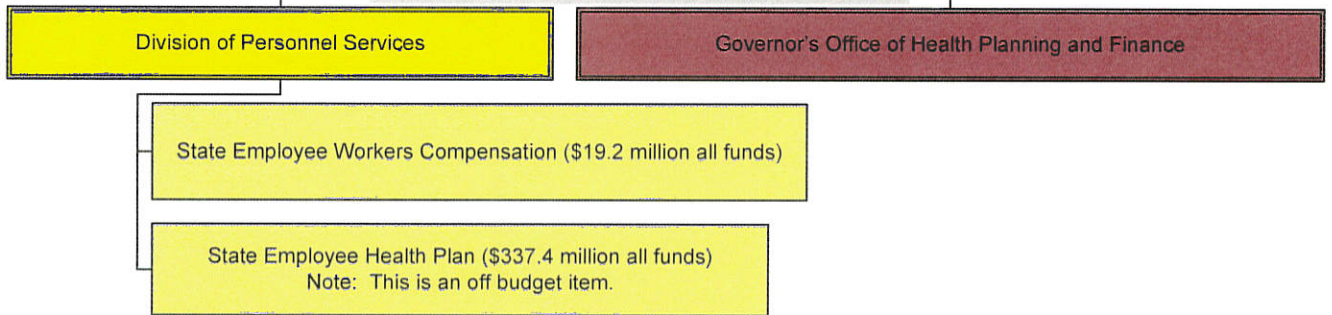
Personnel and funds will be transferred as of July 1, 2005, the effective date of the ERO.

Any conflict arising regarding the disposition of property, powers, duties, function, or fund shall be resolved by the Governor, whose decision is final.

Current Organizational Chart

2/1/2005

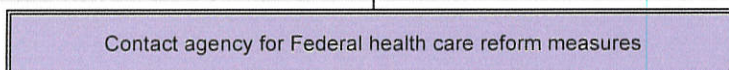
Department of Administration



Department of Social and Rehabilitation Services



Kansas Department of Health and Environment



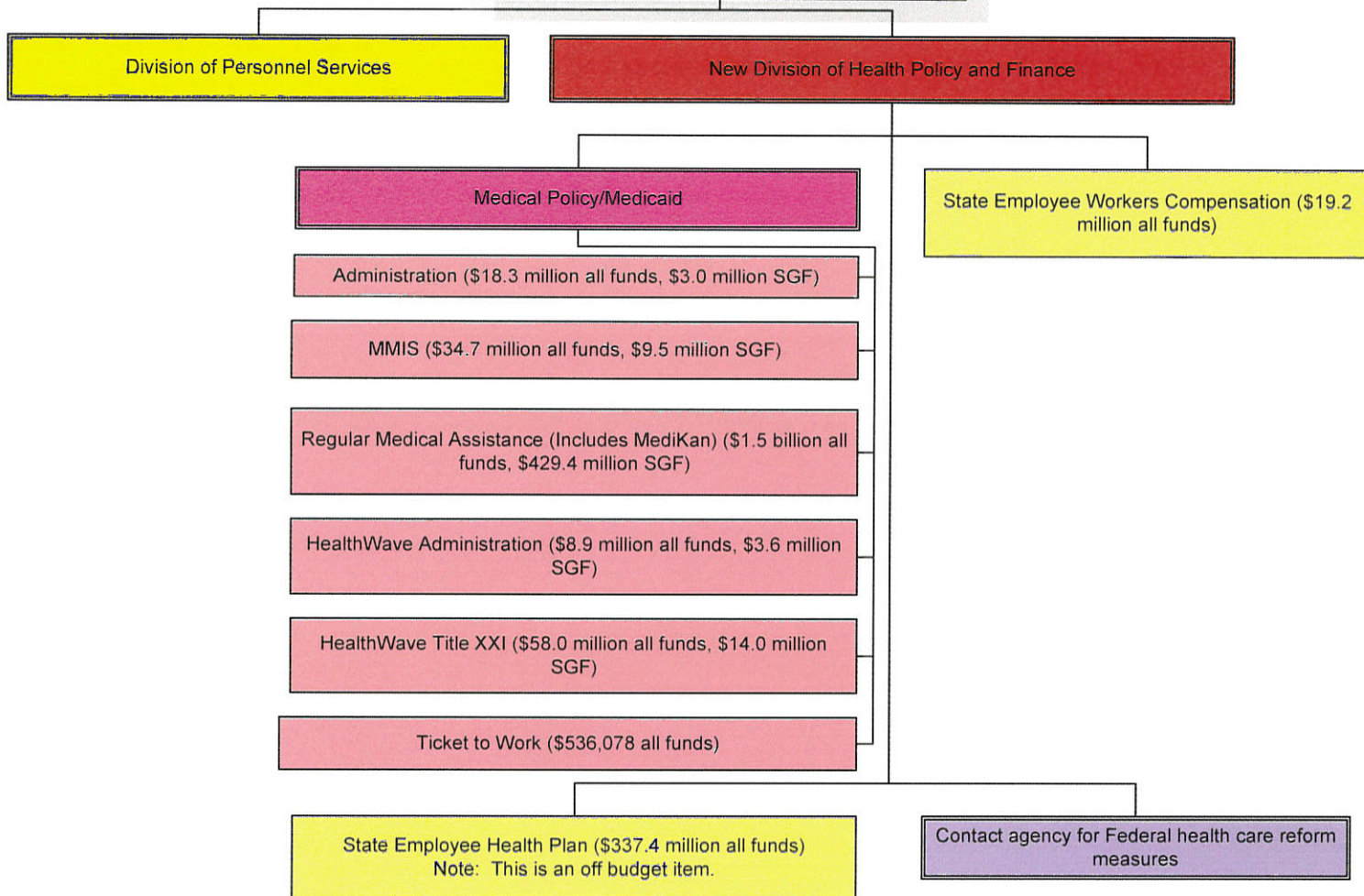
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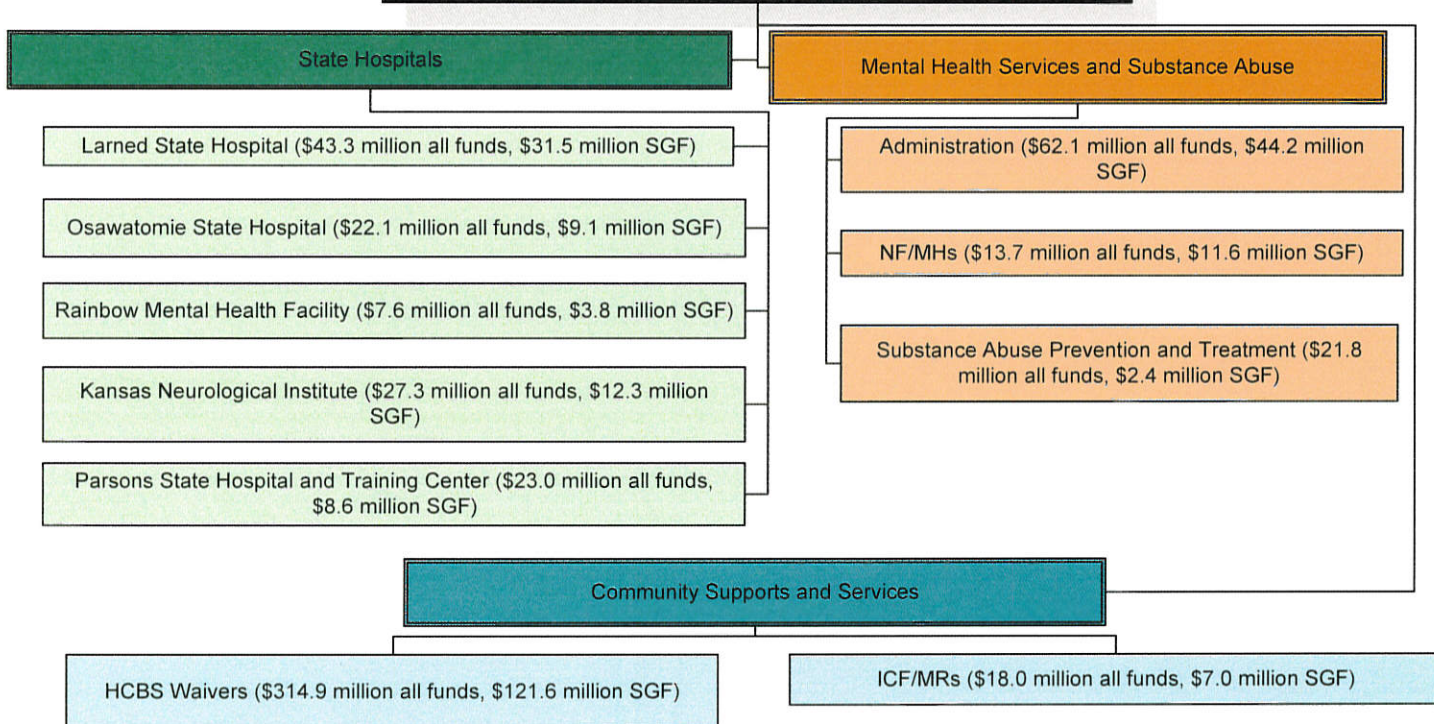
ERO 33 Organizational Chart

2/1/2005

Department of Administration



Department of Human Services

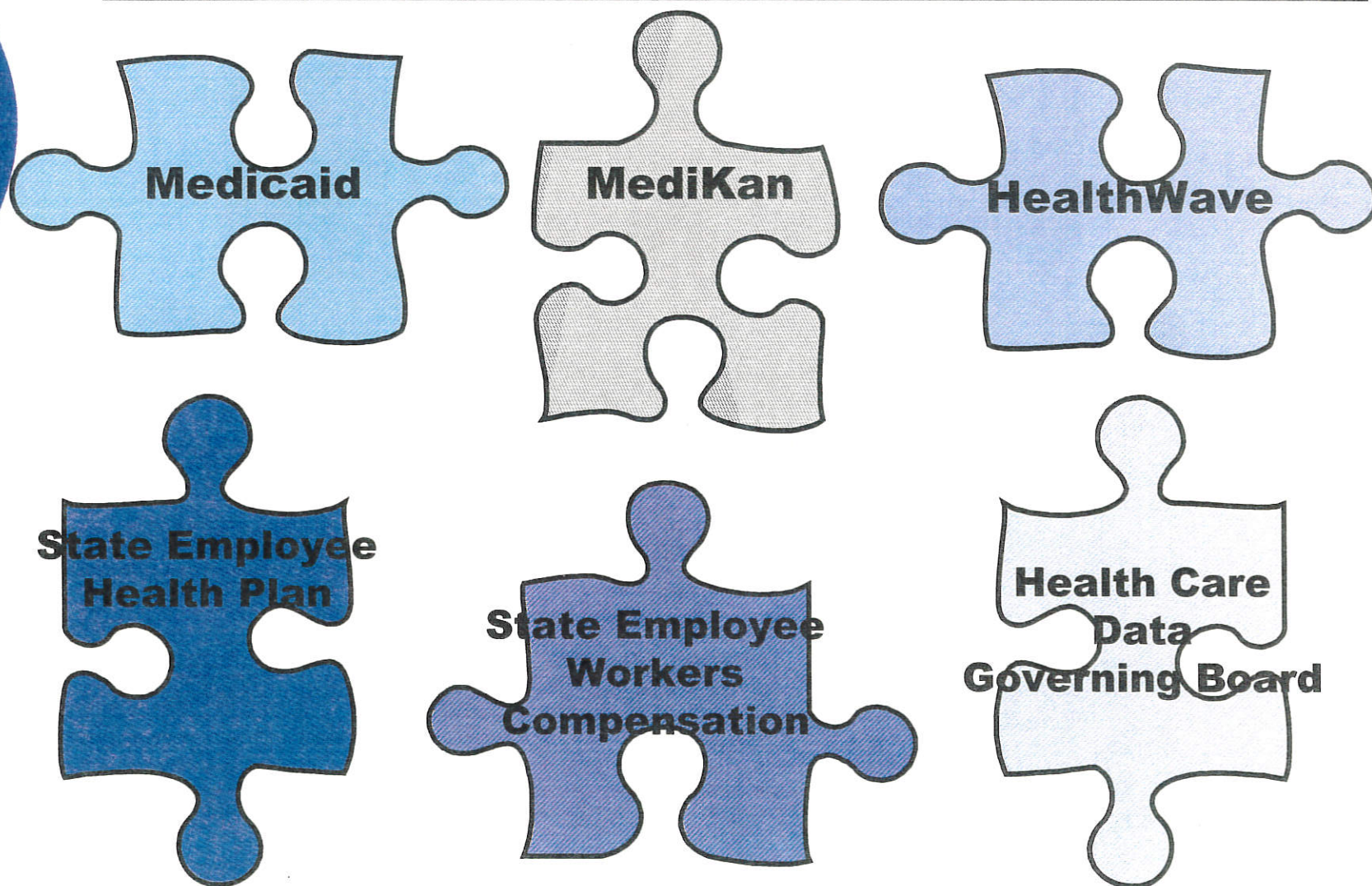


Kansas Department of Health and Environment

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ATTACHMENT 5

State Health Care Purchasing and Planning Current Structure



State Health Care Purchasing and Planning Proposed Structure

6-2.



**Division of
Health Policy
and Finance**