

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 1:30 P.M. on February 9, 2005 in Room 231-N of the Capitol.

Committee members absent:

Committee staff present: Ms. Audrey Dunkel, Senior Physical Analyst, KS Legislative Research Dept.
Ms. Emalene Correll, Kansas Legislative Research Department
Ms. Terri Weber, Kansas Legislative Research Department
Mr. Jim Wilson, Revisor of Statutes Office
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Robert M. Day, Ph.D., Director, Governor's Office of Health Planning and Finance

Overview of ERO 33 - reorganization of the state's major health care programs

Upon calling the meeting to order, Chairperson Wagle announced there would be an overview on ERO 33, the reorganization of the state's major health care programs into a new business division within the Department of Administration. She then called upon legislative staff to explain the bill including:

1. Mr. Jim Wilson, Revisor of Statutes, provided information on: a constitutional background, the Senate Rule concerning EROs, the ERO consideration procedure (becomes effective or is disapproved), and codification of an approved ERO. A copy of his overview is (Attachment 1) attached hereto and incorporated into the minutes as approved;

2. Ms. Emalene Correll, Kansas Legislative Research Department (KLRD), offered an overview from Alan D. Conroy, Director of KLRD. Highlights included: the subject matter of each ERO through 2004, whether or not it was approved or disapproved by the Legislature, and the number of EROs each Governor has presented to the Legislature. A copy of her overview is (Attachment 2) attached hereto and incorporated into the minutes as approved.

3) Ms. Audrey Dunkel, Senior Physical Analyst, also from the KLRD, offered a summary of the ERO which included:

- what state programs would fall under the jurisdiction of the Division of Health Policy and Finance and programs that would be excluded;
- the contact agency;
- responsibilities and mandates;
- attachments (a current organizational chart and the ERO organizational chart).

A copy of her overview and attachments are (Attachment 3) attached hereto and incorporated into the minutes as approved.

The Chair then called upon Mr. Robert M. Day, Ph.D., Director, governor's Office of Health Planning and Finance who offered the rationale for this reorganization (fourfold) and two attachments including:

- a summary of provisions, and
- an organization chart of potential salaries, wages, and expenditure issues.

A copy of his testimony and attachments are (Attachment 4) attached hereto and incorporated into the minutes as approved.

The Chair then asked for questions or comments from the Committee. Questions came from Senators Wagle and Barnett including: when the Governor first announced this was the attempt to streamline government and put purchasing under administration, can the purchasing be done without this ERO, why is the Department of Corrections not included in this since they purchase health care, can the Department of Administration coordinate with the Secretary of SRS to purchase health care without this ERO, what's our guarantee that we just aren't growing government and that you are going to do away with positions, (referring to the green handout, page 1, Section (1)(c)(1), why are these programs not included, as they are key components to

CONTINUATION SHEET

MINUTES OF THE Senate Health Care Strategies Committee at 1:30 P.M. on February 9, 2005 in Room 231-N of the Capitol.

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practicing medicine, one of your goals in your testimony dealt with quality, purchasing quality and determining how the ERO is going to make that difference, if this was the goal why is the Health Care Data Governing Board not included in this ERO, what is your follow up, is oral health part of this move, issues related to KDHE in terms of our rural health clinics are these included, are we doing a good job now with Department of Corrections or Office of Juvenile Justice in purchasing health care, health policies, what is Sprint doing, and when the Governor spoke on health care she mentioned 30% of the \$12 billion that Kansans spend on health care every year went to administration and we can save \$3 billion, who can save with this, and where will this savings come from (who will be cut and where will that reduction be seen?).

As there were no further questions or discussions, Chairperson Wagle thanked Mr. Day for his presentation and announced that they would continue discussing the bill tomorrow.

Adjournment

As there was no further business, the meeting was adjourned. The time was 2:30 p.m.

The next meeting is scheduled for February 10, 2005.

GUEST LIST

DATE: Wednesday, February 9, 2005

NAME	REPRESENTING
Michelle Peterson	Ks. Governmental Consulting
Cindy Lush	Post Audit
Jim McLean	Ks Health Institute
Karen Braman	Gov's Health Planning & Finance Off
Carol Furem	DOA
Amy Bertrand	"
Larry Porman	KEMC
Katie Gonzales	Federico Consulting
Megan Jeffery	Miami County Leadership
Maup Ellen Orlee	Via Christi Health System
Sara Solomon	The Farm, Inc.
Kerrie Bacon	Kansas Commission on Disability Concerns
Chad Austin	KS Hosp Assoc
Shelin Sweeney	Assoc. of Community Mental Health Cn
Alicia Bunnay	DPS
Karla Finnell	KAMU
Gay Dan	SRS
Kyle Kessler	SRS
Shiveta Shura	KDHE

40
 1/24/05

MEMORANDUM

TO: Committee on Health Care Strategies

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. Senate Rule concerning EROs.-

Rule 76. Executive Reorganization Orders. When an executive reorganization order is received from the Governor, it shall be referred to an appropriate committee by the President. The committee to which an executive reorganization order is referred shall report its recommendations thereon, by recommending adoption of a Senate 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 occurs first. If a committee fails to report upon an executive reorganization order within the time specified in this rule, such committee shall be deemed to have returned the same to the Senate without recommendation. When a report or return of an executive reorganization is made, it and all resolutions for approval or disapproval thereof shall be made the special order of business in accordance with Rule 6 (special order of business) at a time not later than the last day the executive reorganization order may be disapproved under section 6 of article 1 of the Constitution of Kansas. The Senate shall act to approve or reject every reorganization order unless at the time set for such action the House of Representatives shall have already rejected such executive reorganization order.

Senate Health Care Strategies Committee
Date: February 9, 2005
Attachment 1

III. ERO Consideration Procedure.

- A. ERO 33 was transmitted to the Senate and House of Representatives on Wednesday, January 12, 2005, was printed in the Senate Journal dated Wednesday, January 12, and was referred to the Committee on Health Care Strategies on January 13. Under Senate Rule 76 and section 6 of Article 1 of the Kansas Constitution, the committee has 30 calendar days from referral, or until Saturday, February 12, 2005, to report its recommendations. If the committee fails to report, it is deemed to have returned the matter to the Senate without recommendation. The Senate then has until the 60th calendar day following transmittal to the Senate, or until Sunday, March 13, 2005, to take up the matter.
- 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 particular day and hour not later than, in the case of ERO 33, Sunday, March 13, 2005.

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 rehabili-
38 tation 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 assistance, health insurance programs, or waivers granted thereunder for
2 persons who are needy, uninsured, or both, and that are financed by
3 federal funds or state funds or both, including the following:

4 (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
5 amendments thereto (the medicaid act); and

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

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

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

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

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

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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

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 3, 2005

To: Senator Susan Wagle
From: Alan D. Conroy, Director
Re: Executive Reorganization Orders

Office No.: 120-S

You had requested information concerning Executive Reorganization Orders (EROs) in Kansas. In particular, you requested the subject matter of each ERO, whether or not it was approved or disapproved by the Legislature, and the number of EROs each Governor has presented to the Legislature.

Background

EROs are provided for in the *Kansas Constitution*. They enable a Governor to transfer, abolish, consolidate, or coordinate agencies and functions within the executive branch of state government. Legislative and judicial agencies and constitutionally-delegated functions of state officers and boards are exempt from EROs. An ERO becomes effective July 1 following its transmittal to the Legislature unless within 60 calendar days either the Senate or the House adopts a resolution disapproving the ERO. The Legislature also has the option of amending an ERO in the same way it would amend any other legislation or statute. Whenever reorganization of the executive branch is initiated by the Governor, EROs are frequently the vehicle used. The use of EROs began in the 1970s, a decade that saw the creation of the cabinet form of government in Kansas and beginning of efforts to streamline the operations of state government.

EROs

Of the 32 EROs that have been issued through 2004, half (16) were issued in the 1970s, including three that were used to create cabinet agencies: the Department of Social and Rehabilitation Services (1973), the Department of Health and Environment (1974), and the Department of Human Resources (1976). The Department of Wildlife and Parks was created by an ERO in 1987.

Of the 32 ERO's that have been dealt with by the Legislature, 19 or 60 percent have been approved and 13 or 40 percent have been disapproved. Within the last ten years, seven EROs have been presented to the Legislature. Of those seven EROs, four have been approved and three have been disapproved. The following table reflects how many EROs a Governor has presented and what was the legislative disposition to the EROs.

Senate Health Care Strategies Committee
Date: February 9, 2005
Attachment 2

<u>Governor</u>	<u>Number of EROs</u>	<u>EROs Approved</u>	<u>EROs Disapproved</u>
R. Docking	5	2	3
Bennett	11	8	3
Carlin	5	2	3
Hayden	1	1	0
Finney	3	2	1
Graves	4	1	3
Sebelius (through 2004)	3	3	0
TOTAL	32	19	13

The EROs, through 2004 along with a short description of what they were about and whether they were adopted, are listed below.

Kansas Executive Reorganization Orders

ERO No.	Governor	Approved or Disapproved (Year)	Short Description
1	Robert B. Docking	Approved (1973)	Created the State Department of Social and Rehabilitation Services headed by an appointed Secretary. The Secretary and the Department were the successor to the existing State Board of Social Welfare, State Department of Social Welfare, and other entities. The ERO also created statutory units within the Department.
2	Robert B. Docking	Disapproved (1973)	Would have changed certain functions of the State Finance Council pertaining to approval of the salary of the Secretary of Administration and of certain plans of the Governor for improvements in state agencies. In addition, it would have changed functions of the State Finance Council that related to the Kansas Civil Service Act.
3	Robert B. Docking	Approved (1974)	Created the State Department of Health and Environment headed by an appointed Secretary. The Secretary and the Department were successors to the existing State Department of Health and other entities. The ERO also created statutory units within the Department.
4	Robert B. Docking	Disapproved (1974)	Would have created within the State Corporation Commission the Mined-Land Conservation and Reclamation Board.

ERO No.	Governor	Approved or Disapproved (Year)	Short Description
5	Robert B. Docking	Disapproved (1974)	Would have transferred duties of the State Auditor and the State Board of Canvassers to other state officials.
6	Robert F. Bennett	Approved (1975)	Removed the State Board of Tax Appeals from the State Department of Revenue and established it as an independent agency.
7	Robert F. Bennett	Approved (1975)	Consolidated duties performed by the State Department of Economic Development, the Director of the Department of Economic Development, and the Kansas Economic Development Commission into the new State Department of Economic Development headed by an appointed Secretary.
8	Robert F. Bennett	Approved (1975)	Abolished the State Board of Podiatry Board Examiners and transferred its powers and duties to the Kansas Board of Healing Arts.
9	Robert F. Bennett	Approved (1975)	Abolished the State Education Commission and transferred its powers and duties relating to student assistance programs to the Kansas Board of Regents.
10	Robert F. Bennett	Approved (1975)	Transferred the Office of Emergency Medical Services from the Office of the Governor to the State Department of Health and Environment.
11	Robert F. Bennett	Approved (1975)	Abolished the existing Governor's Committee on Criminal Administration and created a new Governor's Committee on Criminal Administration under the control and jurisdiction of the Governor.
12	Robert F. Bennett	Disapproved (1975)	Would have abolished the elective office of State Treasurer and established a State Department of the Treasury headed by a State Treasurer appointed by the Governor and confirmed by the Senate.
13	Robert F. Bennett	Disapproved (1975)	Would have abolished the elective office of Commissioner of Insurance and established a State Department of Insurance headed by a Commissioner of Insurance appointed by the Governor and confirmed by the Senate.
14	Robert F. Bennett	Approved (1976)	Created the State Department of Human Resources headed by an appointed Secretary. The Secretary and the Department were successors to a number of existing state offices and entities. The ERO also created statutory units within the Department.
15	Robert F. Bennett	Approved (1977)	Transferred the Crippled Children's Commission to the State Department of Health and Environment.
16	Robert F. Bennett	Disapproved (1977)	Would have established a Division of Services to the Aging within the State Department of Social and Rehabilitation Services.
17	John Carlin	Approved (1980)	Reorganized and clarified various functions within the State Department of Social and Rehabilitation Services.
18	John Carlin	Disapproved (1981)	Would have reorganized various boards, divisions, and sections of existing water agencies into one agency to be known as the Kansas Water Resources Authority.
19	John Carlin	Disapproved (1982)	Would have abolished the Kansas Energy Office and established a Division of Energy within the State Department of Administration.

ERO No.	Governor	Approved or Disapproved (Year)	Short Description
20	John Carlin	Approved (1982)	Established Juvenile Offender Services within the State Department of Social and Rehabilitation Services.
21	John Carlin	Disapproved (1986)	Would have created the State Department of Agriculture headed by an appointed Secretary.
22	Mike Hayden	Approved (1987)	Created the State Department of Wildlife and Parks headed by an appointed Secretary. The ERO also created statutory units within the Department.
23	Joan Finney	Approved (1992)	Reorganized various housing programs into a Division of Housing within the renamed State Department of Commerce and Housing.
24	Joan Finney	Approved (1992)	Abolished the Kansas Savings and Loan Department and the Office of Savings and Loan Commissioner and transferred duties performed by the Department and Commissioner to the Office of State Bank Commissioner.
25	Joan Finney	Disapproved (1992)	Would have separated the State Department of Health and Environment into the State Department of Health and the State Department of Environment, each headed by an appointed Secretary.
26	Bill Graves	Disapproved (1996)	Would have transferred functions relating to the marketing of agriculture products from the State Department of Agriculture to the State Department of Commerce and Housing.
27	Bill Graves	Disapproved (1996)	Would have transferred the responsibility for the Infants and Toddlers program from the State Department of Health and Environment to the State Board of Education.
28	Bill Graves	Disapproved (1996)	Would have reorganized the Kansas Human Rights Commission as the Kansas Commission on Diversity and Human Rights.
29	Bill Graves	Approved (1999)	Created the Commission on Emergency Planning and Response within the Adjutant General's Department.
30	Kathleen Sebelius	Approved (2003)	Shifted the Division of Housing to the Kansas Development Finance Authority from the Department of Commerce and Housing. Renamed the Department of Commerce and Housing to the Department of Commerce.
31	Kathleen Sebelius	Approved (2004)	Transferred the Employment and Training Division and all workforce development programs from the Department of Human Resources to the Department of Commerce.
32	Kathleen Sebelius	Approved (2004)	Transferred certain food safety programs of the Department of Health and Environment to the Department of Agriculture.

February 9, 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 contact 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).

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 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)

*Senate Health Care Strategies Committee
Date: February 9, 2005
Attachment 3-*

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.

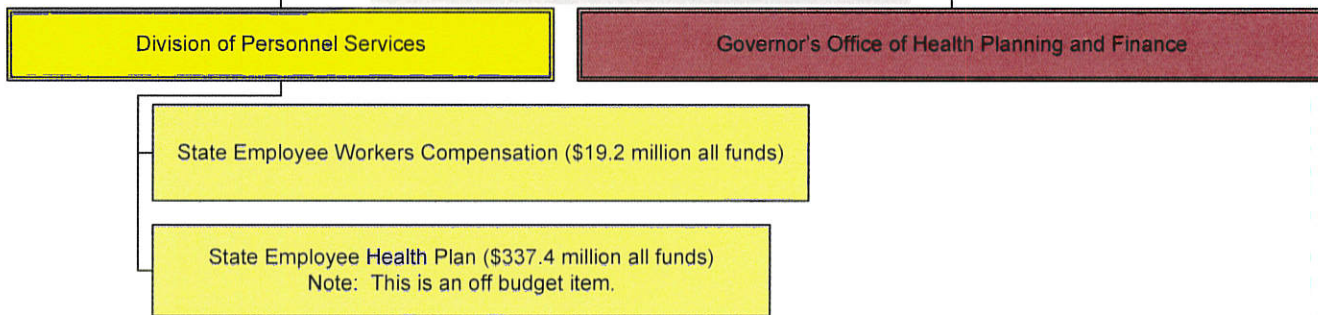
Personnel and funds will be transferred as of July 1, 2005, the effective date of the ERO.

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

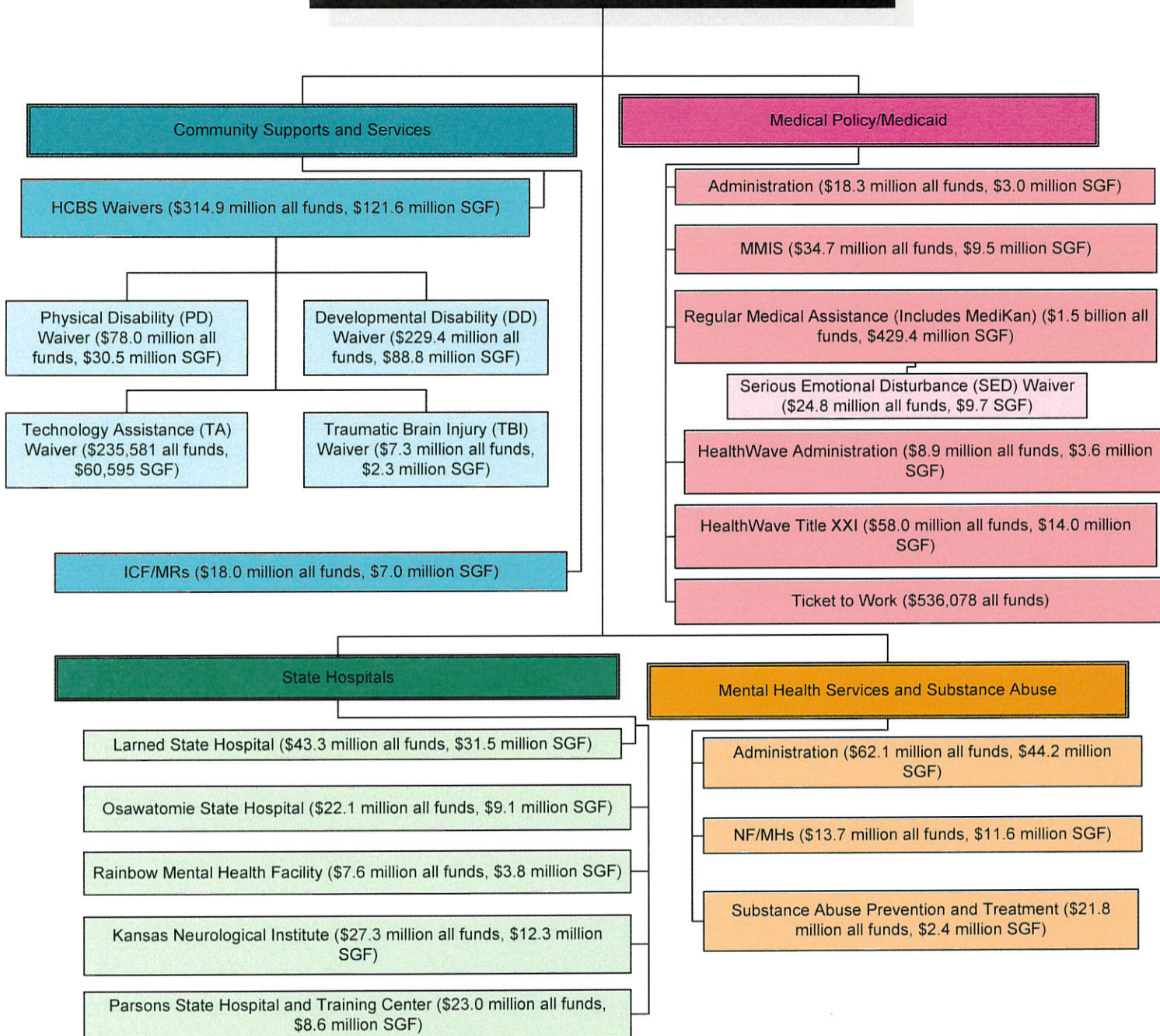
Current Organizational Chart

2/8/2005

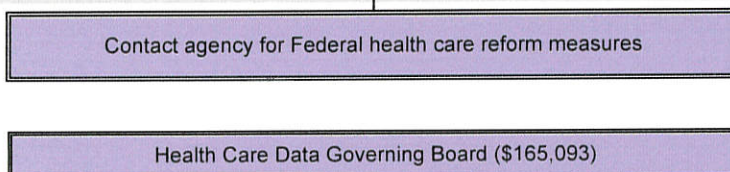
Department of Administration



Department of Social and Rehabilitation Services

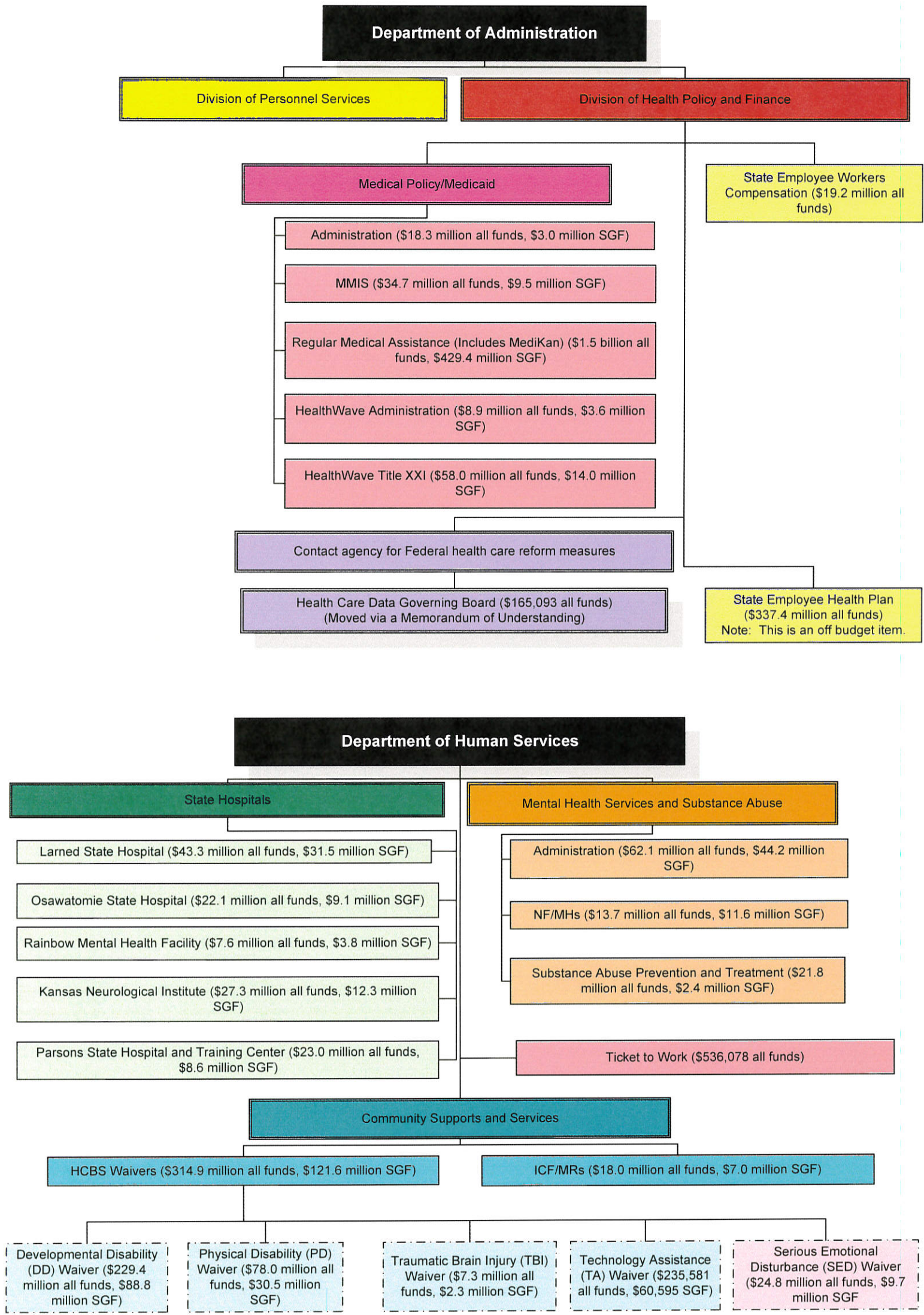


Kansas Department of Health and Environment



ERO 33 Organizational Chart

2/9/2005



Kansas Department of Health and Environment



KANSAS

GOVERNOR'S OFFICE OF HEALTH PLANNING AND FINANCE

ROBERT M. DAY, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on
Executive Reorganization Order No. 33
presented to
Senate Health Care Strategies Committee**

**by Robert M. Day, Ph.D.
Director
Governor's Office of Health Planning and Finance**

**February 9, 2005
1:30PM**

For additional information contact:
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http://www.ks governor.org/healthPlanning/workgroups_hpf.shtml

*Senate Health Care Strategies Committee
Date: February 9, 2005
Attachment 4*

Governor's Office of Health Planning and Finance
Robert M. Day, Ph.D., Director

Senate Health Care Strategies Committee
February 9, 2005

Executive Reorganization Order No. 33

Madam chair woman, I am Robert Day, Director of the Governor's Office of Health Planning and Finance. I want to thank the committee for this opportunity to talk to you about Executive Re-organization Order (ERO) #33. This order is in fact fairly straightforward, despite the legalese in which it is written. Attached to my testimony is a summary of the ERO provisions. ERO #33 designates the Department of Administration as the single state Medicaid agency and moves approximately 130 SRS staff currently dedicated to managing the regular medical programs: Titles XIX, XXI, and MediKan, under a new Division of Health Planning and Finance. Included in this new division will be the State Employee Health Plan and the State Employee Workers Compensation Program, which are already located in the Department of Administration. SRS will be renamed the Department of Human Services and will continue to have budgetary and programmatic control of child welfare, mental health, developmental disabilities and the current home and community-based waivers.

The rationale for this reorganization is four-fold: 1) to increase financial accountability for programs spending Medicaid funds and providers being paid through Medicaid; 2) increase administrative efficiency by combining programs of like content—health care and common functions—purchasing of health care services; 3) increase the purchasing clout of the State by bringing the two largest health care programs under a common administrative structure; and finally, 4) allow SRS to focus on its true mission—the delivery of human services. The reorganization is designed to be cost neutral and over the long term, reduce administrative duplication and thus costs. The reorganization will enable the state of Kansas to implement the principles of value-based purchasing and improve the quality and efficiency of health care delivery.

The first ERO, introduced more than thirty years ago, established the Department of Social and Rehabilitation Services in 1971. Medicaid was folded into this newly created welfare agency. At that time, Medicaid was a program linked to welfare, previously known as Aid to Families with Dependent Children, and was a health care benefit for a narrowly defined population. Today, Medicaid expenditures comprise at least 80% of the agency's budget, funding a broad array of social services that are only tangentially tied to health care.

Medicaid is now the largest single insurer of children; pays for one third of all births; provides health care coverage to over 300,000 Kansans each year; and is second only to Medicare in the number of persons insured. In fact, when you combine all health care spending by State Government, you will find that public funding of health care, including

long term care, comprises almost 20% of all health care spending in the state and makes up 22% of the state's budget. The times have changed dramatically. Health care is a major focus of state government and yet there is no single agency to implement health care policy. Given where we are today, would we still design SRS as we did in 1971? Like business, government needs to modernize our organizational structures to meet the challenges of the 21st century. This reorganization recognizes the importance of the state's role in health care and provides a structure for developing and implementing effective health care policy that meets the needs of its citizens.

ERO # 33: SUMMARY OF PROVISIONS

Section 1:

This section establishes the Division of Health Policy and Finance (HP&F) within the Department of Administration (DofA), with an unclassified director reporting to the governor. It authorizes the director to hire employees and to organize the division. Employees are classified, unless otherwise specifically provided by law. (a) and (b)

This section also sets out HP&F's powers, functions, and duties. *These duties are adapted from the general authorities given to the secretary of SRS under K.S.A. 39-708c.* Key provisions include the following:

(1) HP&F is responsible for Medicaid, Healthwave, and any other medical assistance or health insurance program for the needy or uninsured authorized by chapter 39 of the K.S.A.'s (federal or state funds or both). Other health care programs can be delegated to it by the governor or another state agency (through an Memorandum of Understanding (MOU)). It is to be the contact agency for federal health care reform measures. (c)(1)

(2) HP&F does **not** assume any responsibility for the following programs of SRS: mental health programs (K.S.A. 39-1601 *et seq.* and K.S.A. 75-3304a); the developmental disabilities reform act; addiction and prevention services; and state mental health and developmental disabilities institutions. (c)(1)

(3) HP&F is the single state agency (SSA) for Medicaid. (c)(2)

(4) HP&F is authorized to enter into agreements regarding administration of any of its programs through MOU's with state agencies. (c)(4)(A) The Governor's ERO message identifies a number of Medicaid waivers and other programs that will be delegated to SRS through such an MOU. However, as required by federal law, HP&F must retain overall administrative discretion and policy-making responsibilities for Medicaid. (c)(4)(B) This section further allows HP&F to enter into MOU's with local agencies for partnership in HP&F-administered programs.

Section 2:

This section renames the Department of Social and Rehabilitation Services (SRS) as the Department of Human Services (DHS). It also transfers to HP&F the following SRS functions:

- designation as the single state agency for Medicaid;
- SCHIP (Healthwave); and
- SRS's duties under chapter 39 of the K.S.A. relating to any other medical assistance, health insurance program for the needy or uninsured, or waivers of those programs (whether state or federally funded or both). *(As noted above, administration of many waivers will be delegated to DHS through an MOU.)*

Sections 3 through 7:

These are *standard boilerplate* provisions relating to the transfer of functions from SRS to HP&F and the renaming of SRS.

Section 8:

This is *standard boilerplate* regarding employee transfers. SRS employees performing the transferred functions transfer to DofA, as well as SRS employees providing administrative, technical or other support services essential to the transferred functions.

- The secretaries of DofA and SRS jointly determine which administrative employees are to transfer.
- Classified employees retain classified status. If a vacancy occurs in a transferred classified position, it can be converted to an unclassified position *only if otherwise provided by law*.

Section 9:

This section transfers one duty of the Department of Health and Environment (KDHE) to HP&F – serving as Kansas’ contact agency on federal health care reform measures.

Sections 10 through 12:

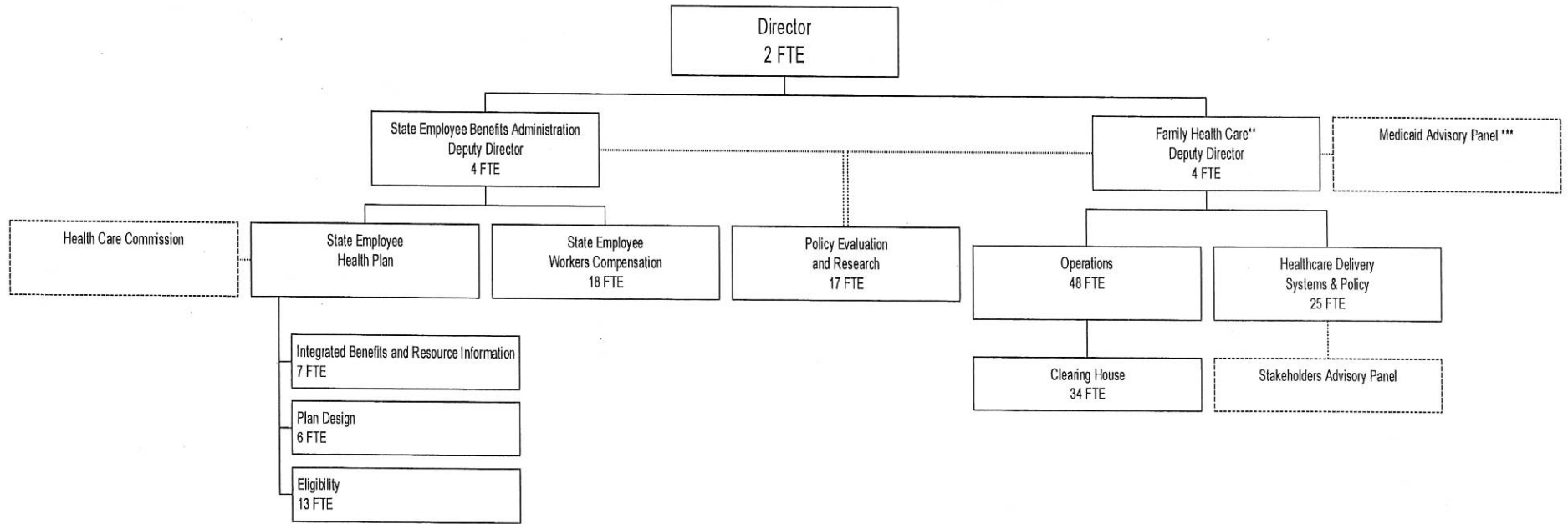
These are *standard boilerplate* sections relating to transfer of one function from KDHE to the HP&F.

Sections 13 through 16:

These are *standard boilerplate* sections that apply to the ERO as a whole:

Note: Responsibilities related to staffing the Health Care Commission and administering state employee health-care related benefits are not addressed in the ERO. These duties are assigned by statute to the Secretary of Administration. Under K.S.A. 75-3702j, the secretary can delegate the secretary’s powers and functions to DofA officers and employees. Therefore, it was not necessary to assign those duties to the director of HP&F through the ERO.

Division of Health Policy and Finance
183.5 FTE*



Estimated Health Care Purchases

- Medicaid \$1.3 billion
- State Employees \$300 million
- Workers Compensation \$16.1 million

Salaries \$8.2 million

Other Operating Expenditures \$62.2 million

- includes MMIS contract
- includes Clearing House contract

*Includes 5.5 FTE transferring from SRS to other Department of Administration divisions to support the programs transferring

**Formerly Medical Policy/Medicaid in SRS

*** Panel composed of the Secretaries of the Departments of Human Services, Aging, Health and Environment and Administration and the Commissioner of the Juvenile Justice Authority