

CHAPTER 187

HOUSE Substitute for SENATE BILL No. 272

AN ACT establishing the Kansas health policy authority; prescribing powers, duties and functions therefor; establishing a division of health policy and finance and a director of health policy and finance within the department of administration and transferring certain powers, duties and functions thereto; amending K.S.A. 39-7,116, 39-7,121, 65-6801, 65-6804, 65-6805, 65-6806, 65-6807 and 65-6809 and K.S.A. 2004 Supp. 39-7,118, 39-7,119, 39-7,120, 39-7,121a, 39-7,121d, 39-7,121e, 40-4702, 40-4706 and 65-6803 and repealing the existing sections; also amending sections 9 through 18 of this act and repealing the existing sections; also amending K.S.A. 39-7,116, as amended by section 22 of this act, and 39-7,121, as amended by section 26 of this act, and K.S.A. 2004 Supp. 39-7,118, as amended by section 23 of this act, 39-7,119, as amended by section 24 of this act, 39-7,120, as amended by section 25 of this act, 39-7,121a, as amended by section 27 of this act, 39-7,121d as amended by section 28 of this act, and 39-7,121e as amended by section 29 of this act, and repealing the existing sections; also repealing K.S.A. 65-6808 and sections 7 and 8 of this act.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) On July 1, 2005, the Kansas health policy authority is hereby established as a state agency within the executive branch of state government.

(b) The Kansas health policy authority shall be composed of nine voting members and seven nonvoting, ex officio members. The nine voting members shall be appointed as follows:

(1) Three members shall be appointed by the governor;

(2) two members shall be appointed by the speaker of the house of representatives;

(3) one member shall be appointed by the minority leader of the house of representatives;

(4) two members shall be appointed by the president of the senate; and

(5) one member shall be appointed by the minority leader of the senate.

(c) The seven nonvoting, ex officio members of the Kansas health policy authority are the director of health of the department of health and environment, secretary of health and environment, secretary of social and rehabilitation services, commissioner of insurance, secretary of administration, secretary of aging, and the executive director of the authority appointed pursuant to section 2, and amendments thereto. The seven nonvoting, ex officio members of the Kansas health policy authority shall act as a resource and support for the voting members of the authority and shall not be entitled to vote or to make or second motions in any meeting of the authority.

(d) The appointment of each voting member of the Kansas health policy authority shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as a voting member of the Kansas health policy authority shall exercise any power, duty or function as a member of the authority until confirmed by the senate. Each member shall hold office for a term of four years, except as provided in subsection (f) for the first members appointed to the Kansas health policy authority, and until a successor is appointed and confirmed. Terms of voting members of the Kansas health policy authority shall expire on March 15.

(e) Voting members of the Kansas health policy authority shall be members of the general public who have knowledge and demonstrated leadership in fields including, but not limited to, health care delivery, health promotion, public health improvement, evidence-based medicine, insurance, information systems, data analysis, health care finance, economics, government, and business. A majority of the voting members of the Kansas health policy authority shall be Kansas residents. No member of the legislature shall be appointed as a voting member of the Kansas health policy authority.

(f) The first voting members of the Kansas health policy authority established by this section shall be appointed on or before August 1, 2005. The terms of office of such members shall be as follows:

(1) The governor shall appoint one member for a term which shall expire on March 15, 2007, and two members for a term which shall expire on March 15, 2009;

(2) the speaker of the house of representatives shall appoint two

members for a term which shall expire on March 15, 2008;

(3) the minority leader of the house of representatives shall appoint one member for a term which shall expire on March 15, 2007;

(4) the president of the senate shall appoint two members for a term which shall expire on March 15, 2008; and

(5) the minority leader of the senate shall appoint one member for a term which shall expire on March 15, 2007.

In addition to such terms, each of the first members appointed shall serve until a successor is appointed and confirmed.

(g) The members of the Kansas health policy authority shall meet and organize annually by electing a voting member as chairperson, except that the governor shall designate the first chairperson of the Kansas health policy authority from among the first voting members appointed. A majority of all voting members shall constitute a quorum for meetings. All actions of the Kansas health policy authority shall be by the affirmative vote of a majority of voting members at any meeting at which a quorum is present. The Kansas health policy authority shall meet at least monthly during the fiscal year ending June 30, 2006, and thereafter not less than once per calendar quarter.

(h) Members of the Kansas health policy authority attending meetings of the authority, or attending a subcommittee meeting thereof authorized by the Kansas health policy authority, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3212, and amendments thereto, for members of the legislature. Members on the Kansas health policy authority shall not receive compensation for their service on the authority.

(i) On July 1, 2013, the Kansas health policy authority is hereby abolished.

New Sec. 2. (a) The Kansas health policy authority shall appoint the executive director of the authority subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. The Kansas health policy authority may appoint a temporary director to serve and to administer and oversee the operations of the authority until such time as an executive director can be appointed and commences employment.

(b) The executive director of the Kansas health policy authority shall be in the unclassified service under the Kansas civil service act and shall serve at the pleasure of the Kansas health policy authority. The executive director of the Kansas health policy authority shall receive a salary fixed by the Kansas health policy authority, subject to approval by the governor.

(c) The executive director shall have the authority to hire and supervise the other personnel of the Kansas health policy authority. Except as provided in section 17, and amendments thereto, and as otherwise provided by this act, all officers and employees of the Kansas health policy authority shall be in the unclassified service under the Kansas civil service act and shall serve at the pleasure of the executive director of the Kansas health policy authority.

New Sec. 3. (a) The Kansas health policy authority is hereby authorized to establish policies and to adopt rules and regulations for the implementation and administration of the powers, duties and functions prescribed for or transferred to the authority as provided by law.

(b) The Kansas health policy authority may enter into contracts as may be necessary to perform the powers, duties and functions of authority and as provided by law. As provided by this act or as otherwise the Kansas health policy authority may enter into contracts with other state agencies or with local governmental entities for the coordination of health services, including care and prevention programs and activities, and public health programs.

(c) The Kansas health policy authority may appoint advisory committees as deemed necessary by the authority. The advisory committees shall consult with and advise the Kansas health policy authority regarding the matters referred thereto by the authority. Members of any advisory committee created under this section attending meetings of such committee or attending a subcommittee meeting thereof authorized by such committee shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto, but shall receive no compensation for services as members of such advisory committee.

New Sec. 4. (a) There is hereby created the joint committee on health policy oversight within the legislative branch of state government.

The joint committee shall be composed of 12 members. Six members shall be members of the house of representatives and six members shall be members of the senate. Four of the members who are members of the house of representatives shall be appointed by the speaker of the house of representatives, four members who are senators shall be appointed by the president of the senate, two members who are members of the house of representatives shall be appointed by the minority leader of the house of representatives and two members who are senators shall be appointed by the minority leader of the senate.

(b) All members of the joint committee on health policy oversight shall serve for terms of two years ending on the first day of the regular session of the legislature commencing in the first odd-numbered year after the year of appointment, except that the first members shall be appointed on July 1, 2005, and shall serve for terms ending on the first day of the regular session of the legislature commencing in 2007. If a vacancy occurs in the office of any member of the joint committee on health policy oversight, a successor shall be appointed in the same manner as the original appointment for the remainder of the term.

(c) (1) The chairperson of the joint committee on health policy oversight shall be appointed for a term of one year which ends on the first day of the next occurring regular session of the legislature. The speaker of the house of representatives shall appoint the first chairperson on July 1, 2005, and shall appoint the chairperson for the term commencing on the first day of the regular session of the legislature commencing in 2006 for a one-year term to end on the first day of the regular session of the legislature commencing in the year 2007. The president of the senate shall appoint the next chairperson on the first day of the regular session of the legislature commencing in the year 2007 for a one-year term which ends on the first day of the next occurring regular session of the legislature. Thereafter the appointment of the chairperson shall continue to alternate between the speaker of the house of representatives and the president of the senate with each subsequent chairperson being appointed for a one-year term ending on the first day of the regular session of the legislature in the next occurring regular session of the legislature after the year of appointment.

(2) The vice-chairperson of the joint committee on health policy oversight shall be appointed for a term of one year which ends on the first day of the next occurring regular session of the legislature. The president of the senate shall appoint the first vice-chairperson on July 1, 2005, and shall appoint the vice-chairperson for the term commencing on the first day of the regular session of the legislature commencing in 2006 for a one-year term to end on the first day of the regular session of the legislature commencing in the year 2007. The speaker of the house of representatives shall appoint the next vice-chairperson on the first day of the regular session of the legislature commencing in the year 2007 for a one-year term which ends on the first day of the next occurring regular session of the legislature. Thereafter the appointment of the vice-chairperson shall continue to alternate between the speaker of the house of representatives and the president of the senate with each subsequent vice-chairperson being appointed for a one-year term ending on the first day of the regular session of the legislature in the next occurring regular session of the legislature after the year of appointment.

(3) If a vacancy occurs in the office of the chairperson or vice-chairperson, a member of the joint committee on health policy oversight who is a member of the same house of the legislature as the member who vacated the office shall be appointed by the speaker of the house, if the vacating member was a member of the house of representatives, or by the president of the senate, if the vacating member was a member of the senate, to fill such vacancy.

(d) A quorum of the joint committee on health policy oversight shall be seven. All actions of the joint committee on health policy oversight shall be taken by a majority of all of the members of the joint committee.

(e) The joint committee on health policy oversight shall have the authority to meet at any time and at any place within the state on the call of the chairperson.

(f) The provisions of the acts contained in article 12 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, applicable to special committees shall apply to the joint committee on health policy oversight to the extent that the same do not conflict with the specific

provisions of this section applicable to the joint committee.

(g) Members of the joint committee on health policy oversight shall receive compensation, travel expenses and subsistence expenses as provided in K.S.A. 75-3212 and amendments thereto when attending meetings of the joint committee.

(h) The staff of the legislative research department, the office of revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the joint committee on health policy oversight and to the extent authorized by the legislative coordinating council.

(i) The joint committee on health policy oversight shall have the exclusive responsibility to monitor and study the operations and decisions of the Kansas health policy authority.

(j) In accordance with K.S.A. 46-1204 and amendments thereto, the legislative coordinating council may provide for such professional services as may be requested by the joint committee on health policy oversight.

(k) The joint committee on health policy oversight may introduce such legislation as it deems necessary in performing its functions.

(l) The provisions of this section shall expire on July 1, 2013.

New Sec. 5. The Kansas health policy authority shall develop and maintain a coordinated health policy agenda that combines effective purchasing and administration of health care with health promotion oriented public health strategies. The powers, duties and functions of the Kansas health policy authority are intended to be exercised to improve the health of the people of Kansas by increasing the quality, efficiency and effectiveness of health services and public health programs.

New Sec. 6. (a) The Kansas health policy authority is responsible for the development of a statewide health policy agenda including health care and health promotion components. The Kansas health policy authority shall report to the legislature at the beginning of the regular session of the legislature in 2007 and at the beginning of each regular legislative session thereafter. The report of the Kansas health policy authority to the legislature shall include recommendations for implementation of the health policy agenda recommended by the authority. The Kansas health policy authority shall develop or adopt health indicators and shall include baseline and trend data on the health costs and indicators in each annual report to the legislature. In accordance with the provisions of this act and the provisions of appropriation acts, the Kansas health policy authority shall assume powers, duties and functions in accordance with the provisions of this act.

(b) On January 1, 2006, the Kansas health policy authority shall assume the functions of the health care data governing board and the functions of the department of social and rehabilitation services under the Kansas business health partnership act, as provided by this act.

(c) On or before March 1, 2006, the Kansas health policy authority shall submit a plan with recommendations for funding and any recommended legislation for the powers, duties and functions transferred to the authority on July 1, 2006, of the programs and activities specified in subsection (d).

(d) On July 1, 2006, the Kansas health policy authority shall assume operational and purchasing responsibility for (1) the regular medical portion of the state medicaid program, (2) the MediKan program, (3) the state children's health insurance program as provided in K.S.A. 38-2001 et seq., and amendments thereto, (4) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program, (5) the medicaid management information system (MMIS), (6) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2004 Supp. 39-7,121a through 39-7,121e, and amendments thereto, (7) the state health care benefits program as provided in K.S.A. 75-6501 through 75-6523, and amendments thereto, and (8) the state workers compensation self-insurance fund and program as provided in K.S.A. 44-575 through 44-580, and amendments thereto.

(e) At the beginning of the regular session of the legislature in 2007, the Kansas health policy authority shall submit to the legislature recommendations and an implementation plan for the transfer of additional

medicaid-funded programs to the Kansas health policy authority which may include (1) mental health services, (2) home and community-based services (HCBS) waiver programs, (3) nursing facilities, (4) substance abuse prevention and treatment programs, and (5) the institutions, as defined in K.S.A. 76-12a01, and amendments thereto.

(f) At the beginning of the regular session of the legislature in 2008, the Kansas health policy authority shall submit to the legislature recommendations and an implementation plan for the Kansas health policy authority to assume responsibility for health care purchasing functions within additional state agencies, which may include (1) the department on aging, (2) the department of education for local education agencies, (3) the juvenile justice authority and the juvenile correctional institutions and facilities thereunder, and (4) the department of corrections and the correctional institutions and facilities thereunder.

New Sec. 7. On July 1, 2005, the division of health policy and finance is hereby established within the department of administration. The head of the division of health policy and finance shall be the director of health policy and finance, who shall be appointed by and serve at the pleasure of the governor. The director of health policy and finance shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the governor. Under the supervision of the governor, the director of health policy and finance shall administer the division of health policy and finance and shall perform such other powers, duties and functions as may be prescribed by law.

New Sec. 8. (a) Subject to the provisions of appropriation acts, the director of health policy and finance shall appoint, in accordance with the provisions of the Kansas civil service act, such officers and employees as may be needed, in the judgment of the director, to carry out the powers and duties of the division of health policy and finance. All such officers and employees shall be within the unclassified service under the Kansas civil service act, unless otherwise specifically provided by law.

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

New Sec. 9. (a) The director of health policy and finance shall coordinate health care planning, administration, and purchasing and analysis of health data for the state of Kansas with respect to the following health programs administered by the state of Kansas:

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

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

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

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

(D) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program; and

(E) the medicaid management information system (MMIS); and

(2) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2004 Supp. 39-7,121a through 39-7,121e, and amendments thereto; and

(3) administering any other health programs delegated to the director by the governor or by a contract with another state agency.

(b) Except to the extent required by its single state agency role as

designated in section 10, and amendments thereto, the division of health policy and finance shall not be responsible for health planning, administration, purchasing and data with respect to the following:

- (1) The mental health reform act, K.S.A. 39-1601 et seq., and amendments thereto;
- (2) the developmental disabilities reform act, K.S.A. 39-1801 et seq., and amendments thereto;
- (3) the mental health program of the state of Kansas as prescribed under K.S.A. 75-3304a, and amendments thereto;
- (4) the addiction and prevention services prescribed under K.S.A. 65-4001 et seq., and amendments thereto; or
- (5) any institution, as defined in K.S.A. 76-12a01, and amendments thereto.

New Sec. 10. (a) The division of health policy and finance shall be designated as the single state agency with responsibility for supervising and administering the state plan for medical assistance under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto. The director shall develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing medical assistance and services to eligible individuals.

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

New Sec. 11. The director of health policy and finance shall have the power, but is not required, to develop a state plan with regard to medical assistance and services in which the federal government does not participate, within the limits of appropriations therefor.

New Sec. 12. (a) Subject to the limitations of subsection (b), the director of health policy and finance may enter into a contract with one or more state agencies or local governmental entities providing for the state agency or local governmental entity to perform services for the division of health policy and finance or delegating to the state agency or local governmental entity the administration of certain functions, services or programs under any of the programs for which the director of health policy and finance or the division of health policy and finance is responsible.

(b) With respect to any plan or program that is subject to or financed in part under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto, the authority of the director of health policy and finance or the division of health policy and finance to exercise administrative discretion in the administration or supervision of the plan or program and to issue policies and to adopt rules and regulations on plan or program matters shall not be delegated by the director of health policy and finance, other than to officials and employees of the division of health policy and finance. To the extent that the director of health policy and finance enters into a contract with a state agency or local governmental entity under this section, the other state agency or the local governmental entity shall not have the authority to change or disapprove any administrative decision of the director of health policy and finance or the division of health policy and finance or to otherwise substitute its judgment for that of the director of health policy and finance or the division of health policy and finance with respect to the application of policies issued or rules and regulations adopted by the director of health policy and finance for any plan or program that is subject to or financed in part under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto.

New Sec. 13. (a) The director of health policy and finance shall have the power and duty to establish general policies relating to the health programs under the director as provided in section 9, and amendments thereto, and to adopt rules and regulations therefor.

(b) The director of health policy and finance shall advise the governor and the legislature on all health programs, policies and plans for which the director of health policy and finance or the division of health policy and finance is responsible under this act.

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

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

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

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

(g) The director of health policy and finance shall have authority to make grants of funds for the promotion of health programs in the state of Kansas, subject to the provisions of appropriation acts.

(h) The director of health policy and finance may receive grants, gifts, bequests, money, or aid of any character whatsoever, for purposes consistent with sections 9 through 14, and amendments thereto.

(i) The director of health policy and finance may enter into agreements with other states or the agency designated as the single state agency under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto, for another state setting out the manner for determining the state of residence in disputed cases and the bearing or sharing of costs associated with those cases.

(j) The director of health policy and finance shall establish such advisory groups as are necessary to assist the division of health policy and finance in carrying out its responsibilities under sections 9 through 14, and amendments thereto, including the following:

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

(2) a policy coordination board consisting of representatives from those state agencies with which the director enters into a contract under section 12, and amendments thereto, and representatives from any other state agencies, as determined by the director.

(k) The director of health policy and finance shall perform any other duties and services that are necessary to carry out the purposes of sections 9 through 14, and amendments thereto, and that are not inconsistent with state law.

New Sec. 14. On July 1, 2005, except as otherwise provided by this act, all of the following powers, duties and functions of the department of social and rehabilitation services and the secretary of social and rehabilitation services are hereby transferred to and imposed upon the division of health policy and finance within the department of administration and the director of health policy and finance established by section 7, and amendments thereto:

(a) All of the powers, duties and functions of the secretary of social and rehabilitation services under chapter 39 of the Kansas Statutes Annotated, and amendments thereto, that relate to development, implementation and administration of programs that provide medical assistance, health insurance programs or waivers granted thereunder for persons who are needy or uninsured, or both, and that are financed by federal funds or state funds, or both, including the following:

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

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

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

(c) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program;

(d) the medicaid management information system (MMIS);

(e) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2004 Supp. 39-7,121a through 39-7,121e, and amendments thereto; and

(f) all of the powers, duties and functions of the department of social and rehabilitation services and secretary of social and rehabilitation services associated with designation of the department of social and rehabilitation services as the single state agency under title XIX of the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto. The designation of the department of social and rehabilitation services as the single state agency for medicaid purposes is hereby transferred to the division of health policy and finance.

New Sec. 15. (a) The division of health policy and finance within the department of administration and the director of health policy and finance established by this act shall be the successor in every way to the powers, duties and functions of the department of social and rehabilitation services and secretary of social and rehabilitation services in which the same were vested prior to the effective date of this act and that are transferred pursuant to section 14, and amendments thereto. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the division of health policy and finance or the director of health policy and finance within the department of administration shall be deemed to have the same force and effect as if performed by the department of social and rehabilitation services or secretary of social and rehabilitation services in which such powers, duties and functions were vested prior to July 1, 2005.

(b) From July 1, 2005, through June 30, 2006, whenever the department of social and rehabilitation services or the secretary of social and rehabilitation services, or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, waiver or other document and such reference is in regard to any of the powers, duties or functions transferred to the division of health policy and finance or the director of health policy and finance pursuant to section 14, and amendments thereto, such reference or designation shall be deemed to apply to the division of health policy and finance or the director of health policy and finance, respectively. The provisions of this subsection shall not apply to references to or designations of the department of social and rehabilitation services or the secretary of social and rehabilitation services, or words of like effect, by the provisions of appropriation acts.

(c) All rules and regulations, orders and directives of the secretary of social and rehabilitation services that relate to the functions transferred by section 14, and amendments thereto, and that are in effect on July 1, 2005, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the director of health policy and finance until revised, amended, revoked or nullified pursuant to law.

New Sec. 16. (a) The division of health policy and finance within the department of administration shall succeed to all property, property rights, and records that were used for or pertain to the performance of powers, duties and functions transferred to the division pursuant to section 14, and amendments thereto. Any conflict as to the proper disposition of property, personnel or records arising under this act shall be determined by the governor, whose decision shall be final.

(b) The provisions of this section shall not apply to the balances of any funds or accounts thereof appropriated or reappropriated for the department of social and rehabilitation services relating to the powers,

duties and functions transferred by section 14, and amendments thereto. All such balances of any funds or accounts thereof shall be transferred by and be subject to the provisions of appropriation acts.

New Sec. 17. (a) (1) All officers and employees of the department of social and rehabilitation services who, immediately prior to the effective date of this act, are engaged in the exercise and performance of the powers, duties and functions transferred to the division of health policy and finance or the director of health policy and finance by section 14, and amendments thereto, are transferred to the department of administration on July 1, 2005, or on a later date or dates determined by the secretary of social and rehabilitation services and the secretary of administration.

(2) All officers and employees of the department of social and rehabilitation services who are determined by the secretary of social and rehabilitation services and the secretary of administration to be engaged in providing administrative, technical or other support services that are essential to the exercise and performance of the powers, duties and functions transferred by section 14, and amendments thereto, are transferred to the department of administration on July 1, 2005, or on a later date or dates determined by the secretary of social and rehabilitation services and the secretary of administration.

(3) All classified employees transferred under this subsection (a) shall retain their status as classified employees. Thereafter, except as otherwise provided by this act, the secretary of administration may convert vacant classified positions to positions that are not classified as otherwise provided by law. The positions of all officers and employees of the department of administration performing duties and functions under the Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto, that are required under applicable federal law, rules and regulations, and policies to be under a merit-based personnel system, shall be in the classified service under the Kansas civil service act.

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

New Sec. 18. Liability for accrued compensation or salaries of each officer and employee who is transferred to the department of administration under section 17, and amendments thereto, shall be assumed and paid by the department of administration on July 1, 2005, or on the date of the transfer, whichever is later.

New Sec. 19. (a) On January 1, 2006, except as otherwise provided by this act, all of the powers, duties and functions of the health care data governing board, department of health and environment and the secretary of health and environment that relate to the health care data system under K.S.A. 65-6801, 65-6802, 65-6804, 65-6805, 65-6806, 65-6807 and 65-6809 and K.S.A. 2004 Supp. 65-6803, and amendments thereto, are hereby transferred to and imposed upon the Kansas health policy authority established by section 1, and amendments thereto.

(b) The Kansas health policy authority shall be the successor in every way to such powers, duties and functions of the health care data governing board, department of health and environment and the secretary of health and environment in which the same were vested prior to January 1, 2006, and that are transferred pursuant to this section. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the Kansas health policy authority shall be deemed to have the same force and effect as if performed by the health care data governing board, department of health and environment and the secretary of health and environment in which such powers, duties and functions were vested prior to January 1, 2006.

(c) On or after January 1, 2006, whenever the health care data governing board, department of health and environment or the secretary of health and environment or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant,

waiver or other document and such reference is in regard to any of the powers, duties or functions transferred to the Kansas health policy authority pursuant to this section, such reference or designation shall be deemed to apply to the Kansas health policy authority. The provisions of this subsection shall not apply to references to or designations of the health care data governing board, department of health and environment, or the secretary of health and environment, or words of like effect, by the provisions of appropriation acts.

(d) All rules and regulations, orders and directives of the health care data governing board or the secretary of health and environment that relate to the functions transferred by this section, and that are in effect on January 1, 2006, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the Kansas health policy authority until revised, amended, revoked or nullified pursuant to law.

(e) The Kansas health policy authority shall succeed to all property, property rights and records that were used for or pertain to the performance of powers, duties and functions transferred to the Kansas health policy authority pursuant to this section. Any conflict as to the proper disposition of property, personnel or records arising under this section shall be determined by the governor, whose decision shall be final. The provisions of this subsection shall not apply to the balances of any funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this section. All such balances of any funds or accounts thereof shall be transferred by and be subject to the provisions of appropriation acts.

(f) (1) All officers and employees of the department of health and environment who, immediately prior to January 1, 2006, are engaged in the exercise and performance of the powers, duties and functions transferred to the Kansas health policy authority pursuant to this section, are transferred to the Kansas health policy authority on January 1, 2006, or on a later date or dates determined by the secretary of health and environment and the Kansas health policy authority.

(2) All officers and employees of the department of health and environment who are determined by the secretary of health and environment and the Kansas health policy authority to be engaged in providing administrative, technical or other support services that are essential to the exercise and performance of the powers, duties and functions transferred by this section are transferred to the Kansas health policy authority on January 1, 2006, or on a later date or dates determined by the secretary of health and environment and the Kansas health policy authority.

(3) All classified employees transferred under this subsection (f) shall retain their status as classified employees. Thereafter, the Kansas health policy authority may convert vacant classified positions to positions that are not classified as otherwise provided by law.

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

(h) Liability for accrued compensation or salaries of each officer and employee who is transferred to the Kansas health policy authority under this section shall be assumed and paid by the Kansas health policy authority on January 1, 2006, or on the date of the transfer, whichever is later.

New Sec. 20. (a) When any conflict arises as to the disposition of any property, power, duty or function as a result of any abolition or transfer made by or under the authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The provisions of this section shall not apply to the balances of any funds or accounts thereof appropriated or reappropriated, or the unexpended balance of any appropriation, for the department of social and rehabilitation services or for the department of health and environment relating to the powers, duties and functions transferred by or under

authority of this act. All such balances of any funds or accounts thereof, or the unexpended balance of any appropriation, shall be transferred by and be subject to the provisions of appropriation acts.

New Sec. 21. (a) No suit, action, or other proceeding, judicial or administrative, that is lawfully commenced or that could have been lawfully commenced, by or against any state agency or program mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

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

Sec. 22. On July 1, 2005, K.S.A. 39-7,116 is hereby amended to read as follows: 39-7,116. As used in this act:

(a) "Restrictive drug formulary" means a list of prescription-only drugs established by the department which excludes in whole or in part reimbursement by the department for such drugs under a program administered by the department.

(b) The words and phrases used in this section shall have the same meanings as are ascribed to such words and phrases under K.S.A. 65-1626 and amendments thereto.

(c) "Physician" means a person licensed to practice medicine and surgery.

~~(d) "Department" means the department of social and rehabilitation services~~ "Director" means the director of health policy and finance of the division of health policy and finance established by section 7, and amendments thereto.

Sec. 23. On July 1, 2005, K.S.A. 2004 Supp. 39-7,118 is hereby amended to read as follows: 39-7,118. ~~The secretary of social and rehabilitation services~~ director of health policy and finance shall implement a drug utilization review program with the assistance of a medicaid drug utilization review board as provided in K.S.A. 39-7,119 and amendments thereto to assure the appropriate utilization of drugs by patients receiving medical assistance under the medicaid program. The drug utilization review program shall include:

(a) Monitoring of prescription information including overutilization and underutilization of prescription-only drugs;

~~(b) making periodic reports of findings and recommendations to the secretary of social and rehabilitation services~~ director of health policy and finance and the United States department of health and human services regarding the activities of the board, drug utilization review programs, summary of interventions, assessments of education interventions and drug utilization review cost estimates;

(c) providing for prospective and retrospective drug utilization review, as specified in the federal omnibus budget reconciliation act of 1990 (public law 101-508);

(d) monitoring provider and recipient compliance with program objectives;

(e) providing educational information on state program objectives, directly or by contract, to private and public sector health care providers to improve prescribing and dispensing practices;

(f) reviewing the increasing costs of purchasing prescription drugs and making recommendations on cost containment;

(g) reviewing profiles of medicaid beneficiaries who have multiple prescriptions above a level specified by the board; and

(h) recommending any modifications or changes to the medicaid prescription drug program.

Sec. 24. On July 1, 2005, K.S.A. 2004 Supp. 39-7,119 is hereby amended to read as follows: 39-7,119. (a) There is hereby created the medicaid drug utilization review board which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the Kansas medicaid program.

(b) Except as provided in subsection (i), the board shall consist of at least seven members appointed as follows:

(1) Two licensed physicians actively engaged in the practice of medicine, nominated by the Kansas medical society and appointed by the ~~secretary of social and rehabilitation services~~ director of health policy and

finance from a list of four nominees;

(2) one licensed physician actively engaged in the practice of osteopathic medicine, nominated by the Kansas association of osteopathic medicine and appointed by the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* from a list of four nominees;

(3) two licensed pharmacists actively engaged in the practice of pharmacy, nominated by the Kansas pharmacy association and appointed by the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* from a list of four nominees;

(4) one person licensed as a pharmacist and actively engaged in academic pharmacy, appointed by the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* from a list of four nominees provided by the university of Kansas;

(5) one licensed professional nurse actively engaged in long-term care nursing, nominated by the Kansas state nurses association and appointed by the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* from a list of four nominees.

(c) The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* may add two additional members so long as no class of professional representatives exceeds 51% of the membership.

(d) The physician and pharmacist members shall have expertise in the clinically appropriate prescribing and dispensing of outpatient drugs.

(e) The appointments to the board shall be for terms of three years. In making the appointments, the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall provide for geographic balance in the representation on the board to the extent possible. Subject to the provisions of subsection (i), members may be reappointed.

(f) The board shall elect a chairperson from among board members who shall serve a one-year term. The chairperson may serve consecutive terms.

(g) The board, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(h) All actions of the medicaid drug utilization review board shall be upon the affirmative vote of five members of the board and the vote of each member present when action was taken shall be recorded by roll call vote.

(i) Upon the expiration of the term of office of any member of the medicaid drug utilization review board on or after the effective date of this act and in any case of a vacancy existing in the membership position of any member of the medicaid drug utilization review board on or after the effective date of this act, a successor shall be appointed by the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* so that as the terms of members expire, or vacancies occur, members are appointed and the composition of the board is changed in accordance with the following and such appointment shall be made by the ~~secretary~~ *director of health policy and finance* in the following order of priority:

(1) One member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a hospital and who is nominated by the Kansas hospital association and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(2) one member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a licensed adult care home and who is nominated by the state board of pharmacy and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(3) one member shall be a licensed physician who is actively engaged in the general practice of allopathic medicine and who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(4) one member shall be a licensed physician who is actively engaged in mental health practice providing care and treatment to persons with mental illness, who has practice experience with the state medicaid plan and who is nominated by the Kansas psychiatric society and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(5) one member shall be a licensed physician who is the medical director of a nursing facility, who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(6) one member shall be a licensed physician who is actively engaged in the general practice of osteopathic medicine, who has practice experience with the state medicaid plan and who is nominated by the Kansas association of osteopathic medicine and who is appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(7) one member shall be a licensed pharmacist who is actively engaged in retail pharmacy, who has practice experience with the state medicaid plan and who is nominated by the state board of pharmacy and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more nominees;

(8) one member shall be a licensed pharmacist who is actively engaged in or who has experience in research pharmacy and who is nominated jointly by the Kansas task force for the pharmaceutical research and manufacturers association and the university of Kansas and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more jointly nominated persons; and

(9) one member shall be a licensed advanced registered nurse practitioner or physician assistant actively engaged in the practice of providing the health care and treatment services such person is licensed to perform, who has practice experience with the state medicaid plan and who is nominated jointly by the Kansas state nurses' association and the Kansas academy of physician assistants and appointed by the ~~secretary~~ *director of health policy and finance* from a list of two or more jointly nominated persons.

Sec. 25. On July 1, 2005, K.S.A. 2004 Supp. 39-7,120 is hereby amended to read as follows: 39-7,120. (a) The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall not restrict patient access to prescription-only drugs pursuant to a program of prior authorization or a restrictive formulary except by rules and regulations adopted in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto. Prior to the promulgation of any such rules and regulations, the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall submit such proposed rules and regulations to the medicaid drug utilization review board for written comment. The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* may not implement permanent prior authorization until 30 days after receipt of comments by the drug utilization review board.

(b) When considering recommendations from the medicaid drug utilization review board regarding the prior authorization of a drug, the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall consider the net economic impact of such prior authorization, including, but not limited to, the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services which may be related to the prior authorization of such drug.

Sec. 26. On July 1, 2005, K.S.A. 39-7,121 is hereby amended to read as follows: 39-7,121. (a) ~~On or before July 1, 1996, the department of social and rehabilitation services~~ *The director of health policy and finance* shall establish and implement an electronic pharmacy claims management system in order to provide for the on-line adjudication of claims and for electronic prospective drug utilization review.

(b) The system shall provide for electronic point-of-sale review of drug therapy using predetermined standards to screen for potential drug therapy problems including incorrect drug dosage, adverse drug-drug interactions, drug-disease contraindications, therapeutic duplication, incorrect duration of drug treatment, drug-allergy interactions and clinical abuse or misuse.

(c) The ~~department~~ *director of health policy and finance* shall not utilize this system, or any other system or program to require that a recipient has utilized or failed with a drug usage or drug therapy prior to allowing the recipient to receive the product or therapy recommended by the recipient's physician.

Sec. 27. On July 1, 2005, K.S.A. 2004 Supp. 39-7,121a is hereby amended to read as follows: 39-7,121a. (a) The ~~secretary of social and~~

~~rehabilitation services~~ *director of health policy and finance* may establish an advisory committee pursuant to K.S.A. 75-5313, and amendments thereto, to advise the ~~secretary~~ *director of health policy and finance* in the development of a preferred formulary listing of covered drugs by the state medicaid program.

(b) The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall evaluate drugs and drug classes for inclusion in the state medicaid preferred drug formulary based on safety, effectiveness and clinical outcomes of such treatments. In addition, the ~~secretary~~ *director of health policy and finance* shall evaluate drugs and drug classes to determine whether inclusion of such drugs or drug classes in a starter dose program would be clinically efficacious and cost effective. If the factors of safety, effectiveness and clinical outcomes among drugs being considered in the same class indicate no therapeutic advantage, then the ~~secretary~~ *director of health policy and finance* shall consider the cost effectiveness and the net economic impact of such drugs in making recommendations for inclusion in the state medicaid preferred drug formulary. Drugs which do not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness or clinical outcomes over other drugs in the same class which have been selected for the preferred drug formulary may be excluded from the preferred drug formulary and may be subject to prior authorization in accordance with state and federal law, except, prior to July 1, 2003, where a prescriber has personally written "dispense as written" or "D.A.W.", or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637, and amendments thereto.

(c) The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall consider the net economic impact of drugs selected or excluded from the preferred formulary and may gather information on the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services.

(d) The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* may accept all services, including, but not limited to, disease state management, associated with the delivery of pharmacy benefits under the state medicaid program having a determinable cost effect in addition to the medicaid prescription drug rebates required pursuant to 42 U.S.C. section 1396r-8.

(e) The state medicaid preferred drug formulary shall be submitted to the medicaid drug utilization review board for review and policy recommendations.

Sec. 28. On July 1, 2005, K.S.A. 2004 Supp. 39-7,121d is hereby amended to read as follows: 39-7,121d. (a) The state medicaid plan shall include provisions for a program of differential dispensing fees for pharmacies that provide prescriptions for adult care homes under a unit dose system in accordance with rules and regulations of the state board of pharmacy and that participate in the return of unused medications program under the state medicaid plan.

(b) The state medicaid plan shall include provisions for differential ingredient cost reimbursement of generic and brand name pharmaceuticals. The ~~secretary of social and rehabilitation services~~ *director of health policy and finance* shall set the rates for differential cost reimbursement of generic and brand name pharmaceuticals by rules and regulations.

Sec. 29. On July 1, 2005, K.S.A. 2004 Supp. 39-7,121e is hereby amended to read as follows: 39-7,121e. (a) Except where a prescriber has personally written "dispense as written" or "D.A.W.," or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637 and amendments thereto, the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* may limit reimbursement for a prescription under the medicaid program to the multisource generic equivalent drug.

(b) No pharmacist participating in the medical assistance program shall be required to dispense a prescription-only drug that will not be reimbursed by the medical assistance program.

Sec. 30. On January 1, 2006, K.S.A. 65-6801 is hereby amended to read as follows: 65-6801. (a) The legislature recognizes the urgent need to provide health care consumers, third-party payors, providers and health care planners with information regarding the trends in use and cost of health care services in this state for improved decision-making. This is to

be accomplished by compiling a uniform set of data and establishing mechanisms through which the data will be disseminated.

(b) It is the intent of the legislature to require that the information necessary for a review and comparison of utilization patterns, cost, quality and quantity of health care services be supplied to the health care database by all providers of health care services and third-party payors to the extent required by K.S.A. 65-6805 and amendments thereto and this section and amendments thereto. ~~The secretary of health and environment at the direction of the health care data governing board~~ *Kansas health policy authority* shall specify by rule and regulation the types of information which shall be submitted and the method of submission.

(c) The information is to be compiled and made available in a form prescribed by the ~~governing board~~ *Kansas health policy authority* to improve the decision-making processes regarding access, identified needs, patterns of medical care, price and use of health care services.

Sec. 31. On January 1, 2006, K.S.A. 2004 Supp. 65-6803 is hereby amended to read as follows: 65-6803. (a) ~~There is hereby created a On January 1, 2006, the~~ health care data governing board ~~is hereby abolished.~~

~~(b) The board shall consist of 15 members appointed as follows: One member shall be appointed by the Kansas medical society, one member shall be appointed by the Kansas hospital association, one member shall be appointed by the executive vice chancellor of the university of Kansas school of medicine, one member who is a licensed professional nurse shall be appointed by the Kansas state nurses association, one member representing health care insurers or other commercial payors shall be appointed by the governor, one member representing a large business that is self-insured as to medical coverage for its employees shall be appointed by the governor, one member representing a small business that is self-insured as to medical coverage for its employees shall be appointed by the governor, one member representing adult care homes shall be appointed by the governor, one member representing the Kansas health institute, one member shall be appointed by the state board of regents, one member representing consumers of health care shall be appointed by the governor and one additional member the governor deems appropriate to serve on this board shall be appointed by the governor. The secretary of health and environment, the secretary of social and rehabilitation services and the insurance commissioner, or their designees, shall be voting members of the board. The secretary of health and environment, or the designee of the secretary, shall also serve as chairperson of the board. Board members and task force members shall not be paid compensation, subsistence allowances, mileage or other expenses as otherwise may be authorized by law for attending meetings or subcommittee meetings of the board. The members appointed to the board shall serve for three-year terms or until their successors are appointed and qualified.~~

~~—(c) (b) The chairperson of the health care data governing board~~ *Kansas health policy authority* may appoint a task force or task forces of interested citizens and providers of health care for the purpose of studying technical issues relating to the collection of health care data. At least one member of the ~~health care data governing board~~ *Kansas health policy authority* shall be a member of any task force appointed under this subsection.

~~(d) The board shall meet at least quarterly and at such other times deemed necessary by the chairperson.~~

~~—(e) (c) The board~~ *Kansas health policy authority* shall develop policy regarding the collection of health care data and procedures for ensuring the confidentiality and security of these data.

Sec. 32. On January 1, 2006, K.S.A. 65-6804 is hereby amended to read as follows: 65-6804. (a) ~~The secretary of health and environment~~ *Kansas health policy authority* shall administer the health care database. In administering the health care database, the ~~secretary~~ *authority* shall receive health care data from those entities identified in K.S.A. 65-6805 and amendments thereto and provide for the dissemination of such data ~~as directed by the board.~~

(b) ~~As directed by the board, the secretary of health and environment~~ *The Kansas health policy authority* may contract with an organization experienced in health care data collection to collect the data from the health care facilities as described in subsection (h) of K.S.A. 65-425 and amendments thereto, build and maintain the database. ~~The secretary of health and environment~~ *Kansas health policy authority* may accept data

submitted by associations or related organizations on behalf of health care providers by entering into binding agreements negotiated with such associations or related organizations to obtain data required pursuant to this section.

(c) ~~The secretary of health and environment~~ *Kansas health policy authority* shall adopt rules and regulations ~~approved by the board~~ governing the acquisition, compilation and dissemination of all data collected pursuant to this act. The rules and regulations shall provide at a minimum that:

(1) Measures have been taken to provide system security for all data and information acquired under this act;

(2) data will be collected in the most efficient and cost-effective manner for both the department and providers of data;

(3) procedures will be developed to assure the confidentiality of patient records. ~~Patient names, addresses and other personal identifiers will be omitted from the database;~~

(4) users may be charged for data preparation or information that is beyond the routine data disseminated and that the ~~secretary~~ *authority* shall establish by the adoption of such rules and regulations a system of fees for such data preparation or dissemination; and

(5) ~~the secretary of health and environment~~ *Kansas health policy authority* will ensure that the health care database will be kept current, accurate and accessible as prescribed by rules and regulations.

(d) Data and other information collected pursuant to this act ~~shall be confidential, shall be disseminated only for statistical purposes pursuant to rules and regulations adopted by the secretary of health and environment and approved by the board~~ and shall not be disclosed ~~by the Kansas health policy authority~~ or made public in any manner which would identify individuals. A violation of this subsection (d) is a class C misdemeanor.

(e) In addition to such criminal penalty under subsection (d), any individual whose identity is revealed in violation of subsection (d) may bring a civil action against the responsible person or persons for any damages to such individual caused by such violation.

Sec. 33. On January 1, 2006, K.S.A. 65-6805 is hereby amended to read as follows: 65-6805. Each medical care facility as defined by subsection (h) of K.S.A. 65-425 and amendments thereto; health care provider as defined in K.S.A. 40-3401 and amendments thereto; providers of health care as defined in subsection (f) of K.S.A. 65-5001 and amendments thereto; health care personnel as defined in subsection (e) of K.S.A. 65-5001 and amendments thereto; home health agency as defined by subsection (b) of K.S.A. 65-5101 and amendments thereto; psychiatric hospitals licensed under K.S.A. 75-3307b and amendments thereto; state institutions for the mentally retarded; community mental retardation facilities as defined under K.S.A. 65-4412 and amendments thereto; community mental health center as defined under K.S.A. 65-4432 and amendments thereto; adult care homes as defined by K.S.A. 39-923 and amendments thereto; laboratories described in K.S.A. 65-1,107 and amendments thereto; pharmacies; board of nursing; Kansas dental board; board of examiners in optometry; state board of pharmacy; state board of healing arts and third-party payors, including but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, fiscal intermediaries for government-funded programs and self-funded employee health plans, shall file health care data with the ~~secretary of health and environment~~ *Kansas health policy authority* as prescribed by the ~~board~~ *authority*. The provisions of this section shall not apply to any individual, facility or other entity under this section which uses spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination for the treatment or cure of disease.

Sec. 34. On January 1, 2006, K.S.A. 65-6806 is hereby amended to read as follows: 65-6806. The ~~secretary of health and environment~~ *Kansas health policy authority* shall make the data available to interested parties on the basis prescribed by the ~~board~~ *authority* and as directed by rules and regulations *of the authority*.

Sec. 35. On January 1, 2006, K.S.A. 65-6807 is hereby amended to read as follows: 65-6807. The ~~secretary of health and environment~~ *Kansas health policy authority* shall on or before February 1 each year make a report to the governor and the legislature as to health care data activity, including examples of policy analyses conducted and purposes for which

the data was disseminated and utilized, and as to the progress made in compiling and making available the information specified under K.S.A. 65-6801 and amendments thereto.

Sec. 36. On January 1, 2006, K.S.A. 65-6809 is hereby amended to read as follows: 65-6809. (a) There is hereby established in the state treasury the health care database fee fund. The ~~secretary of health and environment~~ *Kansas health policy authority* shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys collected or received by the ~~secretary~~ *authority* from the following sources:

- (1) Fees collected under K.S.A. 65-6804, and amendments thereto;
- (2) moneys received by the ~~secretary~~ *authority* in the form of gifts, donations or grants;
- (3) interest attributable to investment of moneys in the fund; and
- (4) any other moneys provided by law.

Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the health care database fee fund.

(b) Moneys deposited in the health care database fee fund shall be expended to supplement maintenance costs of the database, provide technical assistance and training in the proper use of health care data and provide funding for dissemination of information from the database to the public. ~~If the performance audit required by K.S.A. 65-6808, and amendments thereto, is conducted under contract with a firm, as defined by K.S.A. 46-1112, and amendments thereto, the contract cost of that performance audit may be paid from the health care database fee fund.~~

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the health care database fee fund interest earnings based on:

- (1) The average daily balance of moneys in the health care database fee fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the health care database fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~secretary of health and environment~~ *Kansas health policy authority or the authority's designee* for the purposes set forth in this section.

New Sec. 37. (a) On January 1, 2006, except as otherwise provided by this act, all of the powers, duties and functions of the department of social and rehabilitation services and the secretary of social and rehabilitation services under the Kansas business health partnership act, K.S.A. 40-4701 through 40-4707, and amendments thereto, are hereby transferred to and imposed upon the Kansas health policy authority established by section 1, and amendments thereto.

(b) The Kansas health policy authority shall be the successor in every way to such powers, duties and functions of the department of social and rehabilitation services and the secretary of social and rehabilitation services in which the same were vested prior to January 1, 2006, and that are transferred pursuant to this section. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the Kansas health policy authority shall be deemed to have the same force and effect as if performed by the department of social and rehabilitation services and the secretary of social and rehabilitation services in which such powers, duties and functions were vested prior to January 1, 2006.

(c) On or after January 1, 2006, whenever the department of social and rehabilitation services and the secretary of social and rehabilitation services or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, waiver or other document and such reference is in regard to any of the powers, duties or functions transferred to the Kansas health policy authority pursuant to this section, such reference or designation shall be deemed to apply to the Kansas health policy authority. The provisions of this subsection shall not apply to references to or designations of the department of social and rehabilitation services and the secretary of social and rehabilitation services, or words of like effect, by the provisions of appropriation acts.

(d) All rules and regulations, orders and directives of the secretary of social and rehabilitation services that relate to the functions transferred

by this section, and that are in effect on January 1, 2006, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the Kansas health policy authority until revised, amended, revoked or nullified pursuant to law.

(e) The Kansas health policy authority shall succeed to all property, property rights and records that were used for or pertain to the performance of powers, duties and functions transferred to the Kansas health policy authority pursuant to this section. Any conflict as to the proper disposition of property, personnel or records arising under this section shall be determined by the governor, whose decision shall be final. The provisions of this subsection shall not apply to the balances of any funds or accounts thereof appropriated or reappropriated for the department of social and rehabilitation services relating to the powers, duties and functions transferred by this section. All such balances of any funds or accounts thereof shall be transferred by and be subject to the provisions of appropriation acts.

(f) (1) All officers and employees of the department of social and rehabilitation services who, immediately prior to January 1, 2006, are engaged in the exercise and performance of the powers, duties and functions transferred to the Kansas health policy authority pursuant to this section, are transferred to the Kansas health policy authority on January 1, 2006, or on a later date or dates determined by the secretary of social and rehabilitation services and the Kansas health policy authority.

(2) All officers and employees of the department of social and rehabilitation services who are determined by the secretary of social and rehabilitation services and the Kansas health policy authority to be engaged in providing administrative, technical or other support services that are essential to the exercise and performance of the powers, duties and functions transferred by this section are transferred to the Kansas health policy authority on January 1, 2006, or on a later date or dates determined by the secretary of social and rehabilitation services and the Kansas health policy authority.

(3) All classified employees transferred under this subsection (f) shall retain their status as classified employees. Thereafter, the Kansas health policy authority may convert vacant classified positions to positions that are not classified as otherwise provided by law.

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

(h) Liability for accrued compensation or salaries of each officer and employee who is transferred to the Kansas health policy authority under this section shall be assumed and paid by the Kansas health policy authority on January 1, 2006, or on the date of the transfer, whichever is later.

Sec. 38. On January 1, 2006, K.S.A. 2004 Supp. 40-4702 is hereby amended to read as follows: 40-4702. (a) The governor of the state of Kansas shall appoint a committee which shall be known as the Kansas business health policy committee, whose purpose is to explore opportunities and encourage employer participation in health plans developed by the committee for low- and modest-wage employees of small employers.

(b) The Kansas business health policy committee, hereinafter referred to as the health committee, shall consist of:

(1) The secretary of the department of commerce or the secretary's designee;

(2) the secretary of the department of social and rehabilitation services or the secretary's designee;

(3) the commissioner of insurance or the commissioner's designee;

(4) one member appointed by the president of the senate;

(5) one member appointed by the speaker of the house of representatives;

(6) one member appointed by the minority leader of the senate;

(7) one member appointed by the minority leader of the house of representatives; and

(8) three members at large from the private sector appointed by the governor.

The secretary of each state agency represented on this committee shall provide such staff and other resources as the health committee may require.

(c) (1) The initial meeting of the health committee shall be convened within 60 days after the effective date of this act by the governor at a time and place designated by the governor.

(2) Meetings of the health committee subsequent to its initial meeting shall be held and conducted in accordance with policies and procedures established by the health committee.

(3) Commencing at the time of the initial meeting of the health committee, the powers, authorities, duties and responsibilities conferred and imposed upon the health committee by this act shall be operative and effective.

(d) The health committee shall develop and approve a request for proposals for a qualified entity to serve as the Kansas business health partnership, hereinafter referred to as health partnership, which shall provide a mechanism to combine federal and state subsidies with contributions from small employers and eligible employees to purchase health insurance in accordance with guidelines developed by the health committee.

(e) The health committee shall evaluate responses to the request for proposals and select the qualified entity to serve as the health partnership.

(f) The health committee shall:

(1) Develop, approve and revise subsidy eligibility criteria provided that:

(A) Low wage and modest wage employees of small employers shall be eligible for subsidies if:

(i) The small employer has not previously offered health insurance coverage within the two years next preceding the date upon which health insurance is offered; or

(ii) the small employer has previously offered health insurance coverage and a majority of such small employer's employees are low wage or modest wage employees as defined in K.S.A. 40-4701, and amendments thereto;

(B) any small employer's eligible employee with a child who is eligible for coverage under the state childrens' health insurance program established by K.S.A. 38-2001 *et seq.*, and amendments thereto, or in the state medical assistance program shall be eligible automatically for a subsidy and shall be included in the determination of eligibility for the small employer and its low-and-modest wage employees; and

(C) at least 70% of the small employer's eligible employees without group health insurance coverage from another source are insured through the partnership; and

(2) determine and arrange for eligibility determination for subsidies of low wage or modest wage employees; and

(3) develop subsidy schedules based upon eligible employee wage levels and family income; and

(4) be responsible for arranging for the provision of affordable health care coverage for eligible employees of small employers and evaluating and creating the opportunity to improve health care provided by plans in the small group health insurance program.

(g) The health committee shall oversee and monitor the ongoing operation of any subsidy program and the financial accountability of all subsidy funds. If, in the judgment of the health committee, the entity selected to serve as the health partnership fails to perform as intended, the health committee may terminate its selection and designation of that entity as the health partnership and may issue a new request for proposal and select a different qualified entity to serve as the health partnership.

(h) The health committee is hereby authorized to accept funds from the federal government, or its agencies, or any other source whatsoever for research studies, investigation, planning and other purposes related to implementation of the objectives of this act. Any funds so received shall be deposited in the state treasury and shall be credited to a special revenue fund which is hereby created and shall be known as the health committee insurance fund and used in accordance with or direction of

the contributing federal agencies. Expenditures from such fund may be made for any purpose in keeping with the responsibilities, functions and authority of the department. Warrants on such fund shall be drawn in the same manner as required of other state agencies upon vouchers signed by the secretary of the department of social and rehabilitation services approved by the Kansas health policy authority, or the authority's designee, upon receiving prior approval of the health committee.

(i) The health committee is authorized to develop policies for the administration of the subsidy program and for the use of additional federal or private funds to subsidize health insurance coverage for low-and-modest wage employees of predominantly low-wage small employers. The health committee shall be responsible for setting benefit levels and establishing performance measures for health plans providing health care coverage for this program that include quality, preventative health and other supplementary measures. The health committee shall limit access to the program subsidy to the projected annualized expenditure.

(j) The health committee is hereby authorized to organize, or cause to be organized, one or more advisory committees. No member of any advisory committee established under this subsection shall have previously received or currently receive any payment or other compensation from the health partnership. The membership of each advisory committee established under this subsection shall contain at least one representative who is a small employer and one representative who is an eligible employee as defined in K.S.A. 40-4701, and amendments thereto, and one representative of the insurance industry.

(k) The health committee shall report on an annual basis on the following subjects:

- (1) Quality assurance measures;
- (2) disease prevention activities;
- (3) disease management activities; and
- (4) other activities or programs the committee decides to include.

Sec. 39. On January 1, 2006, K.S.A. 2004 Supp. 40-4706 is hereby amended to read as follows: 40-4706. ~~The department of social and rehabilitation services~~ *Kansas health policy authority* shall investigate and pursue all possible policy options to bring into this partnership title XIX and the title XXI eligible families of any eligible employees employed by a small employer. ~~Further, the department of social and rehabilitation services~~ *On and after July 1, 2006, the Kansas health policy authority* shall develop and seek federal approval of any appropriate variance or state plan amendment for the state children's health insurance program established by K.S.A. 38-2001 *et seq.*, and amendments thereto, and the state medical assistance program required to accomplish the purposes of this act. ~~The department of social and rehabilitation services office of medical policy and medicaid~~ *On and after July 1, 2006, the Kansas health policy authority* shall work with the health partnership to develop a single employee application that may be used by the health plan and the medicaid and state children's health insurance program to determine eligibility.

New Sec. 40. On July 1, 2006, the division of health policy and finance and the office of the director of health policy and finance established within the department of administration by section 7, and amendments thereto, are hereby abolished.

Sec. 41. On July 1, 2006, section 9 of this act is hereby amended to read as follows: Sec. 9. (a) ~~On and after July 1, 2006, the director of health policy and finance~~ *Kansas health policy authority* shall coordinate health care planning, administration, and purchasing and analysis of health data for the state of Kansas with respect to the following health programs administered by the state of Kansas:

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

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

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

1397aa et seq., and amendments thereto;

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

(D) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program; and

(E) the medicaid management information system (MMIS); and

(2) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2004 Supp. 39-7,121a through 39-7,121e, and amendments thereto; and

(3) administering any other health programs delegated to the ~~director~~ *Kansas health policy authority* by the governor or by a contract with another state agency.

(b) Except to the extent required by its single state agency role as designated in section 10, and amendments thereto, *or as otherwise provided pursuant to this act* the ~~division of health policy and finance~~ *Kansas health policy authority* shall not be responsible for health care planning, administration, purchasing and data with respect to the following:

(1) The mental health reform act, K.S.A. 39-1601 et seq., and amendments thereto;

(2) the developmental disabilities reform act, K.S.A. 39-1801 et seq., and amendments thereto;

(3) the mental health program of the state of Kansas as prescribed under K.S.A. 75-3304a, and amendments thereto;

(4) the addiction and prevention services prescribed under K.S.A. 65-4001 et seq., and amendments thereto; or

(5) any institution, as defined in K.S.A. 76-12a01, and amendments thereto.

Sec. 42. On July 1, 2006, section 10 of this act is hereby amended to read as follows: Sec. 10. (a) *On and after July 1, 2006*, the ~~division of health policy and finance~~ *Kansas health policy authority* shall be designated as the single state agency with responsibility for supervising and administering the state plan for medical assistance under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto. The ~~director~~ *Kansas health policy authority* shall develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing medical assistance and services to eligible individuals.

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

Sec. 43. On July 1, 2006, section 11 of this act is hereby amended to read as follows: Sec. 11. *On and after July 1, 2006*, the ~~director of health policy and finance~~ *Kansas health policy authority* shall have the power, but is not required, to develop a state plan with regard to medical assistance and services in which the federal government does not participate, within the limits of appropriations therefor.

Sec. 44. On July 1, 2006, section 12 of this act is hereby amended to read as follows: Sec. 12. (a) Subject to the limitations of subsection (b), the ~~director of health policy and finance~~ *Kansas health policy authority* may enter into a contract with one or more state agencies or local governmental entities providing for the state agency or local governmental entity to perform services for the division of health policy and finance or delegating to the state agency or local governmental entity the administration of certain functions, services or programs under any of the programs for which the ~~director of health policy and finance or the division of health policy and finance~~ *Kansas health policy authority* is responsible.

(b) With respect to any plan or program that is subject to or financed in part under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto, the authority of the ~~director of health policy and~~

~~finance or the division of health policy and finance~~ *Kansas health policy authority* to exercise administrative discretion in the administration or supervision of the plan or program and to issue policies and to adopt rules and regulations on plan or program matters shall not be delegated by the ~~director of health policy and finance~~ *Kansas health policy authority*, other than to officials and employees of the ~~division of health policy and finance~~ *authority*. To the extent that the ~~director of health policy and finance~~ *Kansas health policy authority* enters into a contract with a state agency or local governmental entity under this section, the other state agency or the local governmental entity shall not have the authority to change or disapprove any administrative decision of the ~~director of health policy and finance~~ *or the division of health policy and finance* *Kansas health policy authority* or to otherwise substitute its judgment for that of the ~~director of health policy and finance~~ *or the division of health policy and finance* *Kansas health policy authority* with respect to the application of policies issued or rules and regulations adopted by the ~~director of health policy and finance~~ *Kansas health policy authority* for any plan or program that is subject to or financed in part under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto.

Sec. 45. On July 1, 2006, section 13 of this act is hereby amended to read as follows: Sec. 13. (a) *On and after July 1, 2006*, the ~~director of health policy and finance~~ *Kansas health policy authority* shall have the power and duty to establish general policies relating to the health programs under the ~~director authority~~ as provided in section 9, and amendments thereto, and to adopt rules and regulations therefor.

(b) The ~~director of health policy and finance~~ *Kansas health policy authority* shall advise the governor and the legislature on all health programs, policies and plans for which the ~~director of health policy and finance~~ *or the division of health policy and finance* *Kansas health policy authority* is responsible under this act.

(c) The ~~director of health policy and finance~~ *Kansas health policy authority* shall establish an adequate system of financial records. The ~~director of health policy and finance~~ *Kansas health policy authority* shall make periodic reports to the governor and shall make any reports required by federal agencies.

(d) The ~~director of health policy and finance~~ *Kansas health policy authority* may assist other departments, agencies and institutions of the state and federal government and of other states under interstate agreements, when so requested, by performing services in conformity with the purposes of this act.

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

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

(g) The ~~director of health policy and finance~~ *Kansas health policy authority* shall have authority to make grants of funds for the promotion of health programs in the state of Kansas, subject to the provisions of appropriation acts.

(h) The ~~director of health policy and finance~~ *Kansas health policy authority* may receive grants, gifts, bequests, money, or aid of any character whatsoever, for purposes consistent with sections 9 through 14, and amendments thereto.

(i) The ~~director of health policy and finance~~ *Kansas health policy authority* may enter into agreements with other states or the agency designated as the single state agency under the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto, for another state setting out the manner for determining the state of residence in disputed cases

and the bearing or sharing of costs associated with those cases.

(j) ~~The director of health policy and finance~~ *Kansas health policy authority* shall establish such advisory groups as are necessary to assist the division of health policy and finance in carrying out its responsibilities under sections 9 through 14, and amendments thereto, including the following:

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

(2) a policy coordination board consisting of representatives from those state agencies with which the ~~director~~ *Kansas health policy authority* enters into a contract under section 12, and amendments thereto, and representatives from any other state agencies, as determined by the ~~director~~ *Kansas health policy authority*.

(k) ~~The director of health policy and finance~~ *Kansas health policy authority* shall perform any other duties and services that are necessary to carry out the purposes of sections 9 through 14, and amendments thereto, and that are not inconsistent with state law.

Sec. 46. On July 1, 2006, section 14 of this act is hereby amended to read as follows: Sec. 14. On *and after* July 1, ~~2005~~ 2006, except as otherwise provided by this act, all of the following powers, duties and functions of the ~~department of social and rehabilitation services and the secretary of social and rehabilitation services~~ *division of health policy and finance within the department of administration and the director of health policy and finance* are hereby transferred to and imposed upon the ~~division of health policy and finance within the department of administration and the director of health policy and finance~~ *Kansas health policy authority* established by ~~this act section 1, and amendments thereto:~~

(a) All of the powers, duties and functions of the ~~secretary of social and rehabilitation services~~ under chapter 39 of the Kansas Statutes Annotated, and amendments thereto, *that were transferred on July 1, 2005, to the division of health planning and finance and the director of health planning and finance* and that relate to development, implementation and administration of programs that provide medical assistance, health insurance programs or waivers granted thereunder for persons who are needy or uninsured, or both, and that are financed by federal funds or state funds, or both, including the following:

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

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

(b) all of the powers, duties and functions of the ~~secretary of social and rehabilitation services~~ *that were transferred on July 1, 2005, to the division of health planning and finance and the director of health planning and finance* with respect to the health benefits program for children established under K.S.A. 38-2001 et seq., and amendments thereto, and developed and submitted in accordance with federal guidelines established under title XXI of the federal social security act, section 4901 of public law 105-33, 42 U.S.C. § 1397aa et seq., and amendments thereto;

(c) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program;

(d) the medicaid management information system (MMIS);

(e) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2004 Supp. 39-7,121a through 39-7,121e, and amendments thereto; and

(f) all of the powers, duties and functions of the ~~department of social and rehabilitation services and secretary of social and rehabilitation services~~ associated with designation of the ~~department of social and rehabilitation services~~ as the single state agency under title XIX of the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto. *On and after July 1, 2006*, the designation of the ~~department of social and rehabilitation services~~ *division of health and finance* as the single state

agency for medicaid purposes is hereby transferred to the ~~division of health policy and finance~~ *Kansas health policy authority*.

Sec. 47. On July 1, 2006, section 15 of this act is hereby amended to read as follows: Sec. 15. (a) ~~On and after July 1, 2006, the division of health policy and finance within the department of administration and the director of health policy and finance established by this act~~ *Kansas health policy authority* shall be the successor in every way to the powers, duties and functions of the ~~department of social and rehabilitation services and secretary of social and rehabilitation services~~ *division of health policy and finance and the director of health policy and finance* in which the same were vested prior to the effective date of this act ~~July 1, 2006,~~ and that are transferred pursuant to section 14, and amendments thereto. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the ~~division of health policy and finance or the director of health policy and finance within the department of administration~~ *Kansas health policy authority* shall be deemed to have the same force and effect as if performed by the ~~department of social and rehabilitation services or secretary of social and rehabilitation services~~ *division of health policy and finance and the director of health policy and finance* in which such powers, duties and functions were vested prior to July 1, ~~2005~~ 2006.

(b) ~~From July 1, 2005, through June 30~~ *On and after July 1, 2006,* whenever the ~~department of social and rehabilitation services or the secretary of social and rehabilitation services~~ *division of health policy and finance within the department of administration or the director of health policy and finance*, or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, waiver or other document and such reference is in regard to any of the powers, duties or functions transferred to the ~~division of health policy and finance or the director of health policy and finance~~ *Kansas health policy authority* pursuant to section 14, and amendments thereto, such reference or designation shall be deemed to apply to the ~~division of health policy and finance or the director of health policy and finance, respectively~~ *Kansas health policy authority*. The provisions of this subsection shall not apply to references to or designations of the ~~department of social and rehabilitation services or the secretary of social and rehabilitation services~~ *division of health policy and finance within the department of administration or the director of health policy and finance*, or words of like effect, by the provisions of appropriation acts.

(c) All rules and regulations, orders and directives of the ~~secretary of social and rehabilitation services~~ *director of health policy and finance* that relate to the functions transferred by section 14, and amendments thereto, and that are in effect on July 1, ~~2005~~ 2006, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the ~~director of health policy and finance~~ *Kansas health policy authority* until revised, amended, revoked or nullified pursuant to law.

Sec. 48. On July 1, 2006, section 16 of this act is hereby amended to read as follows: Sec. 16. (a) ~~On July 1, 2006, the division of health policy and finance within the department of administration~~ *Kansas health policy authority* shall succeed to all property, property rights, and records that were used for or pertain to the performance of powers, duties and functions transferred to the ~~division~~ *Kansas health policy authority* pursuant to section 14, and amendments thereto. Any conflict as to the proper disposition of property, personnel or records arising under this act shall be determined by the governor, whose decision shall be final.

(b) The provisions of this section shall not apply to the balances of any funds or accounts thereof appropriated or reappropriated for the ~~department of social and rehabilitation services~~ *administration* relating to the powers, duties and functions transferred by section 14, and amendments thereto. All such balances of any funds or accounts thereof shall be transferred by and be subject to the provisions of appropriation acts.

Sec. 49. On July 1, 2006, section 17 of this act is hereby amended to read as follows: Sec. 17. (a) (1) All officers and employees of the ~~department of social and rehabilitation services~~ *division of health policy and finance within the department of administration* who, immediately prior to the effective date of this act ~~July 1, 2006,~~ are engaged in the exercise and performance of the powers, duties and functions transferred to the ~~division of health policy and finance or the director of health policy and finance~~ *Kansas health policy authority* by section 14, and amendments

thereto, are transferred to the ~~department of administration~~ *Kansas health policy authority* on July 1, ~~2005~~ 2006, or on a later date or dates determined by the ~~secretary of social and rehabilitation services~~ *Kansas health policy authority* and the secretary of administration.

(2) All officers and employees of the ~~department of social and rehabilitation services administration~~ who are determined by the ~~secretary of social and rehabilitation services~~ *Kansas health policy authority* and the secretary of administration to be engaged in providing administrative, technical or other support services that are essential to the exercise and performance of the powers, duties and functions transferred by section 14, and amendments thereto, are transferred to the ~~department of administration~~ *Kansas health policy authority* on July 1, ~~2005~~ 2006, or on a later date or dates determined by the ~~secretary of social and rehabilitation services~~ *Kansas health policy authority* and the secretary of administration.

(3) All classified employees transferred under this subsection (a) shall retain their status as classified employees. Thereafter, except as otherwise provided by this act, the ~~secretary of administration~~ *Kansas health policy authority* may convert vacant classified positions to positions that are not classified as otherwise provided by law. The positions of all officers and employees of the ~~department of administration~~ *Kansas health policy authority* performing duties and functions under the Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 et seq., and amendments thereto, that are required under applicable federal law, rules and regulations, and policies to be under a merit-based personnel system, shall be in the classified service under the Kansas civil service act.

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

Sec. 50. On July 1, 2006, section 18 of this act is hereby amended to read as follows: Sec. 18. Liability for accrued compensation or salaries of each officer and employee who is transferred to the *Kansas health policy authority* from the department of administration under section 17, and amendments thereto, shall be assumed and paid by the ~~department of administration~~ *Kansas health policy authority* on July 1, ~~2005~~ 2006, or on the date of the transfer, whichever is later.

Sec. 51. On July 1, 2006, K.S.A. 39-7,116, as amended by section 22 of this act, is hereby amended to read as follows: 39-7,116. As used in this act:

(a) “Restrictive drug formulary” means a list of prescription-only drugs established by the department which excludes in whole or in part reimbursement by the department for such drugs under a program administered by the department.

(b) The words and phrases used in this section shall have the same meanings as are ascribed to such words and phrases under K.S.A. 65-1626 and amendments thereto.

(c) “Physician” means a person licensed to practice medicine and surgery.

(d) ~~“Director”~~ “*Authority*” means the ~~director of health policy and finance of the division of health policy and finance~~ *Kansas health policy authority* established by ~~section 7~~ *section 1*, and amendments thereto.

Sec. 52. On July 1, 2006, K.S.A. 2004 Supp. 39-7,118, as amended by section 23 of this act, is hereby amended to read as follows: 39-7,118. The ~~director of health policy and finance~~ *Kansas health policy authority* shall implement a drug utilization review program with the assistance of a medicaid drug utilization review board as provided in K.S.A. 39-7,119 and amendments thereto to assure the appropriate utilization of drugs by patients receiving medical assistance under the medicaid program. The drug utilization review program shall include:

(a) Monitoring of prescription information including overutilization

and underutilization of prescription-only drugs;

(b) making periodic reports of findings and recommendations to the ~~director of health policy and finance~~ *Kansas health policy authority* and the United States department of health and human services regarding the activities of the board, drug utilization review programs, summary of interventions, assessments of education interventions and drug utilization review cost estimates;

(c) providing for prospective and retrospective drug utilization review, as specified in the federal omnibus budget reconciliation act of 1990 (public law 101-508);

(d) monitoring provider and recipient compliance with program objectives;

(e) providing educational information on state program objectives, directly or by contract, to private and public sector health care providers to improve prescribing and dispensing practices;

(f) reviewing the increasing costs of purchasing prescription drugs and making recommendations on cost containment;

(g) reviewing profiles of medicaid beneficiaries who have multiple prescriptions above a level specified by the board; and

(h) recommending any modifications or changes to the medicaid prescription drug program.

Sec. 53. On July 1, 2006, K.S.A. 2004 Supp. 39-7,119, as amended by section 24 of this act, is hereby amended to read as follows: 39-7,119.

(a) There is hereby created the medicaid drug utilization review board which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the Kansas medicaid program.

(b) Except as provided in subsection (i), the board shall consist of at least seven members appointed as follows:

(1) Two licensed physicians actively engaged in the practice of medicine, nominated by the Kansas medical society and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of four nominees;

(2) one licensed physician actively engaged in the practice of osteopathic medicine, nominated by the Kansas association of osteopathic medicine and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of four nominees;

(3) two licensed pharmacists actively engaged in the practice of pharmacy, nominated by the Kansas pharmacy association and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of four nominees;

(4) one person licensed as a pharmacist and actively engaged in academic pharmacy, appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of four nominees provided by the university of Kansas;

(5) one licensed professional nurse actively engaged in long-term care nursing, nominated by the Kansas state nurses association and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of four nominees.

(c) The ~~director of health policy and finance~~ *Kansas health policy authority* may add two additional members so long as no class of professional representatives exceeds 51% of the membership.

(d) The physician and pharmacist members shall have expertise in the clinically appropriate prescribing and dispensing of outpatient drugs.

(e) The appointments to the board shall be for terms of three years. In making the appointments, the ~~director of health policy and finance~~ *Kansas health policy authority* shall provide for geographic balance in the representation on the board to the extent possible. Subject to the provisions of subsection (i), members may be reappointed.

(f) The board shall elect a chairperson from among board members who shall serve a one-year term. The chairperson may serve consecutive terms.

(g) The board, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(h) All actions of the medicaid drug utilization review board shall be upon the affirmative vote of five members of the board and the vote of each member present when action was taken shall be recorded by roll call vote.

(i) Upon the expiration of the term of office of any member of the medicaid drug utilization review board on or after the effective date of this act and in any case of a vacancy existing in the membership position of any member of the medicaid drug utilization review board on or after the effective date of this act, a successor shall be appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* so that as the terms of members expire, or vacancies occur, members are appointed and the composition of the board is changed in accordance with the following and such appointment shall be made by the ~~director of health policy and finance~~ *Kansas health policy authority* in the following order of priority:

(1) One member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a hospital and who is nominated by the Kansas hospital association and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(2) one member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a licensed adult care home and who is nominated by the state board of pharmacy and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(3) one member shall be a licensed physician who is actively engaged in the general practice of allopathic medicine and who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(4) one member shall be a licensed physician who is actively engaged in mental health practice providing care and treatment to persons with mental illness, who has practice experience with the state medicaid plan and who is nominated by the Kansas psychiatric society and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(5) one member shall be a licensed physician who is the medical director of a nursing facility, who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(6) one member shall be a licensed physician who is actively engaged in the general practice of osteopathic medicine, who has practice experience with the state medicaid plan and who is nominated by the Kansas association of osteopathic medicine and who is appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(7) one member shall be a licensed pharmacist who is actively engaged in retail pharmacy, who has practice experience with the state medicaid plan and who is nominated by the state board of pharmacy and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more nominees;

(8) one member shall be a licensed pharmacist who is actively engaged in or who has experience in research pharmacy and who is nominated jointly by the Kansas task force for the pharmaceutical research and manufacturers association and the university of Kansas and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more jointly nominated persons; and

(9) one member shall be a licensed advanced registered nurse practitioner or physician assistant actively engaged in the practice of providing the health care and treatment services such person is licensed to perform, who has practice experience with the state medicaid plan and who is nominated jointly by the Kansas state nurses' association and the Kansas academy of physician assistants and appointed by the ~~director of health policy and finance~~ *Kansas health policy authority* from a list of two or more jointly nominated persons.

Sec. 54. On July 1, 2006, K.S.A. 2004 Supp. 39-7,120, as amended by section 25 of this act, is hereby amended to read as follows: 39-7,120.

(a) The ~~director of health policy and finance~~ *Kansas health policy authority* shall not restrict patient access to prescription-only drugs pursuant to a program of prior authorization or a restrictive formulary except by rules and regulations adopted in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto. Prior to the promulgation of any such rules and

regulations, the ~~director of health policy and finance~~ *Kansas health policy authority* shall submit such proposed rules and regulations to the medicaid drug utilization review board for written comment. The ~~director of health policy and finance~~ *Kansas health policy authority* may not implement permanent prior authorization until 30 days after receipt of comments by the drug utilization review board.

(b) When considering recommendations from the medicaid drug utilization review board regarding the prior authorization of a drug, the ~~director of health policy and finance~~ *Kansas health policy authority* shall consider the net economic impact of such prior authorization, including, but not limited to, the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services which may be related to the prior authorization of such drug.

Sec. 55. On July 1, 2006, K.S.A. 39-7,121, as amended by section 26 of this act, is hereby amended to read as follows: 39-7,121. (a) The ~~director of health policy and finance~~ *Kansas health policy authority* shall establish and implement an electronic pharmacy claims management system in order to provide for the on-line adjudication of claims and for electronic prospective drug utilization review.

(b) The system shall provide for electronic point-of-sale review of drug therapy using predetermined standards to screen for potential drug therapy problems including incorrect drug dosage, adverse drug-drug interactions, drug-disease contraindications, therapeutic duplication, incorrect duration of drug treatment, drug-allergy interactions and clinical abuse or misuse.

(c) The ~~director of health policy and finance~~ *Kansas health policy authority* shall not utilize this system, or any other system or program to require that a recipient has utilized or failed with a drug usage or drug therapy prior to allowing the recipient to receive the product or therapy recommended by the recipient's physician.

Sec. 56. On July 1, 2006, K.S.A. 2004 Supp. 39-7,121a, as amended by section 27 of this act, is hereby amended to read as follows: 39-7,121a. (a) The ~~director of health policy and finance~~ *Kansas health policy authority* may establish an advisory committee pursuant to K.S.A. 75-5313, and amendments thereto, to advise the ~~director of health policy and finance~~ *Kansas health policy authority* in the development of a preferred formulary listing of covered drugs by the state medicaid program.

(b) The ~~director of health policy and finance~~ *Kansas health policy authority* shall evaluate drugs and drug classes for inclusion in the state medicaid preferred drug formulary based on safety, effectiveness and clinical outcomes of such treatments. In addition, the ~~director of health policy and finance~~ *Kansas health policy authority* shall evaluate drugs and drug classes to determine whether inclusion of such drugs or drug classes in a starter dose program would be clinically efficacious and cost effective. If the factors of safety, effectiveness and clinical outcomes among drugs being considered in the same class indicate no therapeutic advantage, then the ~~director of health policy and finance~~ *Kansas health policy authority* shall consider the cost effectiveness and the net economic impact of such drugs in making recommendations for inclusion in the state medicaid preferred drug formulary. Drugs which do not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness or clinical outcomes over other drugs in the same class which have been selected for the preferred drug formulary may be excluded from the preferred drug formulary and may be subject to prior authorization in accordance with state and federal law, except, prior to July 1, 2003, where a prescriber has personally written "dispense as written" or "D.A.W.", or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637, and amendments thereto.

(c) The ~~director of health policy and finance~~ *Kansas health policy authority* shall consider the net economic impact of drugs selected or excluded from the preferred formulary and may gather information on the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services.

(d) The ~~director of health policy and finance~~ *Kansas health policy authority* may accept all services, including, but not limited to, disease state management, associated with the delivery of pharmacy benefits un-

der the state medicaid program having a determinable cost effect in addition to the medicaid prescription drug rebates required pursuant to 42 U.S.C. section 1396r-8.

(e) The state medicaid preferred drug formulary shall be submitted to the medicaid drug utilization review board for review and policy recommendations.

Sec. 57. On July 1, 2006, K.S.A. 2004 Supp. 39-7,121d, as amended by section 28 of this act, is hereby amended to read as follows: 39-7,121d.

(a) The state medicaid plan shall include provisions for a program of differential dispensing fees for pharmacies that provide prescriptions for adult care homes under a unit dose system in accordance with rules and regulations of the state board of pharmacy and that participate in the return of unused medications program under the state medicaid plan.

(b) The state medicaid plan shall include provisions for differential ingredient cost reimbursement of generic and brand name pharmaceuticals. The ~~director of health policy and finance~~ *Kansas health policy authority* shall set the rates for differential cost reimbursement of generic and brand name pharmaceuticals by rules and regulations.

Sec. 58. On July 1, 2006, K.S.A. 2004 Supp. 39-7,121e, as amended by section 29 of this act, is hereby amended to read as follows: 39-7,121e.

(a) Except where a prescriber has personally written "dispense as written" or "D.A.W.," or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637 and amendments thereto, the ~~director of health policy and finance~~ *Kansas health policy authority* may limit reimbursement for a prescription under the medicaid program to the multisource generic equivalent drug.

(b) No pharmacist participating in the medical assistance program shall be required to dispense a prescription-only drug that will not be reimbursed by the medical assistance program.

Sec. 59. On July 1, 2005, K.S.A. 39-7,116 and 39-7,121 and K.S.A. 2004 Supp. 39-7,118, 39-7,119, 39-7,120, 39-7,121a, 39-7,121d and 39-7,121e are hereby repealed.

Sec. 60. On January 1, 2006, K.S.A. 65-6801, 65-6804, 65-6805, 65-6806, 65-6807, 65-6808 and 65-6809 and K.S.A. 2004 Supp. 40-4702, 40-4706 and 65-6803 are hereby repealed.

Sec. 61. On July 1, 2006, sections 7 through 18 of this act and K.S.A. 39-7,116, as amended by section 22 of this act, and 39-7,121, as amended by section 26 of this act, and K.S.A. 2004 Supp. 39-7,118, as amended by section 23 of this act, 39-7,119, as amended by section 24 of this act, 39-7,120, as amended by section 25 of this act, 39-7,121a, as amended by section 27 of this act, 39-7,121d, as amended by section 28 of this act, and 39-7,121e, as amended by section 29 of this act, are hereby repealed.

Sec. 62. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 10, 2005.
