



February 24, 2020

EXECUTIVE REORGANIZATION ORDER 44

Executive Reorganization Order (ERO) No. 44 transfers all jurisdiction, powers, functions, and duties for the Kansas Department for Aging and Disability Services (KDADS), Juvenile Services from the Department of Corrections (DOC), and oversight of the Kansas Juvenile Correctional Complex to the Department for Children and Families (DCF), and renames this agency the Kansas Department of Human Services (DHS), effective July 1, 2020. The ERO specifies that whenever the Secretaries of, or names of, these agencies, or predecessor agencies—the Department of Social and Rehabilitation Services, Department on Aging, and the Juvenile Justice Authority—are referred to or designated by any statute, rule and regulation, contract, or other document, such reference should be deemed to apply to DHS.

Beginning on July 1, 2020, all the jurisdiction, powers, functions, and duties of DCF, KDADS, Juvenile Services from the DOC, and oversight of the Kansas Juvenile Correctional Complex, for which the agencies are serving as the operating agency or grants manager for another agency, are transferred to and imposed upon DHS and the Secretary of Human Services. DHS will be the successor to the powers, duties, and functions of DCF, KDADS, Juvenile Services from the DOC, oversight of the Kansas Juvenile Correctional Complex, and any potential remaining rights, titles, or interest belonging to the Department of Social and Rehabilitation Services, Department on Aging, and Juvenile Justice Authority in real property. Actions performed by DHS will have the same force and effect as if performed by the above entities, in which the same powers, duties, and functions were vested prior to July 1, 2020.

Kansas Department for Children and Families

Rules and regulations authority; fees, funds, and account balances; property and property rights; and liability regarding DCF will be succeeded by DHS.

Kansas Department for Aging and Disability Services

Rules and regulations authority; fees, funds, grant funds, loan repayment funds, and account balances; property and property rights; and liability for accrued compensation or salaries of personnel for KDADS will be transferred from KDADS to DHS. All current policies, procedures, orders, and directives will continue to be effective until revised, amended, or nullified pursuant to law. The Secretary of Human Services will appoint officers and employees as needed to carry out necessary powers and duties for former KDADS programs and will determine the manner in which the following offices and programs are organized within DHS: the Office of the Secretary of KDADS; Aging, Disability, and Behavioral Health programs; oversight of the State Hospitals; and the Survey, Certification, and Credentialing programs.

KDADS personnel performing duties prior to the ERO will retain all retirement benefits and leave balances upon being transferred to DSH, however the Secretary of Human Services may eliminate positions upon a determination that individuals are not performing necessary services. Classified employees will remain classified, however the Secretary of Human Services has discretion to convert vacant positions from classified to unclassified.

The Aging and Disability Community Services and Programs Commission; the Behavioral Health Services Commission; the State Hospital Commission; the Survey, Certification, and Credentialing Commission; and the Financial and Information Services Commission are transferred from KDADS to DHS. The Secretary of Human Services will determine the manner in which the following programs are organized: Mental Health and Substance Abuse; Serious Emotionally Disturbed, Intellectual and Developmental Disability, Physical Disability, Brain Injury, Autism, Technology Assisted, and the Frail and Elderly Medicaid Home and Community Based Services Waivers and programs; licensure and regulation of Community Mental Health Centers; regulation of Community Developmental Disability Organizations; licensure of private psychiatric hospitals; licensure of Psychiatric Residential Treatment Facilities; licensure and regulation of facilities and providers of residential services; licensure and regulation of providers of addiction and prevention services; licensure and regulation of providers of services and administration for the Older Americans Act, Senior Care Act, and Medicare programs including the Senior Health Insurance Counseling for Kansas, the senior Medicare Patrol, and the Medicare Improvements for Patients and Providers Act, the Client Assessment Referral and Evaluation program, the respite for caregivers program, the Program for All-Inclusive Care for the Elderly; oversight of the state hospitals; licensure of dietitians and adult care home administrators; certification of residential care facility operators, activity directors, social service designees, nurse aides, medication aides, and home health aides; maintenance of the Kansas nurse aide registry; the Criminal History Record Check program; receivership of facilities; and any other programs and related grants not specifically named, but administered by these commissions prior to the effective date of the ERO.

Juvenile Services and Oversight of the Kansas Juvenile Correctional Complex

Rules and regulations authority for persons admitted and operations; fees, funds, grant funds, advisory group funds, loan repayment funds, and account balances; property and property rights; and liability for all accrued compensation or salaries of officers and employees for Juvenile Services Programs and oversight of the Juvenile Correctional Complex affected by this order under the DOC; except the right, title, and interest of Larned Juvenile Correctional Facility and funds related to the maintenance and management of Larned Juvenile Correctional Facility; will be transferred from the DOC to DHS. All existing rules and regulations, internal management policies and procedures, standards, facility orders, post orders, and directives of the Department of Correction relating to the Juvenile Services Program and oversight of the Juvenile Correctional Complex will continue to be effective until revised, amended, or nullified pursuant to law. Personnel previously performing duties for the Juvenile Services Program and oversight of the Kansas Juvenile Correctional Complex prior to the ERO will retain all retirement benefits and leave balances upon being transferred to DHS; however, the Secretary of Human Services may eliminate positions upon a determination that individuals are not performing necessary services. Classified employees will remain classified; however, the Secretary of Human Services has discretion to convert vacant positions from classified to unclassified service. The memorandum of agreement between the DOC and Kansas Department of Administration and Teamsters Union Local #696 will remain effective after the ERO.

After the ERO is effective, the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention will report to the Secretary of Human Services; the Kansas Correctional Industries is authorized to continue to provide canteen services to the juvenile facilities; and DHS will participate in the Interstate Compact for Juveniles. For the Compact, the Secretary of Human Services and the Secretary of Corrections will execute a memorandum of understanding for transferring representation on Compact and share staffing and other agency resources for the administration of interstate compacts to economically meet the needs of juvenile services programs administered by DHS and the needs of adult services administered by the DOC.

Custodian of Records

DHS will succeed to the records of DCF and KDADS used for the performance of powers, duties, and functions transferred to it by this order. DHS will have legal custody of all records, memorandum, writings, entries, prints, representations or combinations of any act, transaction, occurrence, or event of the Juvenile Services Program and oversight of the Kansas Juvenile Correctional Complex and any agency or office transferred under this ERO, except records relating to the maintenance and management of the Larned Juvenile Correctional Facility, which will remain with the DOC.

Conflicts and Legal Actions

Any conflict that arises regarding the transfers described above will be resolved by the Governor, whose decision will be final. The ERO states the status of lawsuits or other proceedings commenced or which could have commenced and the status of criminal actions commenced or which could have been commenced against agencies referenced above will not abate due to the ERO.

Background

House Action

The Governor transmitted ERO No. 44 to the House of Representatives on January 30, 2020. It was referred to the House Committee on Appropriations on January 31, 2020.

In the House Committee on Appropriations hearing, the Secretary for Children and Families and Secretary for Aging and Disability Services provided proponent testimony that combining the agencies is necessary to best serve Kansans, merging will allow for more efficient services, and these efficiencies will allow for prevention earlier in the stream of service. A representative from the Kansas Area Agencies on Aging Association presented testimony noting ERO No. 44 aims to support access to service centers, strengthen the referral process for services and supports, and create an opportunity for the new agency to share resources and be more responsive. Written-only proponent testimony was provided by representatives of the Children's Alliance of Kansas, the Douglas County Citizens Commission on Alcoholism, Grassroots Advocates for Independent Living, Harvesters Community Food Network, Kansas State Alliance of YMCAs, and KVC Kansas.

A representative of Little Government Relations provided opponent testimony in support of juvenile services and the oversight of the Kansas Juvenile Correctional Complex remaining in the DOC. Written-only opponent testimony was submitted by a representative of the Restorative Justice Authority for the 11th Judicial District.

Neutral testimony was provided by a representative of the Juvenile Community Advisory Committee, who noted possible benefits of the ERO, but expressed concerns the ERO could destabilize positive outcomes arising since the passage of 2016 SB 367. Written-only neutral testimony was provided by a private citizen.

The House Committee introduced HR 6032, disapproving ERO No. 44.

Senate Action

The Governor transmitted ERO No. 44 to the Senate on January 30, 2020. It was referred to the Senate Committee on Public Health and Welfare on January 31, 2020.

In the two-day Senate Committee on Public Health and Welfare hearing, the Secretary for Children and Families and Secretary for Aging and Disability Services provided proponent testimony that combining the agencies is necessary to better serve Kansans; merging would better align juvenile services with the goal of 2016 SB 367; allows for targeting of employment and work goals for all persons within a single division rather than in multiple divisions and two agencies; and would overcome barriers on data sharing, fund sharing, and community-focused service centers. A representative from the Kansas Area Agencies on Aging Association presented testimony on expansion of access and reconnection to communities *via* the current DCF service centers. Written-only proponent testimony was submitted by representatives of the Children's Alliance of Kansas, Douglas County Citizens Commission on Alcoholism, Grassroots Advocates for Independent Living, Interhab, Kansas State Alliance of YMCAs, and KVC Kansas.

A representative of the Little Government Relations, on behalf of the Kansas Community Corrections Association, presented opponent testimony in support of juvenile services and the oversight of the Kansas Juvenile Correctional Complex remaining within the DOC to allow for 2016 SB 367 changes to continue without additional upheaval. Written-only opponent testimony was submitted by representatives of the Juvenile Community Advisory Committee and the Restorative Justice Authority, 11th Judicial District.

The Senate Committee on Public Health and Welfare introduced SR 1761, disapproving ERO 44, and submitted the resolution to the Senate Committee of the Whole on February 20, 2020.

Fiscal Information

No fiscal note on ERO No. 44 was prepared. The Governor's recommendation, which was included in *The FY 2021 Governor's Budget Report*, includes the transfer of funding associated with ERO No. 44 from KDADS and DOC to the newly created DHS.

History of Executive Reorganization of Agencies

Since 1973, several EROs adjusted or would have adjusted the organization of the agencies involved in ERO No. 44, including:

- ERO No. 1 (1973) created the State Department of Social and Rehabilitation Services headed by an appointed Secretary;
- ERO No. 3 (1974) created the State Department of Health and Environment headed by an appointed Secretary;
- Disapproved ERO No. 16 (1977) would have established the Division of Services to the Aging within the State Department of Social and Rehabilitation Services;
- ERO No. 17 (1980) reorganized and clarified various functions within the State Department of Social and Rehabilitation Services;
- ERO No. 20 (1982) established Juvenile Offender Services within the State Department of Social and Rehabilitation Services;
- Disapproved ERO No. 33 (2005) would have established the Kansas Health Policy Authority (*Note: KSA 75-7401 established the creation of the Health Policy Authority through enactment of authorizing legislation during the 2005 Legislative Session*);
- ERO No. 38 (2011) reorganized the Kansas Health Policy Authority into the Division of Health Care Finance within the Department of Health and Environment;
- ERO No. 41 (2012) consolidated the financing arm of Medicaid in the Kansas Department of Health and Environment Division of Health Care Finance, renamed the former Department on Aging the Department for Aging and Disability Services, consolidated all disability waiver and mental health services from the Department of Social and Rehabilitation Services into the newly created Department for Aging and Disability Services, and renamed the Department of Social and Rehabilitation Services as the Department for Children and Families;
- ERO No. 42 (2013) abolished the Juvenile Justice Authority and transferred the jurisdiction, powers, functions, and duties of the Juvenile Justice Authority and the Commissioner of Juvenile Justice to the DOC and the Secretary of Corrections; and
- ERO No. 43 (2015) transferred Medicaid eligibility processing responsibility from the Kansas Department for Children and Families to the Kansas Department of Health and Environment, effective January 1, 2016, and transferred foster care licensing duties from Kansas Department of Health and Environment to DCF, effective July 1, 2015.