

HOUSE BILL No. 2608

AN ACT concerning the Kansas health policy authority; relating to administrative hearings; amending K.S.A. 2005 Supp. 75-37,121, 75-7413 and 75-7414 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ or contract with presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers in response to a requesting agency's request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection (h).

(e) The secretary of administration may adopt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

(2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern presiding officers; and

(3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may implement the provisions of this section and rules and regulations adopted under its authority.

(g) The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2005: Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas animal health department and Kansas insurance department.

(2) On and after July 1, 2006: Emergency medical services board, emergency medical services council, *Kansas health policy authority* and Kansas human rights commission.

(3) On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, state treasurer, pooled money investment board, Kansas department of wildlife and parks and state board of tax appeals.

(4) On and after July 1, 2008: Department of human resources, state corporation commission, state conservation commission, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009: Except for administrative hearings conducted by the state board of pharmacy, Kansas dental board, state board of veterinary examiners, behavioral sciences regulatory board, state board

of cosmetology, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, Kansas board of barbering, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, state board of healing arts, Kansas state banking board, state department of credit unions, office of the securities commissioner of Kansas and state board of technical professions, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).

(i) With respect to hearings before the secretary of agriculture in accordance with the Kansas administrative procedures act, the secretary of agriculture or a hearing officer from the office of administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.

(j) (1) Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed

to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 2. K.S.A. 2005 Supp. 75-7413 is hereby amended to read as follows: 75-7413. 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 K.S.A. 2005 Supp. 75-7406, 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. 2005 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; *and*

(g) *hearings conducted pursuant to the transfer of powers, duties and functions conveyed through this section shall be conducted in accordance with the Kansas administrative procedure act utilizing a presiding officer from the office of administrative hearings.*

Sec. 3. K.S.A. 2005 Supp. 75-7414 is hereby amended to read as follows: 75-7414. (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 K.S.A. 2005 Supp. 75-7413, 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 K.S.A. 2005 Supp. 75-7413, 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 K.S.A. 2005 Supp. 75-7413, 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.

(d) *Hearings conducted pursuant to the transfer of powers, duties and functions conveyed through this section shall be conducted in accordance with the Kansas administrative procedure act utilizing a presiding officer from the office of administrative hearings.*

Sec. 4. K.S.A. 2005 Supp. 75-37,121, 75-7413 and 75-7414 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.