

## 2012 Kansas Statutes

**75-5945. Long-term care programs; transfer of programs and personnel from social and rehabilitation services; powers and duties of secretary of aging; state plan; rules and regulations; transfer, appointment and status of personnel; property, records and contracts; reports; investigations, procedures and appeals; payments; services provided by area agencies, eligibility for federal financial participation.** The secretary of aging shall administer the long-term care programs and services transferred in this act. All powers granted in this act are to be interpreted and administered in conformity with federal grant requirements as applicable to programs transferred, even if such powers are limited or excluded:

(a) The secretary of aging shall develop state plans or state plan amendments or portions of state plans or state plan amendments in consultation with the secretary of social and rehabilitation services relating to long-term care programs as provided under the federal social security act. The secretary of aging shall not develop any state plan amendment in duplication of or contrary to any state plan otherwise developed by the secretary of social and rehabilitation services. The secretary of aging may cooperate with the federal government on any other program providing federal financial assistance and long-term care services not otherwise inconsistent with this act. The secretary of aging is not required to develop a state plan for participation or cooperation in all federal social security act programs or other federal programs that are available for long-term care services. The secretary of aging may develop a state plan in regard to long-term care services in which the federal government does not participate.

(b) The secretary of aging, in consultation with the secretary of social and rehabilitation services, may determine the general policies relating to all forms of long-term care programs which are administered or supervised by the secretary of aging and to adopt the rules and regulations therefor.

(c) The secretary of aging shall adopt rules and regulations necessary to protect the confidentiality of all client information as required by federal and state statutes and regulations.

(d) The secretary of aging shall provide that all officers and employees of the department of social and rehabilitation services who are engaged in the exercise and performance of the powers, duties and functions of the programs transferred in this act and are determined by the secretary to be necessary to perform such functions are transferred to the department on aging. Officers and employees of the department of social and rehabilitation services shall retain all retirement benefits and leave rights which had accrued or vested prior to each date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous.

All transfers, layoffs and abolition of classified service positions under the Kansas civil service act which may result from program transfers shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. The secretary of aging may appoint attorneys as are necessary to effectively carry out the mission of the department and the programs transferred by this act. The attorneys appointed shall be in the unclassified service under the Kansas civil service act, shall serve at the pleasure of the secretary, and shall receive an annual salary fixed by the secretary and approved by the governor. Nothing in this act shall affect the classified status of any transferred person employed as an attorney by the department of social and rehabilitation services prior to the date of transfer and the unclassified status shall apply only to persons appointed to such attorney positions on or after the effective date of this act.

(e) The secretary of aging shall establish an adequate system of financial records. The secretary of aging and the secretary of social and rehabilitation services shall execute agreements for the department of social and rehabilitation services and the department on aging to share data systems necessary to maximize the efficiency of program operations and to ensure that federal grant requirements are met. The secretary of aging shall make annual reports to the governor and shall make any reports required by federal agencies.

(f) The secretary of aging may receive, have custody of, protect, administer, disburse, dispose of and account for federal or private equipment, supplies and property which is given, granted, loaned or advanced to the state of Kansas for long-term care programs after the transfer of such programs pursuant to this act.

(g) The secretary of aging 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 purpose of this act.

(h) The secretary of aging may lease real and personal property whenever the property is not available through the state or a political subdivision of the state for performing the functions required by this act.

(i) All contracts shall be made in the name of "secretary of aging" and in that name the secretary may sue and be sued on such contracts. 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 appropriations act of this state.

(j) The secretary of aging, except as set forth in the Kansas administrative procedure act and paragraphs 5 and 6, shall provide a fair hearing for any person who is an applicant, client or other interested person who appeals from the decision or final action of any agent or employee of the secretary. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the requirements of any applicable federal grant programs.

(1) The secretary of aging may investigate (A) any claims and vouchers and persons, businesses and other entities who provide services to the secretary of aging or to clients served by long-term care programs under the administration of the secretary, and (B) the eligibility of persons to receive services under long-term care programs under the administration of the secretary, and (C) the eligibility of providers of services.

(2) When conducting investigations, the secretary of aging may issue subpoenas; compel the attendance of witnesses at any place in this state; compel the production of any records, books, papers or other documents considered necessary; administer oaths; take testimony; and render decisions. If a person refuses to comply with any subpoena issued under this section or to testify to any matter regarding which the person may lawfully be questioned, the district court of any county, on application of the secretary, may issue an order requiring the person to comply with the subpoena and to testify. Failure to obey the order of the court may be punished by the court as a contempt of court. Unless incapacitated, the person placing a claim or defending a privilege before the secretary shall appear in person or by authorized representative and may not be excused from answering questions and supplying information, except in accordance with the person's constitutional rights and lawful privileges.

(3) The presiding officer may close any portion of a hearing conducted under the Kansas administrative procedure act when matters made confidential, pursuant to federal or state law or regulation are under consideration.

(4) Except as provided in subsection (d) of K.S.A. 77-511, and amendments thereto, and notwithstanding the other provisions of the Kansas administrative procedure act, the secretary of aging may enforce any order prior to the disposition of a person's application for an adjudicative proceeding unless prohibited from such action by federal or state statute, regulation or court order.

(5) This appeals procedure shall not have jurisdiction to determine the facial validity of a state or federal statute, rule or regulation.

(6) The secretary of aging shall not be required to provide a hearing if: (A) The appeals procedure lacks jurisdiction over the subject matter; (B) resolution of the matter does not require the secretary to issue an order that determines an applicant's or client's legal rights, duties, privileges, immunities or other legal interests; (C) the matter was not timely submitted for appeal pursuant to regulation or other provision of law; (D) the matter was not submitted in a form substantially complying with any applicable provision of law; or (E) the matter is under the prior or concurrent jurisdiction of the secretary of social and rehabilitation services pursuant to K.S.A. 75-3306, and amendments thereto.

(k) The secretary of aging may establish payment schedules for each group of providers for the long-term care programs. The secretary shall consider budgetary constraints as a factor in establishing payment schedules so long as the result does not conflict with applicable federal law. The secretary shall not be required to make any payments under any federal grant program which do not meet the requirements for state and federal financial participation. The secretary shall not be required to establish or pay at rates which are in excess of the minimum necessary payment requirements regardless of excess costs incurred by a provider.

(l) The secretary of aging shall review all rules and regulations of the department on aging and shall amend and revoke the rules and regulations to conform to the purposes of this act.

(m) The secretary of aging may implement a program which would permit the value of any services provided by the area agencies on aging for the benefit of any long-term care programs administered by the secretary to be considered eligible for federal financial participation for such long-term care programs.

**History:** L. 1996, ch. 271, § 2; L. 1998, ch. 95, § 4; July 1.