Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

The Reorganization of the U.S. Department of Health and Human Services: Selected Legal Issues

May 8, 2025

On March 27, 2025, the U.S. Department of Health and Human Services (HHS, or the Department) announced a reorganization plan to consolidate several of its operating divisions and offices in accordance with an executive order. Among the changes, the press release describes

- the creation of the Administration for Healthy America (AHA), which will combine "into a new, unified entity" five existing HHS operating divisions and offices: the Office of the Assistant Secretary for Health (OASH), the Health Resources and Services Administration (HRSA), the Substance Abuse and Mental Health Services Administration (SAMHSA), the Agency for Toxic Substances and Disease Registry (ATSDR), and the National Institute for Occupational Safety and Health (NIOSH);
- the "transfer" of the Administration for Strategic Preparedness and Response (ASPR) to the Centers for Disease Control and Prevention (CDC);
- the "[r]eorganization" of the Administration for Community Living (ACL) to "integrat[e]" its critical programs "into other HHS agencies, including the Administration for Children and Families (ACF), [the Assistant Secretary for Planning and Evaluation (ASPE)], and the Centers for Medicare and Medicaid Services (CMS)";
- the creation of an Office of Strategy that "merge[s]" ASPE with the Agency for Healthcare Research and Quality (AHRQ); and
- the closure of 5 of HHS's 10 regional offices.

A fact sheet accompanying the press release further states that the plan will entail personnel cuts at certain HHS agencies, such as the Food and Drug Administration, that are not being consolidated. In total, the fact sheet states that the plan will reduce HHS's full-time employees by 20,000, or about 25%.

The press release and fact sheet leave several unanswered questions regarding the implementation of the reorganization plan. For example, it is unclear what it means for AHA to "combine" the five existing agencies—some of which are statutorily established—as well as who will be the AHA Administrator and what functions will the AHA Administrator serve with respect to these agencies. As another example, to

Congressional Research Service
https://crsreports.congress.gov
LSB11311

the extent the plan appears to dissolve ACL, at least in name, it is unclear how its functions would be assigned to other entities. Amid the uncertainties, some Members of Congress have questioned the legality of the Secretary's actions. On May 5, 2025, 19 states and the District of Columbia filed suit to challenge the reorganization and personnel cuts described and implemented following the March 27, 2025, announcement, alleging impacts to the plaintiff states resulting in particular from HHS's personnel and program cuts.

This Sidebar provides an overview of the legal framework governing the HHS Secretary's authority to reorganize the agency and analyzes selected legal questions—stemming from relevant authorizing statutes, appropriations, and constitutional principles—raised by the reorganization plan described in the March 27, 2025, press release. The Sidebar also highlights examples of factual questions that may be relevant to the authority analysis. The Sidebar does not address the Secretary's authority to reduce the HHS workforce, or to eliminate or reduce particular HHS programs or functions.

Background on the HHS Secretary's Authority to Reorganize the Agency

As the Supreme Court has stated, federal agencies "are creatures of statute" that have only the authority that Congress extends to them. Thus, the scope of an agency head's authority to reorganize an agency is often an agency-specific analysis of the powers granted by Congress to that agency head, restrictions imposed by Congress on that power, and any relevant constitutional constraints.

Over the years, various HHS Secretaries have reorganized portions of the department from time to time by asserting reorganization authority that partly stems from the Reorganization Act of 1949 (5 U.S.C. §§ 901–912). This Act generally granted the President the authority to develop reorganization plans for portions of the federal government and to present those plans to Congress for consideration under what is known as a "legislative veto" process, which was a procedure once commonly included in federal legislation. Under this process as applied to the Reorganization Act, a President's reorganization plan became effective unless either the House or the Senate vetoed the plan by resolution. Invoking this authority, President Eisenhower, through the Reorganization Plan No. 1 of 1953, established HHS's predecessor department, the Department of Health, Education, and Welfare (HEW), as a Cabinet-level agency. Section 1 of the plan stated that the agency "shall be administered under the supervision and direction of the Secretary," who is appointed by the President and confirmed by the Senate. Section 6 of the plan gave the HHS Secretary authority to make appropriate provisions to "authoriz[e] the performance of any of the functions of the Secretary by any other officer, or by any agency or employee, of the Department." A little more than a decade later, President Lyndon B. Johnson invoked the Reorganization Act authority and implemented Reorganization Plan No. 3 of 1966, which transferred the Public Health Service and its agencies and employees to the HEW Secretary. Section 2 of the 1966 plan gave the Secretary general authority to "authoriz[e] the performance of any [transferred functions] by any officer, employee, or agency of the Public Health Service or of [HEW]."

In 1983, in a case concerning a legislative veto included in an immigration law, the Supreme Court held that the relevant one-house veto provision was unconstitutional. That decision cast doubt upon the validity of reorganization plans implemented pursuant to that process. In response, Congress enacted Pub. L. 98-532 in 1984 to "ratif[y] and affirm[] as law each reorganization plan that ha[d] . . . been implemented pursuant to the provisions of chapter 9 of title 5, United States Code, or any predecessor Federal reorganization statute." Accordingly, Congress preserved the authorities granted by Section 6 of the 1953 Reorganization Plan and Section 2 of the 1966 Reorganization Plan to the Secretary of HEW, which was renamed HHS in 1979. The authority of the President under the Reorganization Act of 1949, on the other hand, expired in 1984.

In addition to the HHS Secretary's Reorganization Plan authorities, Section 301 of Title 5—sometimes referred to as the "housekeeping statute"—generally authorizes "[t]he head of an Executive department" to "prescribe regulations for the government of his department . . . [and] the distribution and performance of its business." No court appears to have interpreted these provisions with respect to the scope of the HHS Secretary's reorganization authority. At least one appellate court, however, held that a similar reorganization plan provision applying to the Secretary of Labor—together with the Secretary of Labor's authority under 5 U.S.C. § 301—vested the Secretary of Labor with authority to administratively create a sub-agency board and appoint board members. Conversely, at least one other court that considered the scope of § 301 alone characterized the provision as granting the Secretary of Defense "only the power to prescribe regulations." In that court's view, § 301, when read in the greater context of the Defense Secretary's other authorities, did not authorize the Secretary of Defense to appoint civilian appellate military judges.

The history of HHS reorganizations over the years indicates that HHS Secretaries have relied on some combination of their Reorganization Plan authorities and 5 U.S.C. § 301 to reorganize the agency from time to time, including administratively establishing certain agencies such as HRSA and ACL. The scope of past reorganizations indicates that HHS Secretaries have interpreted these provisions to encompass certain general authorities that include the authority to administratively create certain agencies and offices, establish positions to staff those agencies and offices, and abolish certain administratively created agencies and offices.

This general reorganization authority asserted by HHS Secretaries is subject to several potential constraints, including subsequently enacted legislation—whether in authorizing statutes or appropriations acts—that specify, for instance, the structure and/or leadership of particular HHS agencies or offices, the duties of particular HHS officers and their relationship to the Secretary, the delegation of specific functions or programs to specific agencies or officers, the process by which certain reorganizations may occur, or other limits that potentially constrain the Secretary's discretion to reorganize particular agencies or offices. Accordingly, analysis of any HHS reorganization requires a close look at the relevant statutes governing the affected operating divisions, offices, and officers, as well as the programs they implement. Depending on the particular structure of a planned reorganization and how it is carried out, constitutional questions can also arise.

Questions Raised by the March 27, 2025, Reorganization Announcement

Certain aspects of the reorganization described in HHS's March 27, 2025, press release raise several questions regarding the 2025 reorganization plan's interaction with existing law, including questions about (1) statutes establishing particular offices or officers, or directing specific actions or programs to be carried out by particular offices or officers; (2) relevant appropriations act provisions; and (3) the Appointments Clause of the Constitution. This section discusses examples of such questions.

Selected Questions Related to Authorizing Statutes

The HHS press release announcing the reorganization is unclear about the extent of some of the Department's planned consolidations. For example, it is unclear what it means for OASH, HRSA, SAMHSA, ATSDR, and NIOSH to be "combine[d]" into AHA, for ASPR to "transfer" to CDC, or for ASPE to "merge" with AHRQ. If "combining," "transferring," or "merging" operating divisions or offices means that certain affected units are dissolved in their current forms and their functions reassigned, such consolidation may raise questions regarding consistency with existing law to the extent a dissolved operating division or office is established by statute or is headed by an officer whose position is

established by statute. Several of the affected operating divisions and offices are statutorily established, including SAMHSA, ATSDR, NIOSH, and AHRQ, as are certain officers, including the Assistant Secretary for ASPR and the Assistant Secretary for SAMHSA.

To the extent the above-described consolidations do not dissolve any existing agencies, but rather adjust the hierarchy of the affected agencies or offices—for example, if OASH, HRSA, SAMHSA, ATSDR, and NIOSH would continue to exist but reside under AHA, or if ASPR would continue to exist but reside under CDC—other questions remain. For instance, the relocation of ATSDR and NIOSH out of CDC—where both agencies had resided—and into AHA raises questions regarding whether this aspect of the reorganization is consistent with Public Health Service Act (PHSA) Section 305. Congress enacted PHSA Section 305 in 2022 to statutorily establish the CDC Director as a presidentially nominated and Senate-confirmed position and to specify the Director's duties, which include (1) "serv[ing] as the Administrator of [ATSDR]" and (2) "address[ing] occupational and environmental hazards"—functions that likely include those performed by NIOSH. Accordingly, the relocation of ATSDR and NIOSH into AHA raises questions regarding whether the CDC Director would still be performing all of the duties Congress has directed the CDC Director to perform.

Another example of questions raised is whether reorganizing an operating division or office headed by an officer who is specifically required by statute to "report to the Secretary" to a position within another operating division is consistent with such a direct reporting requirement. For example, the Assistant Secretary for ASPR is required by statute to "report to the Secretary." According to the HHS press release, ASPR may be moved to be situated "under" CDC. On the one hand, this change could potentially model an arguably similar structure that Congress established for the Advanced Research Projects Agency-Health (ARPA-H), which Congress placed within the National Institutes of Health (NIH), but whose Director is required to "report to the Secretary." On the other hand, the ARPA-H Director, unlike the ASPR Assistant Secretary, is not a presidentially nominated, Senate-confirmed position and also has a different scope of statutory duties than the Assistant Secretary for ASPR. The Assistant Secretary for ASPR, for instance, is statutorily designated to be "the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies." These differences may raise questions regarding whether the possible move of ASPR under CDC is consistent with Congress's intent for the ASPR Assistant Secretary's duties or direct reporting structure directly to the HHS Secretary.

Selected Questions Related to Appropriations

The reorganization described in HHS's March 27, 2025, press release indicates that at least one agency—ACL—and perhaps others, as noted above, may be dissolved, at least in name, and their functions potentially reassigned. To the extent any dissolved agencies or offices have received appropriations in annual appropriations acts, there may be questions regarding whether their dissolution is consistent with relevant appropriations act provisions. Further, appropriations acts may require that an agency first provide notice to congressional committees before obligating funds to effect a reorganization.

At least two general provisions in Division D (Departments of Labor, Health and Human Services, and Education) of the Further Consolidated Appropriations Act, 2024, which were incorporated by reference into the Full-Year Continuing Appropriations and Extensions Act, 2025 (*see* Sections 1101((8) and 1105), may impose relevant restrictions. For example, Section 512 prohibits the transfer of funds provided in the act "except pursuant to a transfer made by . . . authority provided in[] this Act." To the extent the implementation of any aspect of the described reorganization requires the transfer of appropriated funds from the account of a dissolved agency to that of another agency to which functions have been reassigned, there may be questions regarding whether such transfer is consistent with Section 512. In contrast to Section 512, provisions of permanent law may authorize certain transfers, including those incident to an authorized transfer of functions or interagency agreements related to the provision of goods or services.

Additionally, Section 514 of the FY2024 measure prohibits certain reprogramming of funds, including obligations to create, reorganize, or eliminate a program or relocate or reorganize an office, unless the Secretary consults with and provides advance notice to the House and Senate Appropriations Committees. In other words, the HHS Secretary must notify Congress before he undertakes an obligation that would constitute a reprogramming of funds, meaning to shift funds within an existing appropriations account or fund to use them for a purpose other than what was contemplated at the time the appropriation was made. The Secretary need only provide advance notice to the Appropriations Committees, and Congress did not specify the form or contents of the notice.

Selected Questions Related to the Appointments Clause

The Department's March 27, 2025, press release does not address who will lead the three newly created agencies or offices (AHA, Assistant Secretary of Enforcement, and Office of Strategy) or what will happen to the heads of affected agencies or offices that are subject to consolidation. To the extent the reorganization plan contemplates the creation or the combining of certain HHS positions, the Appointments Clause of the Constitution may impose constraints on such agency actions.

The Appointments Clause provides the method of appointment for "Officers of the United States," who are individuals that "occupy a continuing position created by law" and "exercise[] significant authority pursuant to the laws of the United States." As interpreted by the Supreme Court, there are two classes of officers under the Clause: (1) *principal officers*, " who must be nominated by the President and confirmed by the Senate; and (2) *inferior officers*, whom Congress may "by Law vest the[ir] Appointment" in "the President alone, in the Courts of Law, or in the Heads of Departments." The Supreme Court has not set forth a bright-line standard to distinguish between principal and inferior officers, but it has identified several relevant factors, including whether the officer's work is "directed and supervised" by a duly appointed principal officer within the executive branch.

The specific nature of any Appointments Clause concerns implicated by the described reorganization will depend on certain facts about the reorganization that HHS has not made public. For example, Appointments Clause questions may arise to the extent the reorganization plan contemplates the creation of new positions that will carry out some or more of the functions of existing positions that are established in law—which includes, for instance, the CDC Director, ASPR Assistant Secretary, the SAHMSA Assistant Secretary, and the AHRQ Director. Those questions may include whether the individuals filling those new positions are officers, how they will be appointed, what duties they will perform, how they will interact with any existing officers with positions established by law, and whether their manner of appointment is consistent with their duties and functions.

As of the date of this writing, HHS has not publicly provided details about the reorganization plan beyond what was included in the March 27, 2025, press release and accompanying fact sheet. More information about the Secretary's planned changes to the agency may become available after the administration releases its FY2026 budget proposal in the coming months.

Author Information

Hannah-Alise Rogers
Legislative Attorney

Wen W. Shen
Legislative Attorney

Disclaimer