

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 160

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

SB 160 would establish an independent Home and Community Based Services Ombudsman program (Program).

The bill would require, subject to appropriations, the Secretary of Health and Environment to contract with either Kansas Legal Services or the Disability Rights Center of Kansas to provide advocacy services to actual or potential recipients of Home and Community Based Services (HCBS) benefits under the Kansas Medicaid program (HCBS benefits). The contracted organization would not be subject to control or otherwise affiliated with the Kansas Department of Health and Environment, the Kansas Department for Aging and Disability Services (KDADS), any aging and disability resource center that contracts with KDADS, or any managed care organization that administers state Medicaid services.

Any contract entered into pursuant to the bill would include, as a goal, that the provider of the advocacy services provide one advocate for every 2,500 individuals receiving HCBS benefits. The goals established by the bill would be proportionally modified to accommodate any amount of moneys actually appropriated to the Program.

Any individual contracted to provide advocacy services under the bill would be required to assist actual or potential recipients of HCBS benefits in protecting the individual's rights related to such services under all applicable state and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

federal statutes and rules and regulations, and would be required to provide the following:

- Information, technical assistance, and training on how to obtain needed services or support items;
- Advice and assistance in preparing and filing complaints, grievances, and appeals of complaints or grievances;
- Negotiation and mediation with service providers, state agencies, or managed care organizations;
- Individual case advocacy assistance regarding the appropriate interpretation of statutes or rules and regulations; and
- Individual case advocacy services in administrative hearings and legal representation for court proceedings related to a recipient's benefits.

The Program established by the bill would operate for the benefit of actual or potential recipients of HCBS benefits. The bill would specify that no state agency, employee, or official shall attempt to interfere with or influence the independent status or operation of the program.

The Secretary of Health and Environment would be required to structure the contract to ensure the contracted organization would be able to continue to fulfill the organization's mission as the legal services corporation or protection and advocacy system pursuant to applicable federal law and any activities the organization engages in to advance the organization's mission and charitable purpose as a not-for-profit organization. The contract would be required to be structured to ensure the Program would not be limited regarding the remedies available to serve clients.

Background

The bill was introduced by the Senate Committee on Ways and Means and referred to the Senate Committee on Public Health and Welfare. In the Senate Committee hearing, representatives of the Disability Rights Center of Kansas, KanCare Advocates Network, Kansas Advocates for Better Care, Kansas Association of Area Agencies on Aging and Disabilities, Kansas Council on Developmental Disabilities, and Topeka Independent Living Resource Center, and a private citizen testified in favor of the bill.

The proponents stated an external and independent Ombudsman program is necessary to ensure the protection of consumer rights as the current program is housed inside state government, has structural conflicts of interest, and is unable to advocate for consumers. AARP Kansas, Jenian, Inc., and several private citizens provided written-only proponent testimony.

The Secretary for Aging and Disability Services submitted written-only opponent testimony stating the current KanCare Ombudsman is an independent, impartial, and objective entity providing informal resolutions to KanCare members.

The KanCare Ombudsman provided neutral testimony detailing the current KanCare Ombudsman program.

According to the fiscal note prepared by the Division of the Budget enactment of the bill would eliminate the current KanCare Ombudsman program. The bill would require additional expenditures of \$753,316, including \$376,658 from the State General Fund for FY 2018 and FY 2019. A total of 10.0 FTE positions would be required in order to provide 1.0 FTE for every 2,500 HCBS members as set out as a goal in the bill. The cost estimate was based on information received regarding a similar program in Wisconsin. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.