



**Bob Bethell Joint Committee on Home and Community Based Services  
and KanCare Oversight  
October 7, 2013  
Access to and Quality of Services under KanCare**

Good Morning Madam Chairperson and members of the Committee, thank you for the opportunity to present testimony on access to and quality of services provided under KanCare. My name is Rocky Nichols. I am the Executive Director at the Disability Rights Center of Kansas (DRC). This morning I appear before you on behalf of the Big Tent Coalition. The Big Tent Coalition (BTC) is a grassroots coalition of dozens of organizations as well as people with disabilities, seniors, friends, family members, advocates and service providers who share a strong set of core values.

Prior to the implementation of KanCare, the Big Tent Coalition proposed that Kansas create and adequately fund a robust, independent and external conflict resolution program / Ombudsman program. As part of the Big Tent Coalitions' Policy Paper on Managed Care entitled "Going All In," the Coalition clearly laid out its support for an independent program outside of the Managed Care companies and outside of state government, based on the Wisconsin model of an independent Ombudsman program. The Big Tent Coalition asked the State of Kansas to utilize this model for an independent advocate Ombudsman office, based on Wisconsin and the growing consensus on this issue. Kansas chose a different route, creating an Ombudsman that is housed within state government.

We come to this Committee today to lay out a vision of what an effective, independent, external advocate through an Ombudsman program would look like; why having an independent advocate as an Ombudsman is absolutely necessary in Kansas' managed care environment; and to share best practices and standards of Ombudsman programs established by the federal government, other states similar to Kansas (such as Wisconsin), the American Bar Association, etc. The ideas we share today are standards embraced by many national groups (AARP, the Arc, DREDF, etc.) as well as Kansas organizations, such as the Big Tent Coalition, Kansas Coalition on Developmental Disabilities and others. An effective, independent Ombudsman program is vitally important to ensuring effective access to and quality services under KanCare.

Managed Care has become the means through which medical care and long-term services and supports (LTSS) are being delivered to Kansas' Medicaid populations across our state. **It is essential that KanCare consumers have access to an independent advocate, outside of state government, through a robust**

**and independent Ombudsman program to navigate the complexities of Medicaid Managed Care**

**Programs.** These independent Ombudsman services should be readily available to specialized populations for which Medicaid serves, i.e., seniors, persons with disabilities, those living in lower socioeconomic conditions, etc. Both Kansas and national advocates have urged that an independent external ombudsman program be in place as a beneficiary protection. The established national standards detailed on pages 3-5 can serve as a guide to improve our KanCare Ombuds program.

Please know that I personally have a great deal of respect for the person who is the KanCare Ombudsman. Others I have spoken with at the Big Tent Coalition share this view. The issues identified in this report are not about that individual. They are not about that individual's performance. These comments are about the prevailing best practices and national consensus regarding the standards of what makes for an effective Ombudsman office. These ideas are about the way the office was and still is structured and speaks to the systemic problems inherent with housing such an important office within state government, which creates conflicts of interest. These national best practice standards are being shared with this committee and state government in hopes that a new structure can be developed with the input and support of the disability and Medicaid consumer stakeholders that will be independent, credible, effective and long standing.

We also wish to call out that the KanCare Ombudsman office was added fairly late in the process, after public comment was received on KanCare, and just prior to implementation of KanCare. If I recall correctly, the current Ombudsman position was not called an Ombudsman during the public comment period of KanCare. It was originally described to stakeholders as something of an "air traffic controller" and central point of contact for providers and the Medicaid system as a whole. That vision changed late in the process (approximately November 2012) and the State started suggesting so potential Ombudsman position. The current Ombudsman was hired in December of 2012. This was right before KanCare was set to go live January 1 of 2013. Given the fact that the whole Ombudsman program appeared to be added so late in the process in 2012, it is completely understandable that the version of the program created at the time was not up to these national standards. However, we now have nearly a year under our belts. As a state we can now take the time to make the changes in order to get this right. The table below compares the national standards with how Kansas operates its KanCare Ombudsman program. We are offering this testimony in a proactive manner that will hopefully lead to better changes that are based on the national standards and the success that Wisconsin has had with its independent Ombudsman program.

Growing National Consensus on Standards for Ombudsman Programs:	KanCare Ombudsman Program:
Independence and Impartiality (source: American Bar Association, Standards for the Establishment and Operation of Ombuds Offices, 2004)	Employee of State Government; Housed inside KDADS – the same agency that operates all HCBS Waivers; Unclassified Employee (works at the pleasure of the Governor)
The American Bar Association’s (ABA) test of “independence” includes whether or not anyone can control or limit the Ombuds’s performance or assigned duties, or can eliminate the office, remove the ombudsman or reduce the budget or resources of the office.	Under our understanding of the way the office is operated, Kansas’ KanCare Ombudsman would appear to fail this independence test. The Ombudsman works under the Secretary of KDADS and at the pleasure of the Governor, can be fired as an unclassified employee or removed for any reason, or no reason at all. The Ombuds office depends totally on the money provided by KDADS. It can be reduced by the agency.
“Impartiality,” under the ABA standard, specifically spells out that an Ombudsman can absolutely be an “advocate on behalf of a designated constituency.”	The KanCare Ombudsman specifically tells consumers that he “cannot directly advocate” for them and that the role is apparently more neutral.
The ABA standards require that before an Ombudsman can be removed from office (or fired) that it can only be for “good cause” and that it be subjected to a “fair procedure.”	KanCare Ombudsman is an at will, unclassified state employee, works at the pleasure of the governor, and can be fired at any time, without cause.
The ABA standards specifically allow for an “advocate Ombudsman” to represent the interests of a population and the Ombudsman is “authorized to <i>initiate action</i> in an administrative, judicial, or legislative forum” on behalf of the consumer.	According to the state website, the KanCare Ombudsman does not initiate actions or speak for the person in the appeals process (administrative, judicial, etc.). Our understanding and experience is that he does not directly initiate administrative, judicial or other actions.
Ombudsman offices must be able to engage in “consumer advocacy” (See HHS and ACL – Administration on Community Living – standards and recommendations for Ombudsman for Medicaid Managed Care and Medicaid Long Term Services and Supports, page 12).	See above. The KanCare Ombudsman is not considered the “advocate” for the consumer. This is a policy decision in Kansas, and one that we believe is not in the best interests of consumers.
Independent Entity (See HHS & ACL recommendations, page 12)	KanCare Ombudsman is an unclassified employee of state government

Entity is free of conflicts of interest (See HHS & ACL recommendations)	Disability and consumer advocacy groups are concerned that it is an <i>inherent</i> conflict of interest for a state employee housed within state government to attempt to conduct this role
Ombudsman office must have capacity as an entity to engage in consumer empowerment and advocacy for the consumer (See HHS & ACL recommendations)	Kansas basically has one KanCare Ombudsman. Documentation speaks to having access to other staff for administrative help, but every consumer we have talked to has said they have had to interact with the single, lone KanCare Ombudsman.
Credibility among consumers (See HHS & ACL recommendations)	We have heard from several case managers, advocates, consumer groups, individuals with disabilities, and Medicaid Consumers, that given the inherent conflict of interest with the KanCare Ombudsman being a state employee that they do not approach the office. This speaks to credibility. As noted before, this is not personal against the person who is the Ombudsman. This is all about the way the office is structured, the inherent systemic flaws of having it inside state government, and following the national standards.
Access to legal assistance and counsel for consumers (See HHS & ACL recommendations)	Legal counsel is not available for consumers through the KanCare Ombudsman program.
Sufficient professional staff to provide meaningful access to consumers (See HHS & ACL recommendations)	In Kansas the KanCare Ombudsman is, essentially, a one-man Ombudsman.
Maintain a presence in various parts of the State to enable fact-to-face contacts (See HHS & ACL recommendations)	See above
Wisconsin – outside state government. Contract with deliverables.	Kansas – inside state government.
Wisconsin – has enough external Ombudsman so that they have 1 Ombudsman for every 3,500 consumers.	Kansas KanCare Ombudsman – apparently has 1 full time dedicated Ombudsman for over 388,000 Medicaid consumers.
Kansas Long Term Care Office – has 9 Ombudsman throughout 9 regions (1 Ombudsman for every ~ 3,111 consumers);	Kansas KanCare Ombudsman – apparently has 1 full time dedicated Ombudsman for over 388,000 consumers.

when factor in the volunteers, the ratio is better	
Legal Authority – the ABA and HHS/ACF recommend that Ombudsman have the legal and access authority to records, group homes and other places where services are provided.	Kansas – We know of no law that grants the KanCare Ombudsman program that authority.

**In Summary:**

**The current KanCare Ombudsman program is neither independent nor external from existing programs serving the Medicaid population in Kansas. Moreover, the Ombudsman’s office clearly tells Consumers that they cannot directly advocate for them. Consumers want and need in an Ombudsman an independent advocate who is going to be on their side, free from conflicts of interest.**

**One of the most fundamental pieces of an effective Ombudsman program is that it must be external and independent of state government, providers and the MCOs.** KanCare consumers should have a conflict-free complaint resolution service in place, where an independent and external entity serves in a safe environment where the consumer knows and trusts that the Ombudsman is their advocate, independent of state government and provider or MCO interests.

**For an ombudsman program to be credible and free of any conflict it must be independent in its structure, function, and appearance.**

**A High Quality, Rights-Based, Ombudsman Program Based on these National Standards and Best Practices:**

- Helps Kansas meet its obligations to members/beneficiaries.
- Ensures professionalism when members navigate the contentious process of service denials, reductions in services, as well as formal grievances and appeals.
- Assists members by providing independent, knowledgeable, dedicated, learned professionals who know the rights and responsibilities of Medicaid and managed care.
- De-escalation – An effective Ombudsman program independent of state government has the credibility with members to obtain solutions before relationships sour. It can prevent problems before they occur and it can avoid the hardening of positions and resolve the issue before the matter is escalated.

Thank you for your time and attention to this information.