

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2590

By Committee on Health and Human Services

1-31

1 AN ACT concerning the state long-term care ombudsman; review by  
2 secretary for aging and disability services of the state long-term care  
3 ombudsman program; access to certain records; amending K.S.A. 2017  
4 Supp. 75-7302, 75-7303, 75-7304, 75-7306, 75-7309 and 75-7310 and  
5 repealing the existing sections.  
6

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

8 Section 1. K.S.A. 2017 Supp. 75-7302 is hereby amended to read as  
9 follows: 75-7302. (a) The secretary for aging and disability services and  
10 the state long-term care ombudsman shall enter into agreements for the  
11 provision of financial assistance to the office by the Kansas department for  
12 aging and disability services from available state and federal funds of the  
13 Kansas department for aging and disability services. This financial  
14 assistance shall be to assist the office of the state long-term care  
15 ombudsman to provide ombudsman services in accordance with the long-  
16 term care ombudsman act, applicable federal programs and the provisions  
17 of this section.

18 (b) *The secretary for aging and disability services shall monitor the*  
19 *state long-term care ombudsman program and its activities as set forth in*  
20 *the agreement. Such monitoring shall include an assessment of whether*  
21 *the state long-term care ombudsman program is performing all of the*  
22 *functions, responsibilities and duties set out in state and federal laws and*  
23 *regulations.*

24 (c) Subject to the provisions of appropriation acts, the secretary for  
25 aging and disability services and the Kansas department for aging and  
26 disability services shall continue to provide financial assistance for the  
27 office of the state long-term care ombudsman in an aggregate amount of  
28 not less than the aggregate of the amounts provided during the fiscal year  
29 ending June 30, 1998, appropriately adjusted for increases attributable to  
30 inflation and other applicable factors.

31 ~~(e)(d) For the fiscal year ending June 30, 2000, and for each fiscal~~  
32 ~~year thereafter,~~ the secretary for aging and disability services shall include  
33 in the budget estimate prepared and submitted to the division of the budget  
34 for the Kansas department for aging and disability services under K.S.A.  
35 75-3717, and amendments thereto, in addition to other amounts included  
36 in such budget estimate for the Kansas department for aging and disability

1 services, amounts to be provided to the office of the state long-term care  
2 ombudsman during such fiscal year pursuant to this section. The amounts  
3 included in each such budget estimate to be provided to the office of the  
4 state long-term care ombudsman shall include amounts to be appropriated  
5 from moneys provided to the Kansas department for aging and disability  
6 services under the federal older Americans act, 42 U.S.C. § 3001 et seq.,  
7 and amendments thereto, or other federal programs for the aging or from  
8 other moneys of the Kansas department for aging and disability services.  
9 In no case shall the aggregate of the amounts included in any such budget  
10 estimate of the Kansas department for aging and disability services, that  
11 are to be provided to the office of the state long-term care ombudsman, be  
12 less than the aggregate of all moneys provided during the fiscal year  
13 ending June 30, 1998, by the Kansas department for aging and disability  
14 services for the office of the state long-term care ombudsman from  
15 appropriations to the Kansas department for aging and disability services,  
16 including moneys received under the federal older Americans act, 42  
17 U.S.C. § 3001 et seq., and amendments thereto, or under any other federal  
18 programs for the aging. The aggregate amounts included in each such  
19 budget estimate of the Kansas department for aging and disability services,  
20 that are to be provided to the office of the state long-term care  
21 ombudsman, shall be adjusted appropriately for increases attributable to  
22 inflation and other applicable factors.

23 Sec. 2. K.S.A. 2017 Supp. 75-7303 is hereby amended to read as  
24 follows: 75-7303. As used in the long-term care ombudsman act:

25 (a) "Ombudsman" means the state long-term care ombudsman, any  
26 regional long-term care ombudsman or any individual designated as an  
27 ombudsman under ~~subsection (h)~~ of K.S.A. 2017 Supp. 75-7306(h), and  
28 amendments thereto, who has received the training required under  
29 ~~subsection (f)~~ of K.S.A. 2017 Supp. 75-7306(f), and amendments thereto,  
30 and who has been designated by the state long-term care ombudsman to  
31 carry out the powers, duties and functions of the office of the state long-  
32 term care ombudsman.

33 (b) "Volunteer ombudsman" means an individual who has  
34 satisfactorily completed the training prescribed by the state long-term care  
35 ombudsman under ~~subsection (f)~~ of K.S.A. 2017 Supp. 75-7306(f), and  
36 amendments thereto, who is a volunteer assisting in providing ombudsman  
37 services and who receives no payment for such service other than  
38 reimbursement for expenses incurred in accordance with guidelines  
39 adopted therefor by the state long-term care ombudsman.

40 (c) "Facility" means an adult care home as such term is defined in  
41 K.S.A. 39-923, and amendments thereto, except that facility does not  
42 include any nursing facility for mental health or any intermediate care  
43 facility for people with intellectual disability, as such terms are defined in

1 K.S.A. 39-923, and amendments thereto.

2 (d) "Resident" means a resident as such term is defined in K.S.A. 39-  
3 923, and amendments thereto.

4 (e) "State long-term care ombudsman" means the individual  
5 appointed by the governor to administer the office of the state long-term  
6 care ombudsman.

7 (f) "Regional long-term care ombudsman" means an individual  
8 appointed by the state long-term care ombudsman under K.S.A. 2017  
9 Supp. 75-7304, and amendments thereto.

10 (g) "Office" means the office of the state long-term care ombudsman.

11 (h) "Conflict of interest" means: (1) Having a pecuniary or other  
12 interest in a facility, but not including interests that result only from having  
13 a relative who is a resident or from being the guardian of a resident; (2)  
14 being actively employed or otherwise having active involvement in  
15 representation of or advocacy for any facility or group of facilities,  
16 whether or not such representation or advocacy is individual or through an  
17 association or other entity, but not including any such active involvement  
18 that results only from having a relative who is a resident or from being the  
19 guardian of a resident; ~~or~~; (3) being employed by or having an active  
20 association with any entity that represents any resident or group of  
21 residents, including any area agency on aging, but not including any such  
22 active association that results only from having a relative who is a resident  
23 or from being the guardian of a resident; *or (4) receipt of gifts, gratuities,*  
24 *money or compensation from a long-term care facility, its management, a*  
25 *resident or the resident's representative, in which the ombudsman or*  
26 *ombudsman's representative provides services.*

27 (i) ~~"Residential Resident representative"~~ **Resident representative** means:

28 (1) *An individual chosen by the resident to act on behalf of the*  
29 *resident in order to support the resident in decision-making; access*  
30 *medical, social or other personal information of the resident; manage*  
31 *financial matters; or receive notifications;*

32 (2) *a person authorized by state or federal law, including, but not*  
33 *limited to, agents under power of attorney, representative payees and*  
34 *other fiduciaries, to act on behalf of the resident in order to support the*  
35 *resident in decision-making; access medical, social or other personal*  
36 *information of the resident; manage financial matters; or receive*  
37 *notifications;*

38 (3) *the resident's legal representative, as used in the older americans*  
39 *act; or*

40 (4) *the court-appointed guardian or conservator of a resident.*

41 *Nothing in the definition of "residential resident representative" shall*  
42 *be construed to expand the scope of authority of any resident*  
43 *representative beyond that authority specifically authorized by the*

1 *resident, state or federal law or a court of competent jurisdiction.*

2 Sec. 3. K.S.A. 2017 Supp. 75-7304 is hereby amended to read as  
3 follows: 75-7304. (a) On the effective date of this act, the office of the  
4 state long-term care ombudsman in existence on the day preceding such  
5 effective date is hereby abolished and there is hereby established the office  
6 of the state long-term care ombudsman, the head of which shall be the  
7 state long-term care ombudsman. In performance of the powers, duties and  
8 functions prescribed by law, the office shall be an independent state  
9 agency. The state long-term care ombudsman shall be appointed by the  
10 governor, subject to confirmation by the senate as provided in K.S.A. 75-  
11 4315b, and amendments thereto. The term of office of the first person  
12 appointed as the state long-term care ombudsman on or after the effective  
13 date of this act shall expire on January 15, 2000, and such state long-term  
14 care ombudsman shall serve until a successor is appointed and confirmed.  
15 Thereafter, each person appointed as the state long-term care ombudsman  
16 shall have a term of office of four years and shall serve until a successor is  
17 appointed and confirmed. Except as provided by K.S.A. 46-2601, and  
18 amendments thereto, no person appointed as state long-term care  
19 ombudsman shall exercise any power, duty or function as state long-term  
20 care ombudsman until confirmed by the senate.

21 (b) The state long-term care ombudsman shall appoint each regional  
22 long-term care ombudsman and all officers and employees of the office of  
23 state long-term care ombudsman. Each regional long-term care  
24 ombudsman and all such officers and employees shall be within the  
25 classified service under the Kansas civil service act.

26 (c) In accordance with the provisions of this act, the state long-term  
27 care ombudsman shall administer the office of the state long-term care  
28 ombudsman.

29 (d) No person shall be eligible to be appointed to, or to hold, the  
30 office of state long-term care ombudsman if such person is subject to a  
31 conflict of interest *or has been employed by or participated in the*  
32 *management of a long-term care facility within the previous 12-month*  
33 *period of time.* No person shall be eligible for appointment as the state  
34 long-term care ombudsman unless such person has:

35 (1) A baccalaureate or higher degree from an accredited college or  
36 university;

37 (2) demonstrated abilities to analyze problems of law, administration  
38 and public policy; and

39 (3) experience in investigation, *negotiation* and conflict resolution  
40 procedures;

41 (4) *demonstrated expertise in long-term care services and supports*  
42 *or other direct services for older persons or individuals with disabilities;*  
43 *and*

1       (5) *demonstrated expertise in leadership and program management*  
2 *skills.*

3       (e) (1) On the effective date of this act, all of the powers, duties,  
4 functions, records and property of the office of the state long-term care  
5 ombudsman abolished by this section, which are prescribed for the office  
6 of the state long-term care ombudsman by this act, are hereby transferred  
7 to and conferred and imposed upon the office of the state long-term care  
8 ombudsman that is established by this section, except as is otherwise  
9 specifically provided by this act. On the effective date of this act, all of the  
10 powers, duties, functions, records and property of the secretary of aging or  
11 the department on aging, which relate to or are required for the  
12 performance of powers, duties or functions which are prescribed for the  
13 office of the state long-term care ombudsman or the state long-term care  
14 ombudsman by this act, including the power to expend funds now or  
15 hereafter made available in accordance with appropriation acts, are hereby  
16 transferred to and conferred and imposed upon the office of the state long-  
17 term care ombudsman and the state long-term care ombudsman that are  
18 established by this section, except as is otherwise specifically provided by  
19 this act.

20       (2) The office of the state long-term care ombudsman established by  
21 this section shall be the successor in every way to the powers, duties and  
22 functions of the office of the state long-term care ombudsman, the  
23 secretary of aging, or the department on aging in which such powers,  
24 duties and functions were vested prior to the effective date of this act,  
25 except as otherwise specifically provided by this act. Every act performed  
26 under the authority of the office of the state long-term care ombudsman  
27 established by this act shall be deemed to have the same force and effect as  
28 if performed by the office of the state long-term care ombudsman, the  
29 secretary of aging or the department on aging in which such powers, duties  
30 and functions were vested prior to the effective date of this act.

31       (3) Subject to the provisions of this act, whenever the office of the  
32 state long-term care ombudsman that is abolished by this act or the  
33 secretary on aging or the department on aging, or words of like effect, is  
34 referred to or designated by a statute, contract, or other document, and  
35 such reference or designation relates to a power, duty or function which is  
36 transferred to and conferred and imposed upon the office of the state long-  
37 term care ombudsman that is established by this act, such reference or  
38 designation shall be deemed to apply to the office of the state long-term  
39 care ombudsman established by this act.

40       (4) All policies, orders or directives of the office of the state long-  
41 term care ombudsman that is abolished by this act and all policies, orders  
42 or directives of the secretary of aging, which are in existence on the  
43 effective date of this act and which relate to powers, duties and functions

1 that were vested in such office of the state long-term care ombudsman or  
2 the secretary of aging prior to such date, shall continue to be effective and  
3 shall be deemed to be the policies, orders or directives of the state long-  
4 term care ombudsman established by this act, until revised, amended or  
5 revoked or nullified pursuant to law. The office of the state long-term care  
6 ombudsman established by this act shall be deemed to be a continuation of  
7 the office of the state long-term care ombudsman abolished by this act.

8 (5) (A) The state long-term care ombudsman and the secretary of  
9 administration shall provide that all officers and employees of the  
10 department on aging, who are engaged in the exercise and performance of  
11 the powers, duties and functions of the programs of the office of the state  
12 long-term care ombudsman that are transferred by this act, are transferred  
13 to the office of the state long-term care ombudsman established by this  
14 section.

15 (B) Officers and employees of the department on aging transferred  
16 under this act shall retain all retirement benefits and leave rights which had  
17 accrued or vested prior to each date of transfer. The service of each officer  
18 or employee so transferred shall be deemed to be continuous. All transfers,  
19 layoffs and abolition of classified service positions under the Kansas civil  
20 service act which may result from program transfers under this act shall be  
21 made in accordance with the civil service laws and any rules and  
22 regulations adopted thereunder. Nothing in this act shall affect the  
23 classified status of any transferred person employed by the department on  
24 aging prior to the date of transfer.

25 (C) If the state long-term care ombudsman and the secretary of aging  
26 cannot agree as to how any transfer of an officer or employee is to take  
27 place under this section, the state long-term care ombudsman and the  
28 secretary of administration shall be responsible for administering any  
29 layoff that is part of the transfer in accordance with this act.

30 (D) Notwithstanding the effective date of this act, the provisions of  
31 this act prescribing the transfer of officers and employees between the  
32 office of the state long-term care ombudsman established by this section  
33 and the department on aging, the date of transfer of each such officer or  
34 employee shall commence at the start of a payroll period.

35 Sec. 4. K.S.A. 2017 Supp. 75-7306 is hereby amended to read as  
36 follows: 75-7306. The state long-term care ombudsman shall be an  
37 advocate of residents in facilities throughout the state. The state long-term  
38 care ombudsman shall:

39 (a) Investigate and resolve complaints made by or on behalf of the  
40 residents:

41 (1) ~~Relating to action, inaction or decisions of facilities or the~~  
42 ~~representatives of facilities, or both providers, or representatives of~~  
43 ~~providers, of long-term care, public agencies or health and social services,~~

1 except that ~~all~~ complaints of abuse, neglect or exploitation of a resident  
2 ~~shall~~ *may* be referred to the secretary for aging and disability services in  
3 accordance with provisions of K.S.A. 39-1401 et seq., and amendments  
4 thereto, *with the resident or resident's representative's consent or as*  
5 *permitted by federal law; or*

6 (2) *regarding the welfare and rights of residents with respect to the*  
7 *appointment or activities of resident representatives;*

8 (b) develop continuing programs to inform residents, their family  
9 members or other persons responsible for residents regarding the rights  
10 and responsibilities of residents and such other persons;

11 (c) provide the legislature and the governor with an annual report  
12 containing data, findings and outcomes regarding the types of problems  
13 experienced and complaints received by or on behalf of residents and  
14 containing policy, regulatory and legislative recommendations to solve  
15 such problems, resolve such complaints and improve the quality of care  
16 and life in facilities and shall present such report and other appropriate  
17 information and recommendations to the senate committee on public  
18 health and welfare, the senate committee on ways and means, the house of  
19 representatives committee on health and human services and the house of  
20 representatives committee on appropriations during each regular session of  
21 the legislature;

22 (d) analyze and monitor the development and implementation of  
23 federal, state and local government laws, rules and regulations, resolutions,  
24 ordinances and policies with respect to long-term care facilities and  
25 services provided in this state, and recommend any changes in such laws,  
26 regulations, resolutions, ordinances and policies deemed by the office to be  
27 appropriate;

28 (e) provide information ~~and recommendations directly to news to~~  
29 *public and private agencies, the media representatives, public agencies,*  
30 legislators and others, as deemed necessary by the office, regarding the  
31 problems and concerns of residents in facilities, including  
32 recommendations related thereto, ~~except that~~. The state long-term care  
33 ombudsman ~~shall~~ *may* give the information or recommendations to any  
34 directly affected ~~parties~~ *public and private agency or legislator* or their  
35 representatives before providing such information or recommendations to  
36 news media representatives;

37 (f) prescribe and provide for the training of each regional long-term  
38 care ombudsman and any individual designated as an ombudsman under  
39 subsection (h) of this section, and any individual who is an ombudsman  
40 volunteer in: (1) Federal, state and local laws, rules and regulations,  
41 resolutions, ordinances and policies with respect to facilities located in  
42 Kansas; (2) investigative techniques; and (3) such other matters as the  
43 state long-term care ombudsman deems appropriate;

1 (g) coordinate ombudsman services provided by the office with the  
2 protection and advocacy systems for individuals with developmental  
3 disabilities and mental illness established under part A of the federal  
4 developmental disabilities assistance and bill of rights act, 42 U.S.C.A. §  
5 6001 et seq., and under the federal protection and advocacy for mentally ill  
6 individuals act of 1986, public law 99-316;

7 (h) authorize an individual, who is an employee of the office and who  
8 has satisfactorily completed the training prescribed by the state long-term  
9 care ombudsman under subsection (f), to be an ombudsman or a volunteer  
10 ombudsman and to be a representative of the office and such an authorized  
11 individual shall be deemed to be a representative of the office for the  
12 purposes of and subject to the provisions of the long-term care  
13 ombudsman act;

14 (i) establish and maintain a system to recruit and train individuals to  
15 become volunteer ombudsmen;

16 (j) develop and implement procedures for authorizing and for  
17 withdrawing the authorization of individuals to be ombudsmen or  
18 volunteer ombudsmen to represent the office in providing ombudsmen  
19 services;

20 (k) provide services to residents of facilities throughout the state  
21 directly or through service providers to meet needs for ombudsmen  
22 services;

23 (l) collaborate with the Kansas department for aging and disability  
24 services to ~~establish a review and maintain the~~ statewide system to collect  
25 ~~and analyze that collects and analyzes~~ information on complaints and  
26 conditions in facilities; and

27 (m) perform such other duties and functions as may be provided by  
28 law.

29 Sec. 5. K.S.A. 2017 Supp. 75-7309 is hereby amended to read as  
30 follows: 75-7309. (a) With the consent of the resident of the facility,  
31 ~~guardian~~ of the resident *representative* or next of kin of a deceased  
32 resident, an ombudsman ~~or volunteer ombudsman~~ shall have access to all  
33 records and documents kept for or concerning the resident.

34 (b) An ombudsman ~~or volunteer ombudsman~~ shall have access to all  
35 records and documents kept for or concerning a resident (1) in any case in  
36 which the resident is unable to consent and ~~has no guardian~~ *there is no*  
37 *resident representative*, and (2) in a case in which (A) access to the records  
38 and documents is necessary to investigate a complaint, (B) the resident is  
39 unable to consent and ~~the guardian of~~ the resident *representative* refuses to  
40 give permission for such access, (C) the investigating ombudsman ~~or~~  
41 ~~volunteer ombudsman~~ has reasonable cause to believe that the ~~guardian~~  
42 *resident representative* is not acting in the best interests of the resident, and  
43 (D) the state long-term care ombudsman has approved such access by the



1 investigating ombudsman ~~or volunteer ombudsman~~.

2 (c) In addition, in assisting a resident of a facility, an ombudsman *or*  
3 *volunteer ombudsman* shall have access to all **administrative** records,  
4 **policies** and documents of the facility ~~which that the residents have or~~  
5 **the general public has access to that** are relevant to such assistance to the  
6 extent necessary to carry out the provisions of the long-term care  
7 ombudsman act.

8 ~~(d) A volunteer ombudsman shall have access to the plan of care and~~  
9 ~~other records or documents kept for or concerning the resident to the same~~  
10 ~~extent and under the same circumstances as an ombudsman under this~~  
11 ~~section, except that a volunteer ombudsman shall not have access to any~~  
12 ~~such other records and documents that are privileged medical records.~~

13 Sec. 6. K.S.A. 2017 Supp. 75-7310 is hereby amended to read as  
14 follows: 75-7310. All information, records and reports received by or  
15 developed by an ombudsman or a volunteer ombudsman which relate to a  
16 resident of a facility, including written material identifying a resident or  
17 other complainant, are confidential and not subject to the provisions of  
18 K.S.A. 45-215 ~~to through 45-226, inclusive,~~ and amendments thereto, and  
19 shall not be disclosed or released by an ombudsman or a volunteer  
20 ombudsman, either by name of the resident or other complainant or of  
21 facts which allow the identity of the resident or other complainant to be  
22 inferred, except upon the order of a court or unless the resident or the  
23 resident's legal representative ~~or other complainant~~ consents in writing to  
24 such disclosure or release by an ombudsman or a volunteer ombudsman,  
25 except the state long-term care ombudsman shall forward to the secretary  
26 for aging and disability services ~~copies of reports received by the state~~  
27 ~~long-term care ombudsman~~ *a quarterly summary report* relating to the  
28 health and safety of residents *and complaints reported*. A summary report  
29 ~~and findings shall may be forwarded to the facility posted on the SLTCDP~~  
30 **state long-term care ombudsman program** *website quarterly*, exclusive  
31 of information or material that identifies residents or any other individuals.

32 Sec. 7. K.S.A. 2017 Supp. 75-7302, 75-7303, 75-7304, 75-7306, 75-  
33 7309 and 75-7310 are hereby repealed.

34 Sec. 8. This act shall take effect and be in force from and after its  
35 publication in the statute book.