

HOUSE BILL No. 2590

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

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

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

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

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

~~(e)(d) For the fiscal year ending June 30, 2000, and for each fiscal year thereafter,~~ the secretary for aging and disability services shall include in the budget estimate prepared and submitted to the division of the budget for the Kansas department for aging and disability services under K.S.A. 75-3717, and amendments thereto, in addition to other amounts included in such budget estimate for the Kansas department for aging and disability services, amounts to be provided to the office of the state long-term care ombudsman during such fiscal year pursuant to this section. The amounts included in each such budget estimate to be provided to the office of the state long-term care ombudsman shall include amounts to be appropriated from moneys provided to the Kansas department for aging and disability services under the federal older Americans act, 42 U.S.C. § 3001 et seq., and amendments thereto, or other federal programs for the aging or from other moneys of the Kansas department for aging and disability services. In no case shall the aggregate of the amounts included in any such budget estimate of the Kansas department for aging and disability services, that are to be provided to the office of the state long-term care ombudsman, be less than the aggregate of all moneys provided during the fiscal year ending June 30, 1998, by the Kansas department for aging and disability services for the office of the state long-term care ombudsman from appropriations to the Kansas department for aging and disability services, including moneys received under the federal older Americans act, 42 U.S.C. § 3001 et seq., and amendments thereto, or under any other federal programs for the aging. The aggregate amounts included in each such budget estimate of the Kansas department for aging and disability services, that are to be provided to the office of the state long-term care ombudsman, shall be adjusted appropriately for increases

attributable to inflation and other applicable factors.

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

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

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

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

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

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

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

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

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

(i) "Resident representative" means:

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

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

(3) *the resident's legal representative, as used in the Older Americans Act; or*

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

*Nothing in the definition of "resident representative" shall be construed to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law or a court of competent jurisdiction.*

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

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

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

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

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

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

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

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

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

(e) (1) On the effective date of this act, all of the powers, duties, functions, records and property of the office of the state long-term care ombudsman abolished by this section, which are prescribed for the office of the state long-term care ombudsman by this act, are hereby transferred to and conferred and imposed upon the office of the state long-term care ombudsman that is established by this section, except as is otherwise specifically provided by this act. On the effective date of this act, all of the powers, duties, functions, records and property of the secretary of aging or the department on aging, which relate to or are

required for the performance of powers, duties or functions which are prescribed for the office of the state long-term care ombudsman or the state long-term care ombudsman by this act, including the power to expend funds now or hereafter made available in accordance with appropriation acts, are hereby transferred to and conferred and imposed upon the office of the state long-term care ombudsman and the state long-term care ombudsman that are established by this section, except as is otherwise specifically provided by this act.

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

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

(4) All policies, orders or directives of the office of the state long-term care ombudsman that is abolished by this act and all policies, orders or directives of the secretary of aging, which are in existence on the effective date of this act and which relate to powers, duties and functions that were vested in such office of the state long-term care ombudsman or the secretary of aging prior to such date, shall continue to be effective and shall be deemed to be the policies, orders or directives of the state long-term care ombudsman established by this act, until revised, amended or revoked or nullified pursuant to law. The office of the state long-term care ombudsman established by this act shall be deemed to be a continuation of the office of the state long-term care ombudsman abolished by this act.

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

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

(C) If the state long-term care ombudsman and the secretary of aging cannot agree as to how any transfer of an officer or employee is to take place under this section, the state long-term care ombudsman

and the secretary of administration shall be responsible for administering any layoff that is part of the transfer in accordance with this act.

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

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

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

(1) Relating to action, inaction or decisions of ~~facilities or the representatives of facilities, or both~~ *providers, or representatives of providers, of long-term care, public agencies or health and social services agencies*, except that ~~all~~ complaints of abuse, neglect or exploitation of a resident ~~shall~~ *may* be referred to the secretary for aging and disability services in accordance with provisions of K.S.A. 39-1401 et seq., and amendments thereto, *with the resident or resident's representative's consent or as permitted by federal law; or*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. K.S.A. 2017 Supp. 75-7310 is hereby amended to read as follows: 75-7310. All information, records and reports received by or developed by an ombudsman or a volunteer ombudsman which relate to a resident of a facility, including written material identifying a resident or other complainant, are confidential and not subject to the

provisions of K.S.A. 45-215 ~~to through~~ 45-226, ~~inclusive~~, and amendments thereto, and shall not be disclosed or released by an ombudsman or a volunteer ombudsman, either by name of the resident or other complainant or of facts which allow the identity of the resident or other complainant to be inferred, except upon the order of a court or unless the resident or the resident's legal representative ~~or other complainant~~ consents in writing to such disclosure or release by an ombudsman or a volunteer ombudsman, except the state long-term care ombudsman shall forward to the secretary for aging and disability services ~~copies of reports received by the state long-term care ombudsman~~ a quarterly summary report relating to the health and safety of residents, *complaints reported and resolutions to complaints*. A summary report ~~and findings shall may be forwarded to the facility posted on the state long-term care ombudsman program website quarterly~~, exclusive of information or material that identifies residents or any other individuals.

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

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

I hereby certify that the above BILL originated in the House, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*