

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2590

As Amended by Senate Committee on Public
Health and Welfare

Brief*

HB 2590, as amended, would amend law related to the State Long-Term Care Ombudsman (Ombudsman) and the State Long-Term Care Ombudsman Program (Program).

Monitoring of the Program [Section 1]

The bill would require the Secretary for Aging and Disability Services (Secretary) to monitor the Program and its activities, as set forth in the agreement entered into by the Secretary and Ombudsman for the provision of financial assistance to the Office of the Ombudsman. The monitoring would include an assessment of whether the Program is performing all of the functions, responsibilities, and duties set forth in state and federal laws and regulations.

Definitions [Section 2]

The bill would amend and add definitions used in the Long-Term Care Ombudsman Act (Act).

“Conflict of interest” would be amended to include 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.

*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>

The bill would add a definition of “resident representative” to mean:

- 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;
- 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;
- The resident’s legal representative, as used in the Older Americans Act; or
- The court-appointed guardian or conservator of a resident.

Additionally, the definition of “resident representative” would not be construed to expand the scope of authority of any resident representative beyond the authority specifically authorized by the resident, state, or federal law, or a court of competent jurisdiction.

Qualifications of the Ombudsman [Section 3]

The bill would add additional eligibility requirements to the Ombudsman. The bill would prohibit an individual from the appointment to, or holding the office of, Ombudsman if the individual was employed by or participated in the management of a long-term care facility within the previous 12 months.

Additionally, the bill would specify no person would be eligible for appointment as the Ombudsman unless the person has:

- Experience in negotiation (in addition to investigation and conflict resolution procedures under continuing law);
- Demonstrated expertise in long-term care services and supports or other direct services for older persons or individuals with disabilities; and
- Demonstrated expertise in leadership and program management skills.

Duties of the Ombudsman [Section 4]

The bill would amend the duties of the Ombudsman. The Ombudsman would be required to investigate and resolve complaints made by or on behalf of the residents:

- Relating to action, inaction, or decisions of providers, or representatives of providers, of long-term care, public agencies, or health and social services. The bill would specify complaints of abuse, neglect, or exploitation of a resident may be referred to the Secretary (current law requires these complaints to be referred to the Secretary), with the resident or resident's representative's consent, or as permitted by federal law; or
- Regarding the welfare and rights of residents with respect to the appointment or activities of resident representatives.

The bill would specify to whom the Ombudsman would be required to provide information, including public and private agencies and the media. Additionally, the Ombudsman would be permitted to give the information or recommendations to any directly affected public and private

agency or legislator (current law specifies the information must be provided to any directly affected parties or their representatives).

The bill would amend the duty of the Ombudsman to collaborate with the Kansas Department for Aging and Disability Services (KDADS) so the parties would review and maintain (rather than establish as in current law) the statewide system that collects and analyzes information on complaints and conditions in facilities.

Access of Records [Section 5]

The bill would amend law related to access to records and documents concerning residents.

The bill would update “guardian of the resident” to “resident representative” so the resident representative, with consent of the resident of the facility, would have access to all records and documents kept for or concerning the resident. The bill would also update “guardian” to “resident representative” in all instances related to access of documents by the Ombudsman.

The bill would specify an ombudsman or volunteer ombudsman would have access to all administrative records, policies, and documents of the facility that the residents have or the general public has access to that are relevant to carry out provisions of the Act.

The bill would delete the subsection of law related to the volunteer ombudsman having access to the plan of care and other records or documents, because the bill would provide the volunteer ombudsman with access to certain administrative records, policies, and documents.

Quarterly Summary Report [Section 6]

The bill would require the Ombudsman to forward to the Secretary a quarterly summary report relating to the health and safety of residents, complaints reported, and resolutions to complaints. The bill would permit the summary report to be posted quarterly on the Program's website.

Technical Updates

The bill would make technical updates.

Background

The House Committee on Health and Human Services introduced the bill at the request of KDADS. In the House Committee hearing, the Ombudsman and a representative of Kansans Advocates for Better Care testified as proponents. The proponents stated the bill would update the Act and align Kansas statutes with federal law and regulation. Written-only proponent testimony was provided by the Commissioner on Aging within KDADS.

Representatives of the Kansas Center for Assisted Living, Kansas Health Care Association, and LeadingAge Kansas testified in opposition to the bill. The opponents generally opposed language providing volunteer ombudsmen with broad access to facility records.

No other testimony was provided.

The House Committee amended the bill to remove certain language related to volunteer ombudsmen; clarify the records, policies, and documents an ombudsman or volunteer ombudsman would have access to; and make technical corrections.

In the Senate Committee hearing, the Ombudsman and a representative of KDADS testified as proponents. Written-only proponent testimony was provided by representatives of Kansas Advocates for Better Care, Kansas Center for Assisted Living, and Kansas Health Care Association. Proponents of the bill that previously opposed the bill as introduced were supportive of the amendments made by the House Committee.

Written-only neutral testimony was provided by a representative of LeadingAge Kansas. No other testimony was provided.

The Senate Committee amended the bill to include resolutions of complaints in the required quarterly summary reports. The Senate Committee also made a technical amendment.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, enactment of the bill would have no fiscal effect on KDADS.