

**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.

1 75-3717, and amendments thereto, in addition to other amounts included  
2 in such budget estimate for the Kansas department for aging and disability  
3 services, amounts to be provided to the office of the state long-term care  
4 ombudsman during such fiscal year pursuant to this section. The amounts  
5 included in each such budget estimate to be provided to the office of the  
6 state long-term care ombudsman shall include amounts to be appropriated  
7 from moneys provided to the Kansas department for aging and disability  
8 services under the federal older Americans act, 42 U.S.C. § 3001 et seq.,  
9 and amendments thereto, or other federal programs for the aging or from  
10 other moneys of the Kansas department for aging and disability services.  
11 In no case shall the aggregate of the amounts included in any such budget  
12 estimate of the Kansas department for aging and disability services, that  
13 are to be provided to the office of the state long-term care ombudsman, be  
14 less than the aggregate of all moneys provided during the fiscal year  
15 ending June 30, 1998, by the Kansas department for aging and disability  
16 services for the office of the state long-term care ombudsman from  
17 appropriations to the Kansas department for aging and disability services,  
18 including moneys received under the federal older Americans act, 42  
19 U.S.C. § 3001 et seq., and amendments thereto, or under any other federal  
20 programs for the aging. The aggregate amounts included in each such  
21 budget estimate of the Kansas department for aging and disability services,  
22 that are to be provided to the office of the state long-term care  
23 ombudsman, shall be adjusted appropriately for increases attributable to  
24 inflation and other applicable factors.

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

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

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

42 (c) "Facility" means an adult care home as such term is defined in  
43 K.S.A. 39-923, and amendments thereto, except that facility does not

1 include any nursing facility for mental health or any intermediate care  
 2 facility for people with intellectual disability, as such terms are defined in  
 3 K.S.A. 39-923, and amendments thereto.

4 (d) "Resident" means a resident as such term is defined in K.S.A. 39-  
 5 923, and amendments thereto.

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

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

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

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

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

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

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

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

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

43 *Nothing in the definition of "~~residential~~ resident representative" shall*

1 *be construed to expand the scope of authority of any resident*  
2 *representative beyond that authority specifically authorized by the*  
3 *resident, state or federal law or a court of competent jurisdiction.*

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

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

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

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

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

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

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

43 (4) *demonstrated expertise in long-term care services and supports*

1 *or other direct services for older persons or individuals with disabilities;*  
2 *and*

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

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

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

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

42 (4) All policies, orders or directives of the office of the state long-  
43 term care ombudsman that is abolished by this act and all policies, orders

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

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

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

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

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

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

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

43 (1) Relating to action, inaction or decisions of ~~facilities or the~~

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

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

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

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

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

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

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

1 Kansas; (2) investigative techniques; and (3) such other matters as the  
2 state long-term care ombudsman deems appropriate;

3 (g) coordinate ombudsman services provided by the office with the  
4 protection and advocacy systems for individuals with developmental  
5 disabilities and mental illness established under part A of the federal  
6 developmental disabilities assistance and bill of rights act, 42 U.S.C.A. §  
7 6001 et seq., and under the federal protection and advocacy for mentally ill  
8 individuals act of 1986, public law 99-316;

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

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

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

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

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

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

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

36 (b) An ombudsman ~~or volunteer ombudsman~~ shall have access to all  
37 records and documents kept for or concerning a resident (1) in any case in  
38 which the resident is unable to consent and ~~has no guardian~~ *there is no*  
39 *resident representative*, and (2) in a case in which (A) access to the records  
40 and documents is necessary to investigate a complaint, (B) the resident is  
41 unable to consent and ~~the guardian of the resident~~ *representative* refuses to  
42 give permission for such access, (C) the investigating ombudsman ~~or~~  
43 ~~volunteer ombudsman~~ has reasonable cause to believe that the ~~guardian~~



1 *resident representative* is not acting in the best interests of the resident, and  
2 (D) the state long-term care ombudsman has approved such access by the  
3 investigating ombudsman ~~or volunteer ombudsman~~.

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

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

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

35 Sec. 7. K.S.A. 2017 Supp. 75-7302, 75-7303, 75-7304, 75-7306, 75-  
36 7309 and 75-7310 are hereby repealed.

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