



EQUALITY ♦ LAW ♦ JUSTICE

**Disability Rights Center of Kansas**  
214 SW 6<sup>th</sup> Avenue, Suite 100 ♦ Topeka, KS 66603  
Phone: 785.273.9661 ♦ Toll Free: 1.877.776.1541  
Toll Free TDD: 1.877.335.3725 ♦ Fax: 785-273-9414  
[www.drckansas.org](http://www.drckansas.org) [info@drckansas.org](mailto:info@drckansas.org)

**House Health and Human Services Committee  
Testimony in Support of HB 2663  
March 6, 2018**

**Chairman Hawkins and members of the Committee:**

My name is Mike Burgess. I am the Director of Policy & Outreach at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy system in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

This bill makes a number of changes to the KanCare Ombudsman program which improve it over the status quo.

We very much like the change to move the KanCare Ombudsman program to be a separate state agency similar to the LTC Ombudsman. This will somewhat insulate this office from political pressure (except every four years when their term expires).

Two very important issues not completely addressed in the bill to make KanCare work better for Kansans:

- The office needs additional resources to fulfill its current mission. According to the most recent KanCare Ombudsman report, contacts with the office have doubled over the previous year. They need additional FTEs to be better able to handle the volume of requests they are already getting to help Kansans navigate the KanCare system.
- While it does allow the Ombudsman office to contract for legal services for KanCare beneficiaries, it does not specifically add any resources for this or clarify this should be with a non-state entity to ensure conflict-free legal advocacy. Thankfully, SB 160 can be paired with this bill to create a truly independent HCBS legally-based advocacy program to handle appeals.

**KanCare Ombudsman Office Needs Additional FTE and Resources**

While the current Ombudsman does an admirable job of creatively working within existing constraints, the office needs additional resources to be able to be responsive to the need for information and direction to get the help Kansans need. Additional staff would also help the ombudsman to be able to do additional outreach as many Kansans are unfortunately not aware of the assistance the office can provide (despite having twice as many contacts as the previous year).

**There is Still a Need for Independent Legally-Based Advocacy Services for Individuals Receiving HCBS Waiver Services to Assist with Appeals Needs**

The administration of Gov. Scott Walker in Wisconsin has implemented what AARP, The American Bar Association, and others have called for, namely an independent organization serving the appeals needs of HCBS members. The Wisconsin Ombudsman Program provides for legally-based advocacy services for

HCBS waiver recipients. Those services are provided completely outside of state government and provide turn-key advocacy that includes everything from informal resolution to full-blown appeals representation for their HCBS waiver beneficiaries.

The good news is that HB2663 is complementary to SB 160, which seeks to create a Wisconsin-like HCBS legally-based representation program to conduct the actual appeals. The focus of SB160 is to designate an independent organization to provide legally-based appeals for HCBS members under KanCare. The good news here is this bill also already includes the mechanism to be able to address it as it allows the KanCare Ombudsman to contact for services with an outside independent entity to provide legal services directly to KanCare beneficiaries.

A number of Kansans testified to the need for SB 160 and gave very compelling testimony during a hearing last year in the Senate Public Health and Welfare Committee. I would encourage the committee to also review the testimony from the Feb. 14, 2017 hearing on SB 160.

While it is great the bill allows the KanCare Ombudsman Office to contract for legal services, those services should be independent of any state agency. There is an inherent conflict of interest if a state agency were providing legal representation to an individual against the State of Kansas. The State of Kansas is ultimately the opposing party in any KanCare appeals case. Currently all state legal counsel work under the Department of Administration, so you would essentially have a conflict of interest where the same entity would be tasked with representing both sides in a legal matter. While the AG's office will house the Inspector General and have some expertise in this area, the AG's office also is tasked with representing the State of Kansas so there is a conflict of interest there as well.

Thank you for the opportunity to share my comments with you. I would be happy to stand for questions at the appropriate time.