

HOUSE BILL No. 2663

By Committee on Health and Human Services

2-7

1 AN ACT enacting the KanCare/Medicaid ombudsman act; providing for
2 the powers, duties and functions of the state KanCare/Medicaid
3 ombudsman.
4

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

6 Section 1. As used in the KanCare/Medicaid ombudsman act:

7 (a) "Beneficiary" means a member of KanCare/Medicaid, an enrollee
8 of KanCare/Medicaid, a family member, guardian or other authorized
9 person of the KanCare/Medicaid member or enrollee.

10 (b) "Conflict of interest policy" means staff and volunteers shall not
11 promote private, political or personal interests in conjunction with the
12 performance of duties covered in the KanCare/Medicaid program. To
13 comply with the conflict of interest policy, staff and volunteers agree not
14 to:

15 (1) Attempt to solicit, persuade or coerce consumers to choose a
16 specific type of medical insurance coverage or go to a specific provider of
17 service for treatment. Staff and volunteers shall not direct a client to a
18 specific agent or broker, or both, or any profit-based billing service.
19 Neither the staff, volunteer nor a member of the immediate family of the
20 staff or volunteer may be currently in the business of health insurance;

21 (2) use or disclose confidential information obtained as a result of
22 association with the state KanCare/Medicaid ombudsman's office for
23 personal gain; and

24 (3) use confidential information for or disclose confidential
25 information to any other individuals or parties, unless authorized by law.

26 (c) "KanCare/Medicaid" means the Kansas program of medical
27 assistance.

28 (d) "Office" means the office of the state KanCare/Medicaid
29 ombudsman.

30 (e) "State KanCare/Medicaid ombudsman" means the individual
31 appointed by the governor to administer the office of the state
32 KanCare/Medicaid ombudsman.

33 (f) "Volunteer" means an individual who has satisfactorily completed
34 the training prescribed by the state KanCare/Medicaid ombudsman who is
35 an individual assisting in providing ombudsman services and who receives
36 no payment for such service other than reimbursement for expenses

1 incurred in accordance with guidelines adopted therefor by the state
2 KanCare/Medicaid ombudsman.

3 Sec. 2. (a) The office of the state KanCare/Medicaid ombudsman is
4 hereby attached to the department of administration. The office of the state
5 KanCare/Medicaid ombudsman shall be in Topeka, Kansas. The secretary
6 of administration shall provide such technical assistance and advice as the
7 secretary deems reasonable and necessary to assist the state
8 KanCare/Medicaid ombudsman office to function as an independent state
9 agency. The secretary of administration and the department of
10 administration shall have no authority over the state KanCare/Medicaid
11 ombudsman or employee, including volunteers of the office of the state
12 KanCare/Medicaid ombudsman with respect to the performance of any
13 power, duty or function of the office or the exercise of any other authority
14 of the office or the state KanCare/Medicaid ombudsman.

15 (b) For the fiscal year ending June 30, 2019, and for each fiscal year
16 thereafter, the secretary of administration shall include the budget estimate
17 of the office of the state KanCare/Medicaid ombudsman, as prepared and
18 approved by the state KanCare/Medicaid ombudsman, along with the
19 budget estimate prepared and submitted to the division of the budget for
20 the department of administration under K.S.A. 75-3717, and amendments
21 thereto. The budget estimate of the office of the state KanCare/Medicaid
22 ombudsman for each such fiscal year shall be prepared at the direction and
23 under the supervision of the state KanCare/Medicaid ombudsman.

24 (c) Expenditures from appropriations to the department of
25 administration for the office of the state KanCare/Medicaid ombudsman
26 made pursuant to budget estimates for the office shall be made on
27 vouchers approved by the state KanCare/Medicaid ombudsman or the state
28 KanCare/Medicaid ombudsman's designee. All vouchers for expenditures
29 and all payrolls of the office of the state KanCare/Medicaid ombudsman
30 shall be approved by the state KanCare/Medicaid ombudsman or the state
31 KanCare/Medicaid ombudsman's designee.

32 Sec. 3. (a) On the effective date of this act, the office of the state
33 KanCare/Medicaid ombudsman in existence on the day preceding such
34 effective date is hereby abolished and there is hereby established the office
35 of the state KanCare/Medicaid ombudsman, the head of which shall be the
36 state KanCare/Medicaid ombudsman. In performance of the powers, duties
37 and functions prescribed by law, the office shall be an independent state
38 agency. The state KanCare/Medicaid ombudsman shall be appointed by
39 the governor, subject to confirmation by the senate as provided in K.S.A.
40 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-
41 2601, and amendments thereto, no person appointed as the state
42 KanCare/Medicaid ombudsman shall exercise any power, duty or function
43 as the state KanCare/Medicaid ombudsman until confirmed by the senate.

1 The current state KanCare/Medicaid ombudsman as of January 15, 2018,
2 shall remain in office until the first term expires. The term of office of the
3 first state KanCare/Medicaid ombudsman under this act shall expire on
4 January 15, 2020, and such state KanCare/Medicaid ombudsman shall
5 serve until a successor is appointed and confirmed. Thereafter, each person
6 appointed as the state KanCare/Medicaid ombudsman shall have a term of
7 office of four years and shall serve until a successor is appointed and
8 confirmed.

9 (b) The state KanCare/Medicaid ombudsman shall hire all staff and
10 employees of the office of the state KanCare/Medicaid ombudsman. All
11 employees shall be within the unclassified service under the Kansas civil
12 service act.

13 (c) In accordance with the provisions of this act, the state
14 KanCare/Medicaid ombudsman shall administer the office of the state
15 KanCare/Medicaid ombudsman.

16 (d) No person shall be eligible to be appointed to, or to hold, the
17 office of state KanCare/Medicaid ombudsman if such person is subject to a
18 conflict of interest. No person shall be eligible for appointment as the state
19 KanCare/Medicaid ombudsman unless such person has:

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

22 (2) demonstrated abilities to analyze problems of administration and
23 public policy; and

24 (3) experience in the state's medicaid programs.

25 (e) (1) On the effective date of this act, all of the powers, duties,
26 functions, records and property of the office of the state
27 KanCare/Medicaid ombudsman abolished by this section that are
28 prescribed for the office of the state KanCare/Medicaid ombudsman by
29 this act, are hereby transferred to and conferred and imposed upon the
30 office of the state KanCare/Medicaid ombudsman that is established by
31 this section, except as is otherwise specifically provided by this act. On the
32 effective date of this act, all of the powers, duties, functions, records and
33 property of the secretary for aging and disability services or the
34 department for aging and disability services that relate to or are required
35 for the performance of powers, duties or functions that are prescribed for
36 the office of the state KanCare/Medicaid ombudsman or the state
37 KanCare/Medicaid ombudsman by this act, including the power to expend
38 funds now or hereafter made available in accordance with appropriation
39 acts, are hereby transferred to and conferred and imposed upon the office
40 of the state KanCare/Medicaid ombudsman and the state
41 KanCare/Medicaid ombudsman that are established by this section, except
42 as is otherwise specifically provided by this act.

43 (2) The office of the state KanCare/Medicaid ombudsman established

1 by this section shall be the successor in every way to the powers, duties
2 and functions of the office of the state KanCare/Medicaid ombudsman, the
3 secretary for aging and disability services, or the department for aging and
4 disability services, in which such powers, duties and functions were vested
5 prior to the effective date of this act, except as otherwise specifically
6 provided by this act. Every act performed under the authority of the office
7 of the state KanCare/Medicaid ombudsman established by this act shall be
8 deemed to have the same force and effect as if performed by the office of
9 the state KanCare/Medicaid ombudsman, the secretary for aging and
10 disability services or the department for aging and disability services, in
11 which such powers, duties and functions were vested prior to the effective
12 date of this act.

13 (3) Subject to the provisions of this act, whenever the office of the
14 state KanCare/Medicaid ombudsman that is abolished by this act or the
15 secretary for aging and disability services or the department for aging and
16 disability services, or words of like effect, are referred to or designated by
17 a statute, contract, or other document, and such reference or designation
18 relates to a power, duty or function that is transferred to and conferred and
19 imposed upon the office of the state KanCare/Medicaid ombudsman that is
20 established by this act, such reference or designation shall be deemed to
21 apply to the office of the state KanCare/Medicaid ombudsman established
22 by this act.

23 (4) All policies, orders or directives of the office of the state
24 KanCare/Medicaid ombudsman that is abolished by this act and all
25 policies, orders or directives of the secretary for aging and disability
26 services that are in existence on the effective date of this act and that relate
27 to powers, duties and functions that were vested in such office of the state
28 KanCare/Medicaid ombudsman or the secretary for aging and disability
29 services prior to such date, shall continue to be effective and shall be
30 deemed to be the policies, orders or directives of the state
31 KanCare/Medicaid ombudsman established by this act, until revised,
32 amended or revoked or nullified pursuant to law. The office of the state
33 KanCare/Medicaid ombudsman established by this act shall be deemed to
34 be a continuation of the office of the state KanCare/Medicaid ombudsman
35 abolished by this act.

36 (5) (A) The department for aging and disability services shall provide
37 that all employees of the state KanCare/Medicaid ombudsman office who
38 are engaged in the exercise and performance of the powers, duties and
39 functions of the programs of the office of the state KanCare/Medicaid
40 ombudsman are transferred by this act to the office of the state
41 KanCare/Medicaid ombudsman established by this section.

42 (B) Employees of the department for aging and disability services
43 transferred under this act shall retain all retirement benefits and leave

1 rights that had accrued or vested prior to each date of transfer. The service
2 of each employee so transferred shall be deemed to be continuous.

3 (C) Notwithstanding the effective date of this act, the provisions of
4 this act prescribing the transfer of employees between the office of the
5 state KanCare/Medicaid ombudsman established by this section and the
6 department for aging and disability services shall be administered so that
7 the date of transfer of each such employee shall commence at the start of a
8 payroll period.

9 Sec. 4. (a) The state KanCare/Medicaid ombudsman shall ensure that:

10 (1) All individuals involved in the authorization of any individual to
11 represent the office as an employee or volunteer of the state
12 KanCare/Medicaid ombudsman's office is subject to the conflict of interest
13 agreement;

14 (2) policies and procedures are in place to identify and remedy all
15 conflicts of interest specified under paragraph (1);

16 (3) legal counsel from the department of administration is available to
17 the office for advice and consultation and that legal representation is
18 provided to any employees of the state KanCare/Medicaid ombudsman's
19 office against whom suit or other legal action is brought in connection with
20 the performance of the state KanCare/Medicaid ombudsman's official
21 duties; and

22 (4) the office has the ability to pursue administrative, legal and other
23 appropriate remedies on behalf of members of KanCare/Medicaid.

24 (b) The state KanCare/Medicaid ombudsman may enter into contracts
25 with service providers to provide investigative, legal, public education,
26 training or other services as may be required to assist the state
27 KanCare/Medicaid ombudsman in providing ombudsman services to
28 KanCare/Medicaid members, enrollees or providers, or as otherwise
29 required to carry out the powers, duties and functions of the office.
30 Contracts entered into under this subsection shall not be subject to the
31 competitive bidding requirements of K.S.A. 75-3739, and amendments
32 thereto. No contract may be entered into by the state KanCare/Medicaid
33 ombudsman to privatize the office or to otherwise provide that all or
34 substantially all of the ombudsman services or functions of the office are
35 to be performed by one or more service providers.

36 (c) For the purposes of carrying out the powers and duties of the
37 office of the state KanCare/Medicaid ombudsman, the state
38 KanCare/Medicaid ombudsman may request and accept a grant or
39 donation from any person, firm, association or corporation or from any
40 federal, state or local governmental agency and may enter into contracts or
41 other transactions with any such person or entity in connection with the
42 grant or donation, subject to Kansas governmental ethics commission
43 rules, regulations and guidance. No grant or donation shall represent or

1 appear to represent a conflict of interest to the state KanCare/Medicaid
2 ombudsman's office.

3 Sec. 5. The state shall maintain a permanent system of independent
4 consumer supports through the state KanCare/Medicaid ombudsman's
5 office to assist beneficiaries in understanding the coverage model and in
6 resolving problems regarding services, coverage, access and rights. The
7 state KanCare/Medicaid ombudsman shall:

8 (a) Assist beneficiaries to navigate and access covered health care
9 services and supports. The services of the state KanCare/Medicaid
10 ombudsman help beneficiaries understand the delivery system and resolve
11 problems and concerns that may arise between the beneficiary and
12 provider or payer, or both. Activity shall include, but not be limited to:

13 (1) Serving as an access point for complaints and concerns about
14 access to services and other related matters when the beneficiary is not
15 able to resolve such beneficiary's concern directly with a provider or health
16 plan;

17 (2) helping beneficiaries understand the state's medicaid fair hearing
18 process, grievance and appeal rights and grievance and appeal processes
19 provided by the health plan and shall assist beneficiaries in navigating
20 those processes or accessing community legal resources, or both, if needed
21 or requested;

22 (3) developing a protocol for referring unresolvable issues to the state
23 medicaid agency and other state officials as necessary to ensure the safety
24 and well-being of beneficiaries;

25 (4) developing and implementing a program of training and outreach
26 with KanCare managed care organizations, providers and community-
27 based organizations to facilitate cross-organizational collaboration,
28 understanding and the development of system capacity to support
29 beneficiaries in obtaining covered plan benefits; and

30 (5) assisting beneficiaries to understand and resolve billing issues and
31 notices of action.

32 (b) Provide services to all medicaid beneficiaries enrolled in
33 KanCare, with priority given to those receiving long-term services and
34 supports (institutional, residential and community-based).

35 (c) Provide access to all medicaid beneficiaries enrolled in KanCare
36 through multiple entryways (e.g. phone, internet, office) and must use
37 various means (mail, phone, in person) as appropriate, to reach out to
38 beneficiaries or authorized representatives, or both.

39 (d) Establish and maintain a system to recruit and train volunteers.

40 (e) Establish a training process for employees and volunteers,
41 including the following criteria:

42 (1) Employees and volunteers must be knowledgeable about the
43 state's medicaid programs, beneficiary protections and rights under

1 medicaid managed care arrangements, the health and support needs of
2 persons with complex needs, including those with chronic conditions,
3 disabilities and cognitive or behavioral needs, and the community-based
4 systems that support them.

5 (2) Employees and volunteers must have knowledge regarding
6 provision of services in a culturally competent manner.

7 (f) Provide a robust system of data collection and reporting, to
8 include quarterly and annual reports available to the public. The reporting
9 shall include, but not be limited to:

10 (1) Date of incoming request and change in status;

11 (2) volume and type (email, phone) of incoming requests for
12 assistance;

13 (3) time required for beneficiaries to receive assistance from the state
14 KanCare/Medicaid ombudsman's office;

15 (4) issues presented in incoming requests for assistance;

16 (5) health plans involved in the requests for assistance, if any;

17 (6) geographic area where the beneficiary involved resides, if
18 applicable;

19 (7) the 1915 waiver authority, if applicable, from which the
20 beneficiary receives services;

21 (8) current status of the request for assistance, including actions taken
22 to resolve the request;

23 (9) number and type of education and outreach events conducted by
24 the state KanCare/Medicaid ombudsman's office; and

25 (10) ensuring stakeholder input into the operation, performance and
26 enhancement of the state KanCare/Medicaid ombudsman's office program.

27 (g) Demonstrate transparency and collaboration with beneficiaries,
28 managed care organizations, community-based organizations, providers
29 and state government.

30 (h) Perform such other duties and functions as may be provided by
31 the center for medicare and medicaid services special terms and conditions
32 and by law.

33 Sec. 6. (a) With the consent of the KanCare member or enrollee,
34 guardian of the member or responsible person, the state KanCare/Medicaid
35 ombudsman or authorized designee shall have access to all records and
36 documents kept for or concerning the member.

37 (b) The state KanCare/Medicaid ombudsman or authorized designee
38 shall have access to all records and documents kept for or concerning a
39 member:

40 (1) In any case in which the member is unable to consent and has no
41 guardian; and

42 (2) in a case in which:

43 (A) Access to the records and documents is necessary to investigate a

1 complaint;

2 (B) the member is unable to consent and the guardian of the
3 individual refuses to give permission for such access;

4 (C) the investigating state KanCare/Medicaid ombudsman employee
5 has reasonable cause to believe that the guardian is not acting in the best
6 interests of the member; and

7 (D) the office of the state KanCare/Medicaid ombudsman has
8 approved such access by the investigating state KanCare/Medicaid
9 ombudsman employee.

10 (c) A volunteer shall have access to the integrated service plan and
11 other records or documents kept for or concerning the beneficiary to the
12 same extent and under the same circumstances as the state
13 KanCare/Medicaid ombudsman under this section, except that a volunteer
14 shall not have access to any such other records and documents that are
15 privileged medical records.

16 Sec. 7. All information and records received by or developed by the
17 state KanCare/Medicaid ombudsman, the employee or a volunteer that
18 relate to a beneficiary, enrollee, guardian, family member or other
19 authorized person, including written material identifying the complainant,
20 are confidential and not subject to the provisions of the Kansas open
21 records act, K.S.A. 45-215 et seq., and amendments thereto, and shall not
22 be disclosed or released by the state KanCare/Medicaid ombudsman,
23 the employee or a volunteer, by name of the beneficiary, enrollees, guardian,
24 family member or other authorized person or of facts that allow the
25 identity of the beneficiary, enrollee, guardian, family member or other
26 authorized person to be inferred, except upon the order of a court or unless
27 the beneficiary, enrollee, guardian, family member or other authorized
28 person or the beneficiary, enrollee, guardian, family member or other
29 authorized person's legal representative consents in writing to such
30 disclosure or release by the state KanCare/Medicaid ombudsman, the
31 employee or a volunteer.

32 Sec. 8. There is hereby established in the state treasury the
33 KanCare/Medicaid ombudsman special revenue fund. All moneys credited
34 to the KanCare/Medicaid ombudsman special revenue fund shall be used
35 by the state KanCare/Medicaid ombudsman's office only for purposes
36 related to KanCare/Medicaid and the purposes defined by this act and any
37 additional purposes defined by the centers for medicare and medicaid
38 services in the special terms and conditions for the state
39 KanCare/Medicaid ombudsman's office. All expenditures from the state
40 KanCare/Medicaid ombudsman special revenue fund shall be made in
41 accordance with appropriation acts upon warrants of the director of
42 accounts and reports issued pursuant to vouchers approved by the state
43 KanCare/Medicaid ombudsman or the ombudsman's designee.

1 Sec. 9. (a) No state KanCare/Medicaid ombudsman, employee or
2 volunteer shall be liable for the good faith performance of official duties.

3 (b) No person shall willfully interfere with any lawful action or
4 activity of the state KanCare/Medicaid ombudsman, or employee or a
5 volunteer.

6 (c) No person shall take any discriminatory, disciplinary or retaliatory
7 action against any beneficiary, enrollee, guardian, family member or other
8 authorized person thereof for any communication by any such individual
9 with the state KanCare/Medicaid ombudsman, employee or a volunteer or
10 for any information given or disclosed by such individual in good faith to
11 aid the office in carrying out its duties and responsibilities.

12 (d) Any person who violates the provisions of subsection (b) or (c)
13 shall be guilty of a class C misdemeanor.

14 Sec. 10. The provisions of this act, and amendments thereto, shall be
15 known and may be cited as the KanCare/Medicaid ombudsman act.

16 Sec. 11. This act shall take effect and be in force from and after its
17 publication in the statute book.