



**Filed: 3/3/2004**

09300SB2726sam002

LRB093 19921 BDD 48491 a

1 AMENDMENT TO SENATE BILL 2726

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2726, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Act on the Aging is amended by  
6 changing Section 4.04 as follows:

7 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

8 Sec. 4.04. Long Term Care Ombudsman Program.

9 (a) Long Term Care Ombudsman Program. The Department shall  
10 establish a Long Term Care Ombudsman Program, through the  
11 Office of State Long Term Care Ombudsman ("the Office"), in  
12 accordance with the provisions of the Older Americans Act of  
13 1965, as now or hereafter amended.

14 (b) Definitions. As used in this Section, unless the  
15 context requires otherwise:

16 (1) "Access" has the same meaning as in Section 1-104  
17 of the Nursing Home Care Act, as now or hereafter amended;  
18 that is, it means the right to:

19 (i) Enter any long term care facility or assisted  
20 living or shared housing establishment or supportive  
21 living facility;

22 (ii) Communicate privately and without restriction  
23 with any resident who consents to the communication;

24 (iii) Seek consent to communicate privately and

1 without restriction with any resident;

2 (iv) Inspect the clinical and other records of a  
3 resident with the express written consent of the  
4 resident;

5 (v) Observe all areas of the long term care  
6 facility or supportive living facilities, assisted  
7 living or shared housing establishment except the  
8 living area of any resident who protests the  
9 observation.

10 (2) "Long Term Care Facility" means (i) any facility as  
11 defined by Section 1-113 of the Nursing Home Care Act, as  
12 now or hereafter amended; and (ii) any skilled nursing  
13 facility or a nursing facility which meets the requirements  
14 of Section 1819(a), (b), (c), and (d) or Section 1919(a),  
15 (b), (c), and (d) of the Social Security Act, as now or  
16 hereafter amended (42 U.S.C. 1395i-3(a), (b), (c), and (d)  
17 and 42 U.S.C. 1396r(a), (b), (c), and (d)).

18 (2.5) "Assisted living establishment" and "shared  
19 housing establishment" have the meanings given those terms  
20 in Section 10 of the Assisted Living and Shared Housing  
21 Act.

22 (2.7) "Supportive living facility" means a facility  
23 established under Section 5-5.01a of the Illinois Public  
24 Aid Code.

25 (3) "State Long Term Care Ombudsman" means any person  
26 employed by the Department to fulfill the requirements of  
27 the Office of State Long Term Care Ombudsman as required  
28 under the Older Americans Act of 1965, as now or hereafter  
29 amended, and Departmental policy.

30 (3.1) "Ombudsman" means any designated representative  
31 of a regional long term care ombudsman program; provided  
32 that the representative, whether he is paid for or  
33 volunteers his ombudsman services, shall be qualified and  
34 designated by the Office to perform the duties of an

1           ombudsman as specified by the Department in rules and in  
2           accordance with the provisions of the Older Americans Act  
3           of 1965, as now or hereafter amended.

4           (c) Ombudsman; rules. The Office of State Long Term Care  
5           Ombudsman shall be composed of at least one full-time ombudsman  
6           and shall include a system of designated regional long term  
7           care ombudsman programs. Each regional program shall be  
8           designated by the State Long Term Care Ombudsman as a  
9           subdivision of the Office and any representative of a regional  
10          program shall be treated as a representative of the Office.

11          The Department, in consultation with the Office, shall  
12          promulgate administrative rules in accordance with the  
13          provisions of the Older Americans Act of 1965, as now or  
14          hereafter amended, to establish the responsibilities of the  
15          Department and the Office of State Long Term Care Ombudsman and  
16          the designated regional Ombudsman programs. The administrative  
17          rules shall include the responsibility of the Office and  
18          designated regional programs to investigate and resolve  
19          complaints made by or on behalf of residents of long term care  
20          facilities, supportive living facilities, and assisted living  
21          and shared housing establishments relating to actions,  
22          inaction, or decisions of providers, or their representatives,  
23          of long term care facilities, of supported living facilities,  
24          of assisted living and shared housing establishments, of public  
25          agencies, or of social services agencies, which may adversely  
26          affect the health, safety, welfare, or rights of such  
27          residents. When necessary and appropriate, representatives of  
28          the Office shall refer complaints to the appropriate regulatory  
29          State agency. The Department, in consultation with the Office,  
30          shall cooperate with the Department of Human Services in  
31          providing information and training to designated regional long  
32          term care ombudsman programs about the appropriate assessment  
33          and treatment (including information about appropriate  
34          supportive services, treatment options, and assessment of

1 rehabilitation potential) of persons with mental illness  
2 (other than Alzheimer's disease and related disorders).

3 The State Long Term Care Ombudsman and all other ombudsmen,  
4 as defined in paragraph (3.1) of subsection (b) must submit to  
5 background checks under the Health Care Worker Background Check  
6 Act and receive training, as prescribed by the Illinois  
7 Department on Aging, before visiting facilities. The training  
8 must include information specific to assisted living  
9 establishments, supportive living facilities, and shared  
10 housing establishments and to the rights of residents  
11 guaranteed under the corresponding Acts and administrative  
12 rules.

13 (d) Access and visitation rights.

14 (1) In accordance with subparagraphs (A) and (E) of  
15 paragraph (3) of subsection (c) of Section 1819 and  
16 subparagraphs (A) and (E) of paragraph (3) of subsection  
17 (c) of Section 1919 of the Social Security Act, as now or  
18 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and  
19 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the  
20 Older Americans Act of 1965, as now or hereafter amended  
21 (42 U.S.C. 3058f), a long term care facility, supportive  
22 living facility, assisted living establishment, and shared  
23 housing establishment must:

24 (i) permit immediate access to any resident by a  
25 designated ombudsman; and

26 (ii) permit representatives of the Office, with  
27 the permission of the resident's legal representative  
28 or legal guardian, to examine a resident's clinical and  
29 other records, and if a resident is unable to consent  
30 to such review, and has no legal guardian, permit  
31 representatives of the Office appropriate access, as  
32 defined by the Department, in consultation with the  
33 Office, in administrative rules, to the resident's  
34 records.

1           (2) Each long term care facility, supportive living  
2 facility, assisted living establishment, and shared  
3 housing establishment shall display, in multiple,  
4 conspicuous public places within the facility accessible  
5 to both visitors and residents and in an easily readable  
6 format, the address and phone number of the Office of the  
7 Long Term Care Ombudsman, in a manner prescribed by the  
8 Office.

9           (e) Immunity. An ombudsman or any representative of the  
10 Office participating in the good faith performance of his or  
11 her official duties shall have immunity from any liability  
12 (civil, criminal or otherwise) in any proceedings (civil,  
13 criminal or otherwise) brought as a consequence of the  
14 performance of his official duties.

15           (f) Business offenses.

16           (1) No person shall:

17           (i) Intentionally prevent, interfere with, or  
18 attempt to impede in any way any representative of the  
19 Office in the performance of his official duties under  
20 this Act and the Older Americans Act of 1965; or

21           (ii) Intentionally retaliate, discriminate  
22 against, or effect reprisals against any long term care  
23 facility resident or employee for contacting or  
24 providing information to any representative of the  
25 Office.

26           (2) A violation of this Section is a business offense,  
27 punishable by a fine not to exceed \$501.

28           (3) The Director of Aging, in consultation with the  
29 Office, shall notify the State's Attorney of the county in  
30 which the long term care facility, supportive living  
31 facility, or assisted living or shared housing  
32 establishment is located, or the Attorney General, of any  
33 violations of this Section.

34           (g) Confidentiality of records and identities. The

1 Department shall establish procedures for the disclosure by the  
2 State Ombudsman or the regional ombudsmen entities of files  
3 maintained by the program. The procedures shall provide that  
4 the files and records may be disclosed only at the discretion  
5 of the State Long Term Care Ombudsman or the person designated  
6 by the State Ombudsman to disclose the files and records, and  
7 the procedures shall prohibit the disclosure of the identity of  
8 any complainant, resident, witness, or employee of a long term  
9 care provider unless:

10 (1) the complainant, resident, witness, or employee of  
11 a long term care provider or his or her legal  
12 representative consents to the disclosure and the consent  
13 is in writing;

14 (2) the complainant, resident, witness, or employee of  
15 a long term care provider gives consent orally; and the  
16 consent is documented contemporaneously in writing in  
17 accordance with such requirements as the Department shall  
18 establish; or

19 (3) the disclosure is required by court order.

20 (h) Legal representation. The Attorney General shall  
21 provide legal representation to any representative of the  
22 Office against whom suit or other legal action is brought in  
23 connection with the performance of the representative's  
24 official duties, in accordance with the State Employee  
25 Indemnification Act.

26 (i) Treatment by prayer and spiritual means. Nothing in  
27 this Act shall be construed to authorize or require the medical  
28 supervision, regulation or control of remedial care or  
29 treatment of any resident in a long term care facility operated  
30 exclusively by and for members or adherents of any church or  
31 religious denomination the tenets and practices of which  
32 include reliance solely upon spiritual means through prayer for  
33 healing.

34 (Source: P.A. 93-241, eff. 7-22-03.)

1 Section 10. The Health Care Worker Background Check Act is  
2 amended by changing Section 15 as follows:

3 (225 ILCS 46/15)

4 Sec. 15. Definitions. For the purposes of this Act, the  
5 following definitions apply:

6 "Applicant" means an individual seeking employment with a  
7 health care employer who has received a bona fide conditional  
8 offer of employment.

9 "Conditional offer of employment" means a bona fide offer  
10 of employment by a health care employer to an applicant, which  
11 is contingent upon the receipt of a report from the Department  
12 of State Police indicating that the applicant does not have a  
13 record of conviction of any of the criminal offenses enumerated  
14 in Section 25.

15 "Direct care" means the provision of nursing care or  
16 assistance with feeding, dressing, movement, bathing,  
17 toileting, or other personal needs. The entity responsible for  
18 inspecting and licensing, certifying, or registering the  
19 health care employer may, by administrative rule, prescribe  
20 guidelines for interpreting this definition with regard to the  
21 health care employers that it licenses.

22 "Health care employer" means:

23 (1) the owner or licensee of any of the following:

24 (i) a community living facility, as defined in the  
25 Community Living Facilities Act;

26 (ii) a life care facility, as defined in the Life Care  
27 Facilities Act;

28 (iii) a long-term care facility, as defined in the  
29 Nursing Home Care Act;

30 (iv) a home health agency, as defined in the Home  
31 Health Agency Licensing Act;

32 (v) a full hospice, as defined in the Hospice Program

1 Licensing Act;

2 (vi) a hospital, as defined in the Hospital Licensing  
3 Act;

4 (vii) a community residential alternative, as defined  
5 in the Community Residential Alternatives Licensing Act;

6 (viii) a nurse agency, as defined in the Nurse Agency  
7 Licensing Act;

8 (ix) a respite care provider, as defined in the Respite  
9 Program Act;

10 (ix-a) an establishment licensed under the Assisted  
11 Living and Shared Housing Act;

12 (x) a supportive living program, as defined in the  
13 Illinois Public Aid Code;

14 (xi) early childhood intervention programs as  
15 described in 59 Ill. Adm. Code 121;

16 (xii) the University of Illinois Hospital, Chicago;

17 (xiii) programs funded by the Department on Aging  
18 through the Community Care Program;

19 (xiv) programs certified to participate in the  
20 Supportive Living Program authorized pursuant to Section  
21 5-5.01a of the Illinois Public Aid Code;

22 (xv) programs listed by the Emergency Medical Services  
23 (EMS) Systems Act as Freestanding Emergency Centers;

24 (xvi) locations licensed under the Alternative Health  
25 Care Delivery Act;

26 (2) a day training program certified by the Department of  
27 Human Services; ~~or~~

28 (3) a community integrated living arrangement operated by a  
29 community mental health and developmental service agency, as  
30 defined in the Community-Integrated Living Arrangements  
31 Licensing and Certification Act or ~~or~~

32 (4) the State Long Term Care Ombudsman Program, including  
33 any regional long term care ombudsman programs under Section  
34 4.04 of the Illinois Act on the Aging, only for the purpose of



1 securing background checks.

2 "Initiate" means the obtaining of the authorization for a  
3 record check from a student, applicant, or employee. The  
4 educational entity or health care employer or its designee  
5 shall transmit all necessary information and fees to the  
6 Illinois State Police within 10 working days after receipt of  
7 the authorization.

8 (Source: P.A. 91-598, eff. 1-1-00; 91-656, eff. 1-1-01; 92-16,  
9 eff. 6-28-01.)

10 Section 99. Effective date. This Act takes effect on  
11 January 1, 2005."