

HB4249



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4249

Introduced 1/16/2024, by Rep. Terra Costa Howard

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on Aging. In a provision requiring a long term care facility to permit the Office of State Long Term Care Ombudsman to examine and copy a resident's clinical and other records, includes access to facility incident reports. In the definition of "access", changes "express written consent" to "express consent".

LRB103 35290 KTG 65324 b

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

7 (Text of Section after amendment by P.A. 103-329)

8 Sec. 4.04. Long Term Care Ombudsman Program. The purpose
9 of the Long Term Care Ombudsman Program is to ensure that older
10 persons and persons with disabilities receive quality
11 services. This is accomplished by providing advocacy services
12 for residents of long term care facilities and participants
13 receiving home care and community-based care. Managed care is
14 increasingly becoming the vehicle for delivering health and
15 long-term services and supports to seniors and persons with
16 disabilities, including dual eligible participants. The
17 additional ombudsman authority will allow advocacy services to
18 be provided to Illinois participants for the first time and
19 will produce a cost savings for the State of Illinois by
20 supporting the rebalancing efforts of the Patient Protection
21 and Affordable Care Act.

22 (a) Long Term Care Ombudsman Program. The Department shall
23 establish a Long Term Care Ombudsman Program, through the

1 Office of State Long Term Care Ombudsman ("the Office"), in
2 accordance with the provisions of the Older Americans Act of
3 1965, as now or hereafter amended. The Long Term Care
4 Ombudsman Program is authorized, subject to sufficient
5 appropriations, to advocate on behalf of older persons and
6 persons with disabilities residing in their own homes or
7 community-based settings, relating to matters which may
8 adversely affect the health, safety, welfare, or rights of
9 such individuals.

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

12 (1) "Access" means the right to:

13 (i) Enter any long term care facility or assisted
14 living or shared housing establishment or supportive
15 living facility;

16 (ii) Communicate privately and without restriction
17 with any resident, regardless of age, who consents to
18 the communication;

19 (iii) Seek consent to communicate privately and
20 without restriction with any participant or resident,
21 regardless of age;

22 (iv) Inspect and copy the clinical and other
23 records of a participant or resident, regardless of
24 age, with the express ~~written~~ consent of the
25 participant or resident;

26 (v) Observe all areas of the long term care

1 facility or supportive living facilities, assisted
2 living or shared housing establishment except the
3 living area of any resident who protests the
4 observation; and

5 (vi) Subject to permission of the participant or
6 resident requesting services or his or her
7 representative, enter a home or community-based
8 setting.

9 (2) "Long Term Care Facility" means (i) any facility
10 as defined by Section 1-113 of the Nursing Home Care Act,
11 as now or hereafter amended; (ii) any skilled nursing
12 facility or a nursing facility which meets the
13 requirements of Section 1819(a), (b), (c), and (d) or
14 Section 1919(a), (b), (c), and (d) of the Social Security
15 Act, as now or hereafter amended (42 U.S.C. 1395i-3(a),
16 (b), (c), and (d) and 42 U.S.C. 1396r(a), (b), (c), and
17 (d)); (iii) any facility as defined by Section 1-113 of
18 the ID/DD Community Care Act, as now or hereafter amended;
19 (iv) any facility as defined by Section 1-113 of MC/DD
20 Act, as now or hereafter amended; and (v) any facility
21 licensed under Section 4-105 or 4-201 of the Specialized
22 Mental Health Rehabilitation Act of 2013, as now or
23 hereafter amended.

24 (2.5) "Assisted living establishment" and "shared
25 housing establishment" have the meanings given those terms
26 in Section 10 of the Assisted Living and Shared Housing

1 Act.

2 (2.7) "Supportive living facility" means a facility
3 established under Section 5-5.01a of the Illinois Public
4 Aid Code.

5 (2.8) "Community-based setting" means any place of
6 abode other than an individual's private home.

7 (3) "State Long Term Care Ombudsman" means any person
8 employed by the Department to fulfill the requirements of
9 the Office of State Long Term Care Ombudsman as required
10 under the Older Americans Act of 1965, as now or hereafter
11 amended, and Departmental policy.

12 (3.1) "Ombudsman" means any designated representative
13 of the State Long Term Care Ombudsman Program; provided
14 that the representative, whether he is paid for or
15 volunteers his ombudsman services, shall be qualified and
16 designated by the Office to perform the duties of an
17 ombudsman as specified by the Department in rules and in
18 accordance with the provisions of the Older Americans Act
19 of 1965, as now or hereafter amended.

20 (4) "Participant" means an older person aged 60 or
21 over or an adult with a disability aged 18 through 59 who
22 is eligible for services under any of the following:

23 (i) A medical assistance waiver administered by
24 the State.

25 (ii) A managed care organization providing care
26 coordination and other services to seniors and persons

1 with disabilities.

2 (5) "Resident" means an older person aged 60 or over
3 or an adult with a disability aged 18 through 59 who
4 resides in a long-term care facility.

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

12 The Department, in consultation with the Office, shall
13 promulgate administrative rules in accordance with the
14 provisions of the Older Americans Act of 1965, as now or
15 hereafter amended, to establish the responsibilities of the
16 Department and the Office of State Long Term Care Ombudsman
17 and the designated regional Ombudsman programs. The
18 administrative rules shall include the responsibility of the
19 Office and designated regional programs to investigate and
20 resolve complaints made by or on behalf of residents of long
21 term care facilities, supportive living facilities, and
22 assisted living and shared housing establishments, and
23 participants residing in their own homes or community-based
24 settings, including the option to serve residents and
25 participants under the age of 60, relating to actions,
26 inaction, or decisions of providers, or their representatives,

1 of such facilities and establishments, of public agencies, or
2 of social services agencies, which may adversely affect the
3 health, safety, welfare, or rights of such residents and
4 participants. The Office and designated regional programs may
5 represent all residents and participants, but are not required
6 by this Act to represent persons under 60 years of age, except
7 to the extent required by federal law. When necessary and
8 appropriate, representatives of the Office shall refer
9 complaints to the appropriate regulatory State agency. The
10 Department, in consultation with the Office, shall cooperate
11 with the Department of Human Services and other State agencies
12 in providing information and training to designated regional
13 long term care ombudsman programs about the appropriate
14 assessment and treatment (including information about
15 appropriate supportive services, treatment options, and
16 assessment of rehabilitation potential) of the participants
17 they serve.

18 The State Long Term Care Ombudsman and all other
19 ombudsmen, as defined in paragraph (3.1) of subsection (b)
20 must submit to background checks under the Health Care Worker
21 Background Check Act and receive training, as prescribed by
22 the Illinois Department on Aging, before visiting facilities,
23 private homes, or community-based settings. The training must
24 include information specific to assisted living
25 establishments, supportive living facilities, shared housing
26 establishments, private homes, and community-based settings

1 and to the rights of residents and participants guaranteed
2 under the corresponding Acts and administrative rules.

3 (c-5) Consumer Choice Information Reports. The Office
4 shall:

5 (1) In collaboration with the Attorney General, create
6 a Consumer Choice Information Report form to be completed
7 by all licensed long term care facilities to aid
8 Illinoisans and their families in making informed choices
9 about long term care. The Office shall create a Consumer
10 Choice Information Report for each type of licensed long
11 term care facility. The Office shall collaborate with the
12 Attorney General and the Department of Human Services to
13 create a Consumer Choice Information Report form for
14 facilities licensed under the ID/DD Community Care Act or
15 the MC/DD Act.

16 (2) Develop a database of Consumer Choice Information
17 Reports completed by licensed long term care facilities
18 that includes information in the following consumer
19 categories:

20 (A) Medical Care, Services, and Treatment.

21 (B) Special Services and Amenities.

22 (C) Staffing.

23 (D) Facility Statistics and Resident Demographics.

24 (E) Ownership and Administration.

25 (F) Safety and Security.

26 (G) Meals and Nutrition.

1 (H) Rooms, Furnishings, and Equipment.

2 (I) Family, Volunteer, and Visitation Provisions.

3 (3) Make this information accessible to the public,
4 including on the Internet by means of a hyperlink on the
5 Office's World Wide Web home page. Information about
6 facilities licensed under the ID/DD Community Care Act or
7 the MC/DD Act shall be made accessible to the public by the
8 Department of Human Services, including on the Internet by
9 means of a hyperlink on the Department of Human Services'
10 "For Customers" website.

11 (4) Have the authority, with the Attorney General, to
12 verify that information provided by a facility is
13 accurate.

14 (5) Request a new report from any licensed facility
15 whenever it deems necessary.

16 (6) Include in the Office's Consumer Choice
17 Information Report for each type of licensed long term
18 care facility additional information on each licensed long
19 term care facility in the State of Illinois, including
20 information regarding each facility's compliance with the
21 relevant State and federal statutes, rules, and standards;
22 customer satisfaction surveys; and information generated
23 from quality measures developed by the Centers for
24 Medicare and Medicaid Services.

25 (d) Access and visitation rights.

26 (1) In accordance with subparagraphs (A) and (E) of

1 paragraph (3) of subsection (c) of Section 1819 and
2 subparagraphs (A) and (E) of paragraph (3) of subsection
3 (c) of Section 1919 of the Social Security Act, as now or
4 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and
5 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the
6 Older Americans Act of 1965, as now or hereafter amended
7 (42 U.S.C. 3058f), a long term care facility, supportive
8 living facility, assisted living establishment, and shared
9 housing establishment must:

10 (i) permit immediate access to any resident,
11 regardless of age, by a designated ombudsman;

12 (ii) permit representatives of the Office, with
13 the permission of the resident, the resident's legal
14 representative, or the resident's legal guardian, to
15 examine and copy a resident's clinical and other
16 records including facility incident reports,
17 regardless of the age of the resident, and if a
18 resident is unable to consent to such review, and has
19 no legal guardian, permit representatives of the
20 Office appropriate access, as defined by the
21 Department, in consultation with the Office, in
22 administrative rules, to the resident's records; and

23 (iii) permit a representative of the Program to
24 communicate privately and without restriction with any
25 participant who consents to the communication
26 regardless of the consent of, or withholding of

1 consent by, a legal guardian or an agent named in a
2 power of attorney executed by the participant.

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

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

17 (f) Business offenses.

18 (1) No person shall:

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

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

1 Office.

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

4 (3) The State Long Term Care Ombudsman shall notify
5 the State's Attorney of the county in which the long term
6 care facility, supportive living facility, or assisted
7 living or shared housing establishment is located, or the
8 Attorney General, of any violations of this Section.

9 (g) Confidentiality of records and identities. The
10 Department shall establish procedures for the disclosure by
11 the State Ombudsman or the regional ombudsmen entities of
12 files maintained by the program. The procedures shall provide
13 that the files and records may be disclosed only at the
14 discretion of the State Long Term Care Ombudsman or the person
15 designated by the State Ombudsman to disclose the files and
16 records, and the procedures shall prohibit the disclosure of
17 the identity of any complainant, resident, participant,
18 witness, or employee of a long term care provider unless:

19 (1) the complainant, resident, participant, witness,
20 or employee of a long term care provider or his or her
21 legal representative consents to the disclosure and the
22 consent is in writing;

23 (2) the complainant, resident, participant, witness,
24 or employee of a long term care provider gives consent
25 orally; and the consent is documented contemporaneously in
26 writing in accordance with such requirements as the

1 Department shall establish; or

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

3 (h) Legal representation. The Attorney General shall
4 provide legal representation to any representative of the
5 Office against whom suit or other legal action is brought in
6 connection with the performance of the representative's
7 official duties, in accordance with the State Employee
8 Indemnification Act.

9 (i) Treatment by prayer and spiritual means. Nothing in
10 this Act shall be construed to authorize or require the
11 medical supervision, regulation or control of remedial care or
12 treatment of any resident in a long term care facility
13 operated exclusively by and for members or adherents of any
14 church or religious denomination the tenets and practices of
15 which include reliance solely upon spiritual means through
16 prayer for healing.

17 (j) The Long Term Care Ombudsman Fund is created as a
18 special fund in the State treasury to receive moneys for the
19 express purposes of this Section. All interest earned on
20 moneys in the fund shall be credited to the fund. Moneys
21 contained in the fund shall be used to support the purposes of
22 this Section.

23 (k) Each Regional Ombudsman may, in accordance with rules
24 promulgated by the Office, establish a multi-disciplinary team
25 to act in an advisory role for the purpose of providing
26 professional knowledge and expertise in handling complex

1 abuse, neglect, and advocacy issues involving participants.
2 Each multi-disciplinary team may consist of one or more
3 volunteer representatives from any combination of at least 7
4 members from the following professions: banking or finance;
5 disability care; health care; pharmacology; law; law
6 enforcement; emergency responder; mental health care; clergy;
7 coroner or medical examiner; substance abuse; domestic
8 violence; sexual assault; or other related fields. To support
9 multi-disciplinary teams in this role, law enforcement
10 agencies and coroners or medical examiners shall supply
11 records as may be requested in particular cases. The Regional
12 Ombudsman, or his or her designee, of the area in which the
13 multi-disciplinary team is created shall be the facilitator of
14 the multi-disciplinary team.

15 (Source: P.A. 102-1033, eff. 1-1-23; 103-329, eff. 1-1-24.)