



Rep. Terra Costa Howard

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1 AMENDMENT TO HOUSE BILL 4249

2 AMENDMENT NO. _____. Amend House Bill 4249 by replacing
3 everything after the enacting clause with the following:

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 Sec. 4.04. Long Term Care Ombudsman Program. The purpose
8 of the Long Term Care Ombudsman Program is to ensure that older
9 persons and persons with disabilities receive quality
10 services. This is accomplished by providing advocacy services
11 for residents of long term care facilities and participants
12 receiving home care and community-based care. Managed care is
13 increasingly becoming the vehicle for delivering health and
14 long-term services and supports to seniors and persons with
15 disabilities, including dual eligible participants. The
16 additional ombudsman authority will allow advocacy services to

1 be provided to Illinois participants for the first time and
2 will produce a cost savings for the State of Illinois by
3 supporting the rebalancing efforts of the Patient Protection
4 and Affordable Care Act.

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

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

18 (1) "Access" 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, regardless of age, who consents to
24 the communication;

25 (iii) Seek consent to communicate privately and
26 without restriction with any participant or resident,

1 regardless of age;

2 (iv) Inspect and copy the clinical and other
3 records of a participant or resident, regardless of
4 age, with the express written consent of the
5 participant or resident, or if consent is given
6 orally, visually, or through the use of auxiliary aids
7 and services, such consent is documented
8 contemporaneously by a representative of the Office in
9 accordance with such procedures;

10 (v) Observe all areas of the long term care
11 facility or supportive living facilities, assisted
12 living or shared housing establishment except the
13 living area of any resident who protests the
14 observation; and

15 (vi) Subject to permission of the participant or
16 resident requesting services or his or her
17 representative, enter a home or community-based
18 setting.

19 (2) "Long Term Care Facility" means (i) any facility
20 as defined by Section 1-113 of the Nursing Home Care Act,
21 as now or hereafter amended; (ii) any skilled nursing
22 facility or a nursing facility which meets the
23 requirements of Section 1819(a), (b), (c), and (d) or
24 Section 1919(a), (b), (c), and (d) of the Social Security
25 Act, as now or hereafter amended (42 U.S.C. 1395i-3(a),
26 (b), (c), and (d) and 42 U.S.C. 1396r(a), (b), (c), and

1 (d)); (iii) any facility as defined by Section 1-113 of
2 the ID/DD Community Care Act, as now or hereafter amended;
3 (iv) any facility as defined by Section 1-113 of MC/DD
4 Act, as now or hereafter amended; and (v) any facility
5 licensed under Section 4-105 or 4-201 of the Specialized
6 Mental Health Rehabilitation Act of 2013, as now or
7 hereafter amended.

8 (2.5) "Assisted living establishment" and "shared
9 housing establishment" have the meanings given those terms
10 in Section 10 of the Assisted Living and Shared Housing
11 Act.

12 (2.7) "Supportive living facility" means a facility
13 established under Section 5-5.01a of the Illinois Public
14 Aid Code.

15 (2.8) "Community-based setting" means any place of
16 abode other than an individual's private home.

17 (3) "State Long Term Care Ombudsman" means any person
18 employed by the Department to fulfill the requirements of
19 the Office of State Long Term Care Ombudsman as required
20 under the Older Americans Act of 1965, as now or hereafter
21 amended, and Departmental policy.

22 (3.1) "Ombudsman" means any designated representative
23 of the State Long Term Care Ombudsman Program; provided
24 that the representative, whether he is paid for or
25 volunteers his ombudsman services, shall be qualified and
26 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 (4) "Participant" means an older person aged 60 or
5 over or an adult with a disability aged 18 through 59 who
6 is eligible for services under any of the following:

7 (i) A medical assistance waiver administered by
8 the State.

9 (ii) A managed care organization providing care
10 coordination and other services to seniors and persons
11 with disabilities.

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

15 (c) Ombudsman; rules. The Office of State Long Term Care
16 Ombudsman shall be composed of at least one full-time
17 ombudsman and shall include a system of designated regional
18 long term care ombudsman programs. Each regional program shall
19 be designated by the State Long Term Care Ombudsman as a
20 subdivision of the Office and any representative of a regional
21 program shall be treated as a representative of the Office.

22 The Department, in consultation with the Office, shall
23 promulgate administrative rules in accordance with the
24 provisions of the Older Americans Act of 1965, as now or
25 hereafter amended, to establish the responsibilities of the
26 Department and the Office of State Long Term Care Ombudsman

1 and the designated regional Ombudsman programs. The
2 administrative rules shall include the responsibility of the
3 Office and designated regional programs to investigate and
4 resolve complaints made by or on behalf of residents of long
5 term care facilities, supportive living facilities, and
6 assisted living and shared housing establishments, and
7 participants residing in their own homes or community-based
8 settings, including the option to serve residents and
9 participants under the age of 60, relating to actions,
10 inaction, or decisions of providers, or their representatives,
11 of such facilities and establishments, of public agencies, or
12 of social services agencies, which may adversely affect the
13 health, safety, welfare, or rights of such residents and
14 participants. The Office and designated regional programs may
15 represent all residents and participants, but are not required
16 by this Act to represent persons under 60 years of age, except
17 to the extent required by federal law. When necessary and
18 appropriate, representatives of the Office shall refer
19 complaints to the appropriate regulatory State agency. The
20 Department, in consultation with the Office, shall cooperate
21 with the Department of Human Services and other State agencies
22 in providing information and training to designated regional
23 long term care ombudsman programs about the appropriate
24 assessment and treatment (including information about
25 appropriate supportive services, treatment options, and
26 assessment of rehabilitation potential) of the participants

1 they serve.

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

13 (c-5) Consumer Choice Information Reports. The Office
14 shall:

15 (1) In collaboration with the Attorney General, create
16 a Consumer Choice Information Report form to be completed
17 by all licensed long term care facilities to aid
18 Illinoisans and their families in making informed choices
19 about long term care. The Office shall create a Consumer
20 Choice Information Report for each type of licensed long
21 term care facility. The Office shall collaborate with the
22 Attorney General and the Department of Human Services to
23 create a Consumer Choice Information Report form for
24 facilities licensed under the ID/DD Community Care Act or
25 the MC/DD Act.

26 (2) Develop a database of Consumer Choice Information

1 Reports completed by licensed long term care facilities
2 that includes information in the following consumer
3 categories:

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

5 (B) Special Services and Amenities.

6 (C) Staffing.

7 (D) Facility Statistics and Resident Demographics.

8 (E) Ownership and Administration.

9 (F) Safety and Security.

10 (G) Meals and Nutrition.

11 (H) Rooms, Furnishings, and Equipment.

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

13 (3) Make this information accessible to the public,
14 including on the Internet by means of a hyperlink on the
15 Office's World Wide Web home page. Information about
16 facilities licensed under the ID/DD Community Care Act or
17 the MC/DD Act shall be made accessible to the public by the
18 Department of Human Services, including on the Internet by
19 means of a hyperlink on the Department of Human Services'
20 "For Customers" website.

21 (4) Have the authority, with the Attorney General, to
22 verify that information provided by a facility is
23 accurate.

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

26 (6) Include in the Office's Consumer Choice

1 Information Report for each type of licensed long term
2 care facility additional information on each licensed long
3 term care facility in the State of Illinois, including
4 information regarding each facility's compliance with the
5 relevant State and federal statutes, rules, and standards;
6 customer satisfaction surveys; and information generated
7 from quality measures developed by the Centers for
8 Medicare and Medicaid Services.

9 (d) Access and visitation rights.

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

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

22 (ii) permit representatives of the Office, with
23 the permission of the resident, the resident's legal
24 representative, or the resident's legal guardian, to
25 examine and copy a resident's clinical and other
26 records, including reports of incidents or occurrences

1 made to State agencies, regardless of the age of the
2 resident, and if a resident is unable to consent to
3 such review, and has no legal guardian, permit
4 representatives of the Office appropriate access, as
5 defined by the Department, in consultation with the
6 Office, in administrative rules, to the resident's
7 records; and

8 (iii) permit a representative of the Program to
9 communicate privately and without restriction with any
10 participant who consents to the communication
11 regardless of the consent of, or withholding of
12 consent by, a legal guardian or an agent named in a
13 power of attorney executed by the participant.

14 (2) Each long term care facility, supportive living
15 facility, assisted living establishment, and shared
16 housing establishment shall display, in multiple,
17 conspicuous public places within the facility accessible
18 to both visitors and residents and in an easily readable
19 format, the address and phone number of the Office of the
20 Long Term Care Ombudsman, in a manner prescribed by the
21 Office.

22 (e) Immunity. An ombudsman or any representative of the
23 Office participating in the good faith performance of his or
24 her official duties shall have immunity from any liability
25 (civil, criminal or otherwise) in any proceedings (civil,
26 criminal or otherwise) brought as a consequence of the

1 performance of his official duties.

2 (f) Business offenses.

3 (1) No person shall:

4 (i) Intentionally prevent, interfere with, or
5 attempt to impede in any way any representative of the
6 Office in the performance of his official duties under
7 this Act and the Older Americans Act of 1965; or

8 (ii) Intentionally retaliate, discriminate
9 against, or effect reprisals against any long term
10 care facility resident or employee for contacting or
11 providing information to any representative of the
12 Office.

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

15 (3) The State Long Term Care Ombudsman shall notify
16 the State's Attorney of the county in which the long term
17 care facility, supportive living facility, or assisted
18 living or shared housing establishment is located, or the
19 Attorney General, of any violations of this Section.

20 (g) Confidentiality of records and identities. The
21 Department shall establish procedures for the disclosure by
22 the State Ombudsman or the regional ombudsmen entities of
23 files maintained by the program. The procedures shall provide
24 that the files and records may be disclosed only at the
25 discretion of the State Long Term Care Ombudsman or the person
26 designated by the State Ombudsman to disclose the files and

1 records, and the procedures shall prohibit the disclosure of
2 the identity of any complainant, resident, participant,
3 witness, or employee of a long term care provider unless:

4 (1) the complainant, resident, participant, witness,
5 or employee of a long term care provider or his or her
6 legal representative consents to the disclosure and the
7 consent is in writing;

8 (2) the complainant, resident, participant, witness,
9 or employee of a long term care provider gives consent
10 orally; and the consent is documented contemporaneously in
11 writing in accordance with such requirements as the
12 Department shall establish; or

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

14 (h) Legal representation. The Attorney General shall
15 provide legal representation to any representative of the
16 Office against whom suit or other legal action is brought in
17 connection with the performance of the representative's
18 official duties, in accordance with the State Employee
19 Indemnification Act.

20 (i) Treatment by prayer and spiritual means. Nothing in
21 this Act shall be construed to authorize or require the
22 medical supervision, regulation or control of remedial care or
23 treatment of any resident in a long term care facility
24 operated exclusively by and for members or adherents of any
25 church or religious denomination the tenets and practices of
26 which include reliance solely upon spiritual means through

1 prayer for healing.

2 (j) The Long Term Care Ombudsman Fund is created as a
3 special fund in the State treasury to receive moneys for the
4 express purposes of this Section. All interest earned on
5 moneys in the fund shall be credited to the fund. Moneys
6 contained in the fund shall be used to support the purposes of
7 this Section.

8 (k) Each Regional Ombudsman may, in accordance with rules
9 promulgated by the Office, establish a multi-disciplinary team
10 to act in an advisory role for the purpose of providing
11 professional knowledge and expertise in handling complex
12 abuse, neglect, and advocacy issues involving participants.
13 Each multi-disciplinary team may consist of one or more
14 volunteer representatives from any combination of at least 7
15 members from the following professions: banking or finance;
16 disability care; health care; pharmacology; law; law
17 enforcement; emergency responder; mental health care; clergy;
18 coroner or medical examiner; substance abuse; domestic
19 violence; sexual assault; or other related fields. To support
20 multi-disciplinary teams in this role, law enforcement
21 agencies and coroners or medical examiners shall supply
22 records as may be requested in particular cases. The Regional
23 Ombudsman, or his or her designee, of the area in which the
24 multi-disciplinary team is created shall be the facilitator of
25 the multi-disciplinary team.

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