

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 Sec. 4.04. Long Term Care Ombudsman Program.

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

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

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

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

21 (ii) Communicate privately and without restriction  
22 with any resident, regardless of age, who consents to  
23 the communication;

1 (iii) Seek consent to communicate privately and  
2 without restriction with any resident, regardless of  
3 age;

4 (iv) Inspect the clinical and other records of a  
5 resident, regardless of age, with the express written  
6 consent of the resident;

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

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

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

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

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

6           (3.1) "Ombudsman" means any designated representative  
7 of a regional long term care ombudsman program; provided  
8 that the representative, whether he is paid for or  
9 volunteers his ombudsman services, shall be qualified and  
10 designated by the Office to perform the duties of an  
11 ombudsman as specified by the Department in rules and in  
12 accordance with the provisions of the Older Americans Act  
13 of 1965, as now or hereafter amended.

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

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

1 rules shall include the responsibility of the Office and  
2 designated regional programs to investigate and resolve  
3 complaints made by or on behalf of residents of long term care  
4 facilities, supportive living facilities, and assisted living  
5 and shared housing establishments, regardless of the age of the  
6 residents, relating to actions, inaction, or decisions of  
7 providers, or their representatives, of long term care  
8 facilities, of supported living facilities, of assisted living  
9 and shared housing establishments, of public agencies, or of  
10 social services agencies, which may adversely affect the  
11 health, safety, welfare, or rights of such residents. When  
12 necessary and appropriate, representatives of the Office shall  
13 refer complaints to the appropriate regulatory State agency.  
14 The Department, in consultation with the Office, shall  
15 cooperate with the Department of Human Services in providing  
16 information and training to designated regional long term care  
17 ombudsman programs about the appropriate assessment and  
18 treatment (including information about appropriate supportive  
19 services, treatment options, and assessment of rehabilitation  
20 potential) of persons with mental illness (other than  
21 Alzheimer's disease and related disorders).

22 The State Long Term Care Ombudsman and all other ombudsmen,  
23 as defined in paragraph (3.1) of subsection (b) must submit to  
24 background checks under the Health Care Worker Background Check  
25 Act and receive training, as prescribed by the Illinois  
26 Department on Aging, before visiting facilities. The training

1 must include information specific to assisted living  
2 establishments, supportive living facilities, and shared  
3 housing establishments and to the rights of residents  
4 guaranteed under the corresponding Acts and administrative  
5 rules.

6 (d) Access and visitation rights.

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

17 (i) permit immediate access to any resident,  
18 regardless of age, by a designated ombudsman; and

19 (ii) permit representatives of the Office, with  
20 the permission of the resident's legal representative  
21 or legal guardian, to examine a resident's clinical and  
22 other records, regardless of the age of the resident,  
23 and if a resident is unable to consent to such review,  
24 and has no legal guardian, permit representatives of  
25 the Office appropriate access, as defined by the  
26 Department, in consultation with the Office, in

1 administrative rules, to the resident's records.

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

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

16 (f) Business offenses.

17 (1) No person shall:

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

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

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

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

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

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

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

1           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 medical  
11 supervision, regulation or control of remedial care or  
12 treatment of any resident in a long term care facility operated  
13 exclusively by and for members or adherents of any church or  
14 religious denomination the tenets and practices of which  
15 include reliance solely upon spiritual means through prayer for  
16 healing.

17           (Source: P.A. 93-241, eff. 7-22-03; 93-878, eff. 1-1-05.)

18           Section 99. Effective date. This Act takes effect upon  
19 becoming law.