

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, including the option to  
6 serve residents under the age of 60, relating to actions,  
7 inaction, or decisions of providers, or their representatives,  
8 of long term care facilities, of supported living facilities,  
9 of assisted living and shared housing establishments, of public  
10 agencies, or of social services agencies, which may adversely  
11 affect the health, safety, welfare, or rights of such  
12 residents. The Office and designated regional programs may  
13 represent all residents, but are not required by this Act to  
14 represent persons under 60 years of age, except to the extent  
15 required by federal law. When necessary and appropriate,  
16 representatives of the Office shall refer complaints to the  
17 appropriate regulatory State agency. The Department, in  
18 consultation with the Office, shall cooperate with the  
19 Department of Human Services and other State agencies in  
20 providing information and training to designated regional long  
21 term care ombudsman programs about the appropriate assessment  
22 and treatment (including information about appropriate  
23 supportive services, treatment options, and assessment of  
24 rehabilitation potential) of the residents they serve,  
25 including children, persons with mental illness (other than  
26 Alzheimer's disease and related disorders), and persons with

1 developmental disabilities.

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

12 (d) Access and visitation rights.

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

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

25 (ii) permit representatives of the Office, with  
26 the permission of the resident's legal representative

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

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

16 (e) Immunity. An ombudsman or any representative of the  
17 Office participating in the good faith performance of his or  
18 her official duties shall have immunity from any liability  
19 (civil, criminal or otherwise) in any proceedings (civil,  
20 criminal or otherwise) brought as a consequence of the  
21 performance of his official duties.

22 (f) Business offenses.

23 (1) No person shall:

24 (i) Intentionally prevent, interfere with, or  
25 attempt to impede in any way any representative of the  
26 Office in the performance of his official duties under

1           this Act and the Older Americans Act of 1965; or

2                   (ii) Intentionally retaliate, discriminate  
3           against, or effect reprisals against any long term care  
4           facility resident or employee for contacting or  
5           providing information to any representative of the  
6           Office.

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

9           (3) The Director of Aging, in consultation with the  
10          Office, shall notify the State's Attorney of the county in  
11          which the long term care facility, supportive living  
12          facility, or assisted living or shared housing  
13          establishment is located, or the Attorney General, of any  
14          violations of this Section.

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

25                  (1) the complainant, resident, witness, or employee of  
26          a long term care provider or his or her legal

1 representative consents to the disclosure and the consent  
2 is in writing;

3 (2) the complainant, resident, witness, or employee of  
4 a long term care provider gives consent orally; and the  
5 consent is documented contemporaneously in writing in  
6 accordance with such requirements as the Department shall  
7 establish; or

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

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

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

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

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.