



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB3508

Introduced 2/28/2007, by Rep. Kevin Joyce

#### SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.03	from Ch. 23, par. 6104.03
20 ILCS 105/4.04	from Ch. 23, par. 6104.04
210 ILCS 45/2-214 new	
815 ILCS 505/2ZZ new	

Amends the Illinois Act on the Aging, the Nursing Home Care Act, and the Consumer Fraud and Deceptive Business Practices Act. Provides that the Office of State Long Term Care Ombudsman shall: (1) operate an Internet database to aid Illinoisans and their families in making informed choices about long-term care; (2) in collaboration with the Attorney General, create a Consumer Choice Information Report form to be completed by long-term care facilities; (3) develop a database of Consumer Choice Information Reports completed by facilities that includes certain information as identified by the Attorney General; (4) make this information accessible to the public on the Internet by means of a hyperlink labeled "Resident's Right to Know" on the Office's World Wide Web home page; (5) have the authority, with the Attorney General, to ensure that information provided by a facility is accurate; and (6) request a new report from any licensed facility whenever it deems necessary. Requires nursing homes to file annual Consumer Choice Information Reports with the Office beginning July 1, 2008. Provides that a nursing home's violation of the Consumer Choice Information Report provisions is an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

LRB095 08515 DRJ 31907 b

FISCAL NOTE ACT  
MAY APPLY

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 Sections 4.03 and 4.04 as follows:

6 (20 ILCS 105/4.03) (from Ch. 23, par. 6104.03)

7 Sec. 4.03. The Department on Aging, in cooperation with the  
8 Department of Human Services and any other appropriate State,  
9 local or federal agency, shall, without regard to income  
10 guidelines, establish a nursing home prescreening program to  
11 determine whether Alzheimer's Disease and related disorders  
12 victims, and persons who are deemed as blind or disabled as  
13 defined by the Social Security Act and who are in need of long  
14 term care, may be satisfactorily cared for in their homes  
15 through the use of home and community based services. Case  
16 coordination units under contract with the Department may  
17 charge a fee for the prescreening provided under this Section  
18 and the fee shall be no greater than the cost of such services  
19 to the case coordination unit. At the time of each  
20 prescreening, case coordination units shall provide  
21 information regarding the Office of State Long Term Care  
22 Ombudsman's Residents Right to Know website as authorized in  
23 subsection (c-5) of Section 4.04.

1 (Source: P.A. 89-21, eff. 7-1-95; 89-507, eff. 7-1-97.)

2 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

3 Sec. 4.04. Long Term Care Ombudsman Program.

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

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

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

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

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

19 (iii) Seek consent to communicate privately and  
20 without restriction with any resident;

21 (iv) Inspect the clinical and other records of a  
22 resident with the express written consent of the  
23 resident;

24 (v) Observe all areas of the long term care  
25 facility or supportive living facilities, assisted

1 living or shared housing establishment except the  
2 living area of any resident who protests the  
3 observation.

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

12 (2.5) "Assisted living establishment" and "shared  
13 housing establishment" have the meanings given those terms  
14 in Section 10 of the Assisted Living and Shared Housing  
15 Act.

16 (2.7) "Supportive living facility" means a facility  
17 established under Section 5-5.01a of the Illinois Public  
18 Aid Code.

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

24 (3.1) "Ombudsman" means any designated representative  
25 of a regional long term care ombudsman program; provided  
26 that the representative, whether he is paid for or

1 volunteers his ombudsman services, shall be qualified and  
2 designated by the Office to perform the duties of an  
3 ombudsman as specified by the Department in rules and in  
4 accordance with the provisions of the Older Americans Act  
5 of 1965, as now or hereafter amended.

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

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

1 agencies, or of social services agencies, which may adversely  
2 affect the health, safety, welfare, or rights of such  
3 residents. When necessary and appropriate, representatives of  
4 the Office shall refer complaints to the appropriate regulatory  
5 State agency. The Department, in consultation with the Office,  
6 shall cooperate with the Department of Human Services in  
7 providing information and training to designated regional long  
8 term care ombudsman programs about the appropriate assessment  
9 and treatment (including information about appropriate  
10 supportive services, treatment options, and assessment of  
11 rehabilitation potential) of persons with mental illness  
12 (other than Alzheimer's disease and related disorders).

13 The State Long Term Care Ombudsman and all other ombudsmen,  
14 as defined in paragraph (3.1) of subsection (b) must submit to  
15 background checks under the Health Care Worker Background Check  
16 Act and receive training, as prescribed by the Illinois  
17 Department on Aging, before visiting facilities. The training  
18 must include information specific to assisted living  
19 establishments, supportive living facilities, and shared  
20 housing establishments and to the rights of residents  
21 guaranteed under the corresponding Acts and administrative  
22 rules.

23 (c-5) Consumer Choice Information Reports. The Office  
24 shall:

25 (1) Operate an Internet database to aid Illinoisans and  
26 their families in making informed choices about long-term

1 care.

2 (2) In collaboration with the Attorney General, create  
3 a Consumer Choice Information Report form to be completed  
4 by all licensed long-term care facilities as defined in  
5 Section 1-113 of the Nursing Home Care Act.

6 (3) Develop a database of Consumer Choice Information  
7 Reports completed by long term care facilities that  
8 includes information in the following consumer categories  
9 as identified by the Attorney General:

10 (A) Facility information.

11 (B) Quality of life.

12 (C) Safety and security.

13 (D) Quality of care.

14 (E) Illinois Department of Public Health survey  
15 information.

16 (4) Make this information accessible to the public on  
17 the Internet by means of a hyperlink labeled "Resident's  
18 Right to Know" on the Office's World Wide Web home page.

19 (5) Have the authority, with the Attorney General, to  
20 ensure that information provided by a facility is accurate.

21 (6) Request a new report from any licensed facility  
22 whenever it deems necessary.

23 (d) Access and visitation rights.

24 (1) In accordance with subparagraphs (A) and (E) of  
25 paragraph (3) of subsection (c) of Section 1819 and  
26 subparagraphs (A) and (E) of paragraph (3) of subsection

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

8 (i) permit immediate access to any resident by a  
9 designated ombudsman; and

10 (ii) permit representatives of the Office, with  
11 the permission of the resident's legal representative  
12 or legal guardian, to examine a resident's clinical and  
13 other records, and if a resident is unable to consent  
14 to such review, and has no legal guardian, permit  
15 representatives of the Office appropriate access, as  
16 defined by the Department, in consultation with the  
17 Office, in administrative rules, to the resident's  
18 records.

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



1           (e) Immunity. An ombudsman or any representative of the  
2 Office participating in the good faith performance of his or  
3 her official duties shall have immunity from any liability  
4 (civil, criminal or otherwise) in any proceedings (civil,  
5 criminal or otherwise) brought as a consequence of the  
6 performance of his official duties.

7           (f) Business offenses.

8                 (1) No person shall:

9                         (i) Intentionally prevent, interfere with, or  
10 attempt to impede in any way any representative of the  
11 Office in the performance of his official duties under  
12 this Act and the Older Americans Act of 1965; or

13                         (ii) Intentionally retaliate, discriminate  
14 against, or effect reprisals against any long term care  
15 facility resident or employee for contacting or  
16 providing information to any representative of the  
17 Office.

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

20                 (3) The Director of Aging, in consultation with the  
21 Office, shall notify the State's Attorney of the county in  
22 which the long term care facility, supportive living  
23 facility, or assisted living or shared housing  
24 establishment is located, or the Attorney General, of any  
25 violations of this Section.

26           (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

1 this Act shall be construed to authorize or require the medical  
2 supervision, regulation or control of remedial care or  
3 treatment of any resident in a long term care facility operated  
4 exclusively by and for members or adherents of any church or  
5 religious denomination the tenets and practices of which  
6 include reliance solely upon spiritual means through prayer for  
7 healing.

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

9 Section 10. The Nursing Home Care Act is amended by adding  
10 Section 2-214 as follows:

11 (210 ILCS 45/2-214 new)

12 Sec. 2-214. Consumer Choice Information Reports.

13 (a) Every facility as defined in Section 1-113 shall  
14 complete a Consumer Choice Information Report annually and  
15 shall file it with the Office of State Long Term Care  
16 Ombudsman. The first Consumer Choice Information Report is due  
17 to the Office of State Long Term Care Ombudsman on July 1,  
18 2008. The Consumer Choice Information Report must be completed  
19 by the facility in full.

20 (b) A violation of any of the provisions of this Section  
21 constitutes an unlawful practice under the Consumer Fraud and  
22 Deceptive Business Practices Act. All remedies, penalties, and  
23 authority granted to the Attorney General by the Consumer Fraud  
24 and Deceptive Business Practices Act shall be available to him

1 or her for the enforcement of this Section.

2 Section 15. The Consumer Fraud and Deceptive Business  
3 Practices Act is amended by adding Section 2ZZ as follows:

4 (815 ILCS 505/2ZZ new)

5 Sec. 2ZZ. Long-term care facility; Consumer Choice  
6 Information Report. A long-term care facility that fails to  
7 comply with Section 2-214 of the Nursing Home Care Act commits  
8 an unlawful practice within the meaning of this Act.