



Rep. Kevin Joyce

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1 AMENDMENT TO HOUSE BILL 3508

2 AMENDMENT NO. _____. Amend House Bill 3508 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 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

1 charge a fee for the prescreening provided under this Section
2 and the fee shall be no greater than the cost of such services
3 to the case coordination unit. At the time of each
4 prescreening, case coordination units shall provide
5 information regarding the Office of State Long Term Care
6 Ombudsman's Residents Right to Know database as authorized in
7 subsection (c-5) of Section 4.04.

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

9 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

10 Sec. 4.04. Long Term Care Ombudsman Program.

11 (a) Long Term Care Ombudsman Program. The Department shall
12 establish a Long Term Care Ombudsman Program, through the
13 Office of State Long Term Care Ombudsman ("the Office"), in
14 accordance with the provisions of the Older Americans Act of
15 1965, as now or hereafter amended.

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

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

21 (i) Enter any long term care facility or assisted
22 living or shared housing establishment or supportive
23 living facility;

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

1 (iii) Seek consent to communicate privately and
2 without restriction with any resident;

3 (iv) Inspect the clinical and other records of a
4 resident with the express written consent of the
5 resident;

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

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

19 (2.5) "Assisted living establishment" and "shared
20 housing establishment" have the meanings given those terms
21 in Section 10 of the Assisted Living and Shared Housing
22 Act.

23 (2.7) "Supportive living facility" means a facility
24 established under Section 5-5.01a of the Illinois Public
25 Aid Code.

26 (3) "State Long Term Care Ombudsman" means any person

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

5 (3.1) "Ombudsman" means any designated representative
6 of a regional long term care ombudsman program; provided
7 that the representative, whether he is paid for or
8 volunteers his ombudsman services, shall be qualified and
9 designated by the Office to perform the duties of an
10 ombudsman as specified by the Department in rules and in
11 accordance with the provisions of the Older Americans Act
12 of 1965, as now or hereafter amended.

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

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

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

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

1 housing establishments and to the rights of residents
2 guaranteed under the corresponding Acts and administrative
3 rules.

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

6 (1) In collaboration with the Attorney General, create
7 a Consumer Choice Information Report form to be completed
8 by all licensed long term care facilities to aid
9 Illinoisans and their families in making informed choices
10 about long term care. The Office shall create a Consumer
11 Choice Information Report for each type of licensed long
12 term care facility.

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

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

18 (B) Special Services and Amenities.

19 (C) Staffing.

20 (D) Facility Statistics and Resident Demographics.

21 (E) Ownership and Administration.

22 (F) Safety and Security.

23 (G) Meals and Nutrition.

24 (H) Rooms, Furnishings, and Equipment.

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

26 (3) Make this information accessible to the public,

1 including on the Internet by means of a hyperlink labeled
2 "Resident's Right to Know" on the Office's World Wide Web
3 home page.

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

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

8 (d) Access and visitation rights.

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

19 (i) permit immediate access to any resident by a
20 designated ombudsman; and

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

1 defined by the Department, in consultation with the
2 Office, in administrative rules, to the resident's
3 records.

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

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

18 (f) Business offenses.

19 (1) No person shall:

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

24 (ii) Intentionally retaliate, discriminate
25 against, or effect reprisals against any long term care
26 facility resident or employee for contacting or

1 providing information to any representative of the
2 Office.

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

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

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

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

25 (2) the complainant, resident, witness, or employee of
26 a long term care provider gives consent orally; and the

1 consent is documented contemporaneously in writing in
2 accordance with such requirements as the Department shall
3 establish; or

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

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

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

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

20 Section 10. The Nursing Home Care Act is amended by
21 changing Sections 3-210 and 3-212 and by adding Section 2-214
22 as follows:

23 (210 ILCS 45/2-214 new)

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

1 (a) Every facility shall complete a Consumer Choice
2 Information Report and shall file it with the Office of State
3 Long Term Care Ombudsman electronically as prescribed by the
4 Office. The Report shall be filed annually and upon request of
5 the Office of State Long Term Care Ombudsman. The Consumer
6 Choice Information Report must be completed by the facility in
7 full.

8 (b) A violation of any of the provisions of this Section
9 constitutes an unlawful practice under the Consumer Fraud and
10 Deceptive Business Practices Act. All remedies, penalties, and
11 authority granted to the Attorney General by the Consumer Fraud
12 and Deceptive Business Practices Act shall be available to him
13 or her for the enforcement of this Section.

14 (c) The Department of Public Health shall include
15 verification of the submission of a facility's current Consumer
16 Choice Information Report when conducting an inspection
17 pursuant to Section 3-212.

18 (210 ILCS 45/3-210) (from Ch. 111 1/2, par. 4153-210)

19 Sec. 3-210. A facility shall retain the following for
20 public inspection:

21 (1) A complete copy of every inspection report of the
22 facility received from the Department during the past 5 years;

23 (2) A copy of every order pertaining to the facility issued
24 by the Department or a court during the past 5 years;

25 (3) A description of the services provided by the facility

1 and the rates charged for those services and items for which a
2 resident may be separately charged;

3 (4) A copy of the statement of ownership required by
4 Section 3-207;

5 (5) A record of personnel employed or retained by the
6 facility who are licensed, certified or registered by the
7 Department of Professional Regulation; and

8 (6) A complete copy of the most recent inspection report of
9 the facility received from the Department.

10 (7) A copy of the current Consumer Choice Information
11 Report required by Section 2-214.

12 (Source: P.A. 85-1209)

13 (210 ILCS 45/3-212) (from Ch. 111 1/2, par. 4153-212)

14 Sec. 3-212. Inspection.

15 (a) The Department, whenever it deems necessary in
16 accordance with subsection (b), shall inspect, survey and
17 evaluate every facility to determine compliance with
18 applicable licensure requirements and standards. Submission of
19 a facility's current Consumer Choice Information Report
20 required by Section 2-214 shall be verified at time of
21 inspection. An inspection should occur within 120 days prior to
22 license renewal. The Department may periodically visit a
23 facility for the purpose of consultation. An inspection,
24 survey, or evaluation, other than an inspection of financial
25 records, shall be conducted without prior notice to the

1 facility. A visit for the sole purpose of consultation may be
2 announced. The Department shall provide training to surveyors
3 about the appropriate assessment, care planning, and care of
4 persons with mental illness (other than Alzheimer's disease or
5 related disorders) to enable its surveyors to determine whether
6 a facility is complying with State and federal requirements
7 about the assessment, care planning, and care of those persons.

8 (a-1) An employee of a State or unit of local government
9 agency charged with inspecting, surveying, and evaluating
10 facilities who directly or indirectly gives prior notice of an
11 inspection, survey, or evaluation, other than an inspection of
12 financial records, to a facility or to an employee of a
13 facility is guilty of a Class A misdemeanor.

14 An inspector or an employee of the Department who
15 intentionally prenotifies a facility, orally or in writing, of
16 a pending complaint investigation or inspection shall be guilty
17 of a Class A misdemeanor. Superiors of persons who have
18 prenotified a facility shall be subject to the same penalties,
19 if they have knowingly allowed the prenotification. A person
20 found guilty of prenotifying a facility shall be subject to
21 disciplinary action by his or her employer.

22 If the Department has a good faith belief, based upon
23 information that comes to its attention, that a violation of
24 this subsection has occurred, it must file a complaint with the
25 Attorney General or the State's Attorney in the county where
26 the violation took place within 30 days after discovery of the

1 information.

2 (a-2) An employee of a State or unit of local government
3 agency charged with inspecting, surveying, or evaluating
4 facilities who willfully profits from violating the
5 confidentiality of the inspection, survey, or evaluation
6 process shall be guilty of a Class 4 felony and that conduct
7 shall be deemed unprofessional conduct that may subject a
8 person to loss of his or her professional license. An action to
9 prosecute a person for violating this subsection (a-2) may be
10 brought by either the Attorney General or the State's Attorney
11 in the county where the violation took place.

12 (b) In determining whether to make more than the required
13 number of unannounced inspections, surveys and evaluations of a
14 facility the Department shall consider one or more of the
15 following: previous inspection reports; the facility's history
16 of compliance with standards, rules and regulations
17 promulgated under this Act and correction of violations,
18 penalties or other enforcement actions; the number and severity
19 of complaints received about the facility; any allegations of
20 resident abuse or neglect; weather conditions; health
21 emergencies; other reasonable belief that deficiencies exist.

22 (b-1) The Department shall not be required to determine
23 whether a facility certified to participate in the Medicare
24 program under Title XVIII of the Social Security Act, or the
25 Medicaid program under Title XIX of the Social Security Act,
26 and which the Department determines by inspection under this

1 Section or under Section 3-702 of this Act to be in compliance
2 with the certification requirements of Title XVIII or XIX, is
3 in compliance with any requirement of this Act that is less
4 stringent than or duplicates a federal certification
5 requirement. In accordance with subsection (a) of this Section
6 or subsection (d) of Section 3-702, the Department shall
7 determine whether a certified facility is in compliance with
8 requirements of this Act that exceed federal certification
9 requirements. If a certified facility is found to be out of
10 compliance with federal certification requirements, the
11 results of an inspection conducted pursuant to Title XVIII or
12 XIX of the Social Security Act may be used as the basis for
13 enforcement remedies authorized and commenced under this Act.
14 Enforcement of this Act against a certified facility shall be
15 commenced pursuant to the requirements of this Act, unless
16 enforcement remedies sought pursuant to Title XVIII or XIX of
17 the Social Security Act exceed those authorized by this Act. As
18 used in this subsection, "enforcement remedy" means a sanction
19 for violating a federal certification requirement or this Act.

20 (c) Upon completion of each inspection, survey and
21 evaluation, the appropriate Department personnel who conducted
22 the inspection, survey or evaluation shall submit a copy of
23 their report to the licensee upon exiting the facility, and
24 shall submit the actual report to the appropriate regional
25 office of the Department. Such report and any recommendations
26 for action by the Department under this Act shall be

1 transmitted to the appropriate offices of the associate
2 director of the Department, together with related comments or
3 documentation provided by the licensee which may refute
4 findings in the report, which explain extenuating
5 circumstances that the facility could not reasonably have
6 prevented, or which indicate methods and timetables for
7 correction of deficiencies described in the report. Without
8 affecting the application of subsection (a) of Section 3-303,
9 any documentation or comments of the licensee shall be provided
10 within 10 days of receipt of the copy of the report. Such
11 report shall recommend to the Director appropriate action under
12 this Act with respect to findings against a facility. The
13 Director shall then determine whether the report's findings
14 constitute a violation or violations of which the facility must
15 be given notice. Such determination shall be based upon the
16 severity of the finding, the danger posed to resident health
17 and safety, the comments and documentation provided by the
18 facility, the diligence and efforts to correct deficiencies,
19 correction of the reported deficiencies, the frequency and
20 duration of similar findings in previous reports and the
21 facility's general inspection history. Violations shall be
22 determined under this subsection no later than 60 days after
23 completion of each inspection, survey and evaluation.

24 (d) The Department shall maintain all inspection, survey
25 and evaluation reports for at least 5 years in a manner
26 accessible to and understandable by the public.

1 (Source: P.A. 91-799, eff. 6-13-00; 92-209, eff. 1-1-02.)

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."