

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 database 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) In collaboration with the Attorney General, create
26 a Consumer Choice Information Report form to be completed

1 by all licensed long term care facilities to aid
2 Illinoisans and their families in making informed choices
3 about long term care. The Office shall create a Consumer
4 Choice Information Report for each type of licensed long
5 term care facility.

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

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

11 (B) Special Services and Amenities.

12 (C) Staffing.

13 (D) Facility Statistics and Resident Demographics.

14 (E) Ownership and Administration.

15 (F) Safety and Security.

16 (G) Meals and Nutrition.

17 (H) Rooms, Furnishings, and Equipment.

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

19 (3) Make this information accessible to the public,
20 including on the Internet by means of a hyperlink labeled
21 "Resident's Right to Know" on the Office's World Wide Web
22 home page.

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

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

1 (d) Access and visitation rights.

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

12 (i) permit immediate access to any resident by a
13 designated ombudsman; and

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

23 (2) Each long term care facility, supportive living
24 facility, assisted living establishment, and shared
25 housing establishment shall display, in multiple,
26 conspicuous public places within the facility accessible

1 to both visitors and residents and in an easily readable
2 format, the address and phone number of the Office of the
3 Long Term Care Ombudsman, in a manner prescribed by the
4 Office.

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

11 (f) Business offenses.

12 (1) No person shall:

13 (i) Intentionally prevent, interfere with, or
14 attempt to impede in any way any representative of the
15 Office in the performance of his official duties under
16 this Act and the Older Americans Act of 1965; or

17 (ii) Intentionally retaliate, discriminate
18 against, or effect reprisals against any long term care
19 facility resident or employee for contacting or
20 providing information to any representative of the
21 Office.

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

24 (3) The Director of Aging, in consultation with the
25 Office, shall notify the State's Attorney of the county in
26 which the long term care facility, supportive living

1 facility, or assisted living or shared housing
2 establishment is located, or the Attorney General, of any
3 violations of this Section.

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

14 (1) the complainant, resident, witness, or employee of
15 a long term care provider or his or her legal
16 representative consents to the disclosure and the consent
17 is in writing;

18 (2) the complainant, resident, witness, or employee of
19 a long term care provider gives consent orally; and the
20 consent is documented contemporaneously in writing in
21 accordance with such requirements as the Department shall
22 establish; or

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

24 (h) Legal representation. The Attorney General shall
25 provide legal representation to any representative of the
26 Office against whom suit or other legal action is brought in

1 connection with the performance of the representative's
2 official duties, in accordance with the State Employee
3 Indemnification Act.

4 (i) Treatment by prayer and spiritual means. Nothing in
5 this Act shall be construed to authorize or require the medical
6 supervision, regulation or control of remedial care or
7 treatment of any resident in a long term care facility operated
8 exclusively by and for members or adherents of any church or
9 religious denomination the tenets and practices of which
10 include reliance solely upon spiritual means through prayer for
11 healing.

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

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

16 (210 ILCS 45/2-214 new)

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

18 (a) Every facility shall complete a Consumer Choice
19 Information Report and shall file it with the Office of State
20 Long Term Care Ombudsman electronically as prescribed by the
21 Office. The Report shall be filed annually and upon request of
22 the Office of State Long Term Care Ombudsman. The Consumer
23 Choice Information Report must be completed by the facility in
24 full.

1 (b) A violation of any of the provisions of this Section
2 constitutes an unlawful practice under the Consumer Fraud and
3 Deceptive Business Practices Act. All remedies, penalties, and
4 authority granted to the Attorney General by the Consumer Fraud
5 and Deceptive Business Practices Act shall be available to him
6 or her for the enforcement of this Section.

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

11 (210 ILCS 45/3-210) (from Ch. 111 1/2, par. 4153-210)

12 Sec. 3-210. A facility shall retain the following for
13 public inspection:

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

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

18 (3) A description of the services provided by the facility
19 and the rates charged for those services and items for which a
20 resident may be separately charged;

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

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

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

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

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

6 (210 ILCS 45/3-212) (from Ch. 111 1/2, par. 4153-212)

7 Sec. 3-212. Inspection.

8 (a) The Department, whenever it deems necessary in
9 accordance with subsection (b), shall inspect, survey and
10 evaluate every facility to determine compliance with
11 applicable licensure requirements and standards. Submission of
12 a facility's current Consumer Choice Information Report
13 required by Section 2-214 shall be verified at time of
14 inspection. An inspection should occur within 120 days prior to
15 license renewal. The Department may periodically visit a
16 facility for the purpose of consultation. An inspection,
17 survey, or evaluation, other than an inspection of financial
18 records, shall be conducted without prior notice to the
19 facility. A visit for the sole purpose of consultation may be
20 announced. The Department shall provide training to surveyors
21 about the appropriate assessment, care planning, and care of
22 persons with mental illness (other than Alzheimer's disease or
23 related disorders) to enable its surveyors to determine whether
24 a facility is complying with State and federal requirements
25 about the assessment, care planning, and care of those persons.

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

7 An inspector or an employee of the Department who
8 intentionally prenotifies a facility, orally or in writing, of
9 a pending complaint investigation or inspection shall be guilty
10 of a Class A misdemeanor. Superiors of persons who have
11 prenotified a facility shall be subject to the same penalties,
12 if they have knowingly allowed the prenotification. A person
13 found guilty of prenotifying a facility shall be subject to
14 disciplinary action by his or her employer.

15 If the Department has a good faith belief, based upon
16 information that comes to its attention, that a violation of
17 this subsection has occurred, it must file a complaint with the
18 Attorney General or the State's Attorney in the county where
19 the violation took place within 30 days after discovery of the
20 information.

21 (a-2) An employee of a State or unit of local government
22 agency charged with inspecting, surveying, or evaluating
23 facilities who willfully profits from violating the
24 confidentiality of the inspection, survey, or evaluation
25 process shall be guilty of a Class 4 felony and that conduct
26 shall be deemed unprofessional conduct that may subject a

1 person to loss of his or her professional license. An action to
2 prosecute a person for violating this subsection (a-2) may be
3 brought by either the Attorney General or the State's Attorney
4 in the county where the violation took place.

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

15 (b-1) The Department shall not be required to determine
16 whether a facility certified to participate in the Medicare
17 program under Title XVIII of the Social Security Act, or the
18 Medicaid program under Title XIX of the Social Security Act,
19 and which the Department determines by inspection under this
20 Section or under Section 3-702 of this Act to be in compliance
21 with the certification requirements of Title XVIII or XIX, is
22 in compliance with any requirement of this Act that is less
23 stringent than or duplicates a federal certification
24 requirement. In accordance with subsection (a) of this Section
25 or subsection (d) of Section 3-702, the Department shall
26 determine whether a certified facility is in compliance with

1 requirements of this Act that exceed federal certification
2 requirements. If a certified facility is found to be out of
3 compliance with federal certification requirements, the
4 results of an inspection conducted pursuant to Title XVIII or
5 XIX of the Social Security Act may be used as the basis for
6 enforcement remedies authorized and commenced under this Act.
7 Enforcement of this Act against a certified facility shall be
8 commenced pursuant to the requirements of this Act, unless
9 enforcement remedies sought pursuant to Title XVIII or XIX of
10 the Social Security Act exceed those authorized by this Act. As
11 used in this subsection, "enforcement remedy" means a sanction
12 for violating a federal certification requirement or this Act.

13 (c) Upon completion of each inspection, survey and
14 evaluation, the appropriate Department personnel who conducted
15 the inspection, survey or evaluation shall submit a copy of
16 their report to the licensee upon exiting the facility, and
17 shall submit the actual report to the appropriate regional
18 office of the Department. Such report and any recommendations
19 for action by the Department under this Act shall be
20 transmitted to the appropriate offices of the associate
21 director of the Department, together with related comments or
22 documentation provided by the licensee which may refute
23 findings in the report, which explain extenuating
24 circumstances that the facility could not reasonably have
25 prevented, or which indicate methods and timetables for
26 correction of deficiencies described in the report. Without

1 affecting the application of subsection (a) of Section 3-303,
2 any documentation or comments of the licensee shall be provided
3 within 10 days of receipt of the copy of the report. Such
4 report shall recommend to the Director appropriate action under
5 this Act with respect to findings against a facility. The
6 Director shall then determine whether the report's findings
7 constitute a violation or violations of which the facility must
8 be given notice. Such determination shall be based upon the
9 severity of the finding, the danger posed to resident health
10 and safety, the comments and documentation provided by the
11 facility, the diligence and efforts to correct deficiencies,
12 correction of the reported deficiencies, the frequency and
13 duration of similar findings in previous reports and the
14 facility's general inspection history. Violations shall be
15 determined under this subsection no later than 60 days after
16 completion of each inspection, survey and evaluation.

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

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

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

23 (815 ILCS 505/2ZZ new)

24 Sec. 2ZZ. Long term care facility; Consumer Choice

1 Information Report. A long term care facility that fails to
2 comply with Section 2-214 of the Nursing Home Care Act commits
3 an unlawful practice within the meaning of this Act.