

HB5550



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5550

by Rep. Joseph M. Lyons

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on the Aging. Authorizes the Office of Long Term Care Ombudsman to enter into an agreement with the Department of Healthcare and Family Services to facilitate obtaining federal matching funds. Sets forth the requirements of the agreement. Effective immediately.

LRB095 18141 RCE 44224 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning aging.

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 Office is authorized to enter into a memorandum of
3 understanding, or other agreement, with the Department of
4 Healthcare and Family Services to facilitate obtaining federal
5 matching funds under Title 19 of the Social Security Act, for
6 services provided by the Office and the regional long term care
7 ombudsman programs. To the extent permitted by federal law, the
8 agreement must authorize obtaining matching funds for State and
9 local cash and in-kind contributions to the program. The
10 Department must cooperate in obtaining the maximum available
11 federal matching funds under Title 19, to the extent doing so
12 does not reduce funding from other federal programs. Any
13 matching funds obtained pursuant to the agreement must be used
14 solely by the regional long term care ombudsman programs and
15 the Office.

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

26 (d) Access and visitation rights.

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

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

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

22 (2) Each long term care facility, supportive living
23 facility, assisted living establishment, and shared
24 housing establishment shall display, in multiple,
25 conspicuous public places within the facility accessible
26 to both visitors and residents and in an easily readable

1 format, the address and phone number of the Office of the
2 Long Term Care Ombudsman, in a manner prescribed by the
3 Office.

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

10 (f) Business offenses.

11 (1) No person shall:

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

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

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

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

1 establishment is located, or the Attorney General, of any
2 violations of this Section.

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

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

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

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

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

1 official duties, in accordance with the State Employee
2 Indemnification Act.

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

11 (Source: P.A. 95-620, eff. 9-17-07.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.