



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3466

Introduced 2/10/2010, by Sen. Deanna Demuzio

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04 from Ch. 23, par. 6104.04
20 ILCS 105/4.04b new

Amends the Illinois Act on the Aging. Provides that prior to representing a resident under the Long Term Care Ombudsman Program, an ombudsman must obtain the resident's written or oral consent to act on that resident's behalf. Requires the Office of State Long Term Care Ombudsman to include in the Consumer Choice Information Reports on long term care facilities additional information concerning each facility's compliance with the relevant State and federal statutes, rules, and standards; customer satisfaction surveys; and information generated from quality measures developed by the Centers for Medicare and Medicaid Services. Requires facilities licensed under the Nursing Home Care Act, supportive living facilities, and assisted living or shared housing establishments to pay to the Department on Aging to be deposited into the Long Term Care Ombudsman Fund an annual \$400 fee to cover the costs associated with compiling and publishing the Report. Further provides that these facilities shall pay to the Department on Aging to be deposited into the Fund an annual \$7 fee for each bed maintained by the facility for use by a resident during any part of the previous fiscal year. Provides that the Department on Aging, in consultation with the Office of State Long Term Care Ombudsman, shall promulgate administrative rules to establish the forms, deadlines, and procedures for the notification of the facilities subject to the bed fee requirement. Establishes a monetary penalty for facilities that fail to pay the required bed fees within a specified timeframe. Effective January 1, 2011.

LRB096 20149 KTG 35981 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 Section 4.04 and by adding Section 4.04b 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 (c-3) Consent. Prior to representing a resident, an
13 ombudsman must obtain the resident's written or oral consent to
14 act on that resident's behalf. In the event oral consent is
15 given, such consent must be contemporaneously documented by the
16 ombudsman. If the resident is unable to give consent, the
17 ombudsman may obtain the resident's consent from a duly
18 authorized guardian or agent of the resident. If the resident's
19 authorized guardian or agent refuses to give consent or is
20 unavailable to give consent after the ombudsman has made a good
21 faith effort to contact the authorized guardian or agent, the
22 regional ombudsman shall consult with the Office of State Long
23 Term Care Ombudsman. If following this consultation, the Office
24 decides that representation is proper, the ombudsman shall
25 represent the resident. This representation may include
26 requesting or appealing, on behalf of the resident, any

1 administrative decision, including involuntary discharges.

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

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

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

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

16 (B) Special Services and Amenities.

17 (C) Staffing.

18 (D) Facility Statistics and Resident Demographics.

19 (E) Ownership and Administration.

20 (F) Safety and Security.

21 (G) Meals and Nutrition.

22 (H) Rooms, Furnishings, and Equipment.

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

24 (3) Make this information accessible to the public,
25 including on the Internet by means of a hyperlink labeled
26 "Resident's Right to Know" on the Office's World Wide Web

1 home page.

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

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

6 (6) Include in the Office's Consumer Choice
7 Information Report for each type of licensed long term care
8 facility additional information on each licensed long term
9 care facility in the State of Illinois as well as
10 information regarding each facility's compliance with the
11 relevant State and federal statutes, rules, and standards;
12 customer satisfaction surveys; and information generated
13 from quality measures developed by the Centers for Medicare
14 and Medicaid Services. Each of the following facilities
15 shall annually pay to the Department on Aging to be
16 deposited into the Long Term Care Ombudsman Fund the sum of
17 \$400:

18 (A) A licensed facility as defined in Section 1-113
19 of the Nursing Home Care Act.

20 (B) A supportive living facility as defined in
21 Section 5-5.01a of the Illinois Public Aid Code.

22 (C) An assisted living or shared housing
23 establishment as defined in Section 10 of the Assisted
24 Living and Shared Housing Act.

25 (d) Access and visitation rights.

26 (1) In accordance with subparagraphs (A) and (E) of

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

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

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

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

1 Long Term Care Ombudsman, in a manner prescribed by the
2 Office.

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

9 (f) Business offenses.

10 (1) No person shall:

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

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

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

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

1 violations of this Section.

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

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

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

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

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

1 Indemnification Act.

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

10 (j) The Long Term Care Ombudsman Fund is created as a
11 special fund in the State treasury to receive moneys for the
12 express purposes of this Section. All interest earned on moneys
13 in the fund shall be credited to the fund. All bed fees
14 collected under Section 4.04b of this Act shall be deposited
15 into the fund. Moneys contained in or credited to the fund
16 shall be used to support the purposes of this Section,
17 including covering the costs of operating the State Long Term
18 Care Ombudsman Program. Not less than 80% of the amount
19 appropriated from the fund in each fiscal year shall be
20 distributed to the regional long term care ombudsman programs.

21 All fees collected under paragraph 6 of subsection (c-5) of
22 this Section shall be deposited into the fund and shall be used
23 to compile and publish the "Consumer Choice Information
24 Report".

25 (Source: P.A. 95-620, eff. 9-17-07; 95-823, eff. 1-1-09;
26 96-328, eff. 8-11-09; 96-758, eff. 8-25-09.)

1 (20 ILCS 105/4.04b new)

2 Sec. 4.04b. Facility bed fees.

3 (a) Each of the following facilities shall annually pay to
4 the Department on Aging to be deposited into the Long Term Care
5 Ombudsman Fund the sum of \$7 for each bed maintained by the
6 facility for use by a resident during any part of the previous
7 fiscal year:

8 (1) A licensed facility as defined in Section 1-113 of
9 the Nursing Home Care Act.

10 (2) A supportive living facility as defined in Section
11 5-5.01a of the Illinois Public Aid Code.

12 (3) An assisted living or shared housing establishment
13 as defined in Section 10 of the Assisted Living and Shared
14 Housing Act.

15 (b) The Department, in consultation with the Office of
16 State Long Term Care Ombudsman, shall promulgate
17 administrative rules to establish the forms, deadlines, and
18 procedures for the notification of facilities subject to this
19 Section and the collection of payments required by this
20 Section.

21 (c) A facility that fails to pay the required bed fee
22 within 90 days after the established deadline shall be liable
23 for a penalty equal to 2 times the fee amount.

24 Section 99. Effective date. This Act takes effect January
25 1, 2011.