

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. The purpose of
8 the Long Term Care Ombudsman Program is to ensure that older
9 persons and persons with disabilities receive quality
10 services. This is accomplished by providing advocacy services
11 for residents of long term care facilities and participants
12 receiving home care and community-based care. Managed care is
13 increasingly becoming the vehicle for delivering health and
14 long-term services and supports to seniors and persons with
15 disabilities, including dual eligible participants. The
16 additional ombudsman authority will allow advocacy services to
17 be provided to Illinois participants for the first time and
18 will produce a cost savings for the State of Illinois by
19 supporting the rebalancing efforts of the Patient Protection
20 and Affordable Care Act.

21 (a) Long Term Care Ombudsman Program. The Department shall
22 establish a Long Term Care Ombudsman Program, through the
23 Office of State Long Term Care Ombudsman ("the Office"), in

1 accordance with the provisions of the Older Americans Act of
2 1965, as now or hereafter amended. The Long Term Care Ombudsman
3 Program is authorized, subject to sufficient appropriations,
4 to advocate on behalf of older persons and persons with
5 disabilities residing in their own homes or community-based
6 settings, relating to matters which may adversely affect the
7 health, safety, welfare, or rights of such individuals.

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

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

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

16 (ii) Communicate privately and without restriction
17 with any resident, regardless of age, who consents to
18 the communication;

19 (iii) Seek consent to communicate privately and
20 without restriction with any participant or resident,
21 regardless of age;

22 (iv) Inspect the clinical and other records of a
23 participant or resident, regardless of age, with the
24 express written consent of the participant or
25 resident;

26 (v) Observe all areas of the long term care

1 facility or supportive living facilities, assisted
2 living or shared housing establishment except the
3 living area of any resident who protests the
4 observation; and

5 (vi) Subject to permission of the participant or
6 resident requesting services or his or her
7 representative, enter a home or community-based
8 setting.

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

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 (2.8) "Community-based setting" means any place of

1 abode other than an individual's private home.

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

7 (3.1) "Ombudsman" means any designated representative
8 of the State Long Term Care Ombudsman Program; provided
9 that the representative, whether he is paid for or
10 volunteers his ombudsman services, shall be qualified and
11 designated by the Office to perform the duties of an
12 ombudsman as specified by the Department in rules and in
13 accordance with the provisions of the Older Americans Act
14 of 1965, as now or hereafter amended.

15 (4) "Participant" means an older person aged 60 or over
16 or an adult with a disability aged 18 through 59 who is ~~or~~
17 ~~persons with disabilities who are~~ eligible for services
18 under any of the following:

19 (i) A medical assistance waiver administered by
20 the State.

21 (ii) A managed care organization providing care
22 coordination and other services to seniors and persons
23 with disabilities.

24 (5) "Resident" means an older person aged 60 or over or
25 an adult with a disability aged 18 through 59 ~~individual~~
26 who resides in a long-term care facility.

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

8 The Department, in consultation with the Office, shall
9 promulgate administrative rules in accordance with the
10 provisions of the Older Americans Act of 1965, as now or
11 hereafter amended, to establish the responsibilities of the
12 Department and the Office of State Long Term Care Ombudsman and
13 the designated regional Ombudsman programs. The administrative
14 rules shall include the responsibility of the Office and
15 designated regional programs to investigate and resolve
16 complaints made by or on behalf of residents of long term care
17 facilities, supportive living facilities, and assisted living
18 and shared housing establishments, and participants residing
19 in their own homes or community-based settings, including the
20 option to serve residents and participants under the age of 60,
21 relating to actions, inaction, or decisions of providers, or
22 their representatives, of such facilities and establishments,
23 of public agencies, or of social services agencies, which may
24 adversely affect the health, safety, welfare, or rights of such
25 residents and participants. The Office and designated regional
26 programs may represent all residents and participants, but are

1 not required by this Act to represent persons under 60 years of
2 age, except to the extent required by federal law. When
3 necessary and appropriate, representatives of the Office shall
4 refer complaints to the appropriate regulatory State agency.
5 The Department, in consultation with the Office, shall
6 cooperate with the Department of Human Services and other State
7 agencies in providing information and training to designated
8 regional long term care ombudsman programs about the
9 appropriate assessment and treatment (including information
10 about appropriate supportive services, treatment options, and
11 assessment of rehabilitation potential) of the participants
12 they serve.

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, private
18 homes, or community-based settings. The training must include
19 information specific to assisted living establishments,
20 supportive living facilities, shared housing establishments,
21 private homes, and community-based settings and to the rights
22 of residents and participants guaranteed under the
23 corresponding Acts and administrative rules.

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

26 (1) In collaboration with the Attorney General, create

1 a Consumer Choice Information Report form to be completed
2 by all licensed long term care facilities to aid
3 Illinoisans and their families in making informed choices
4 about long term care. The Office shall create a Consumer
5 Choice Information Report for each type of licensed long
6 term care facility. The Office shall collaborate with the
7 Attorney General and the Department of Human Services to
8 create a Consumer Choice Information Report form for
9 facilities licensed under the MR/DD Community Care Act.

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

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

15 (B) Special Services and Amenities.

16 (C) Staffing.

17 (D) Facility Statistics and Resident Demographics.

18 (E) Ownership and Administration.

19 (F) Safety and Security.

20 (G) Meals and Nutrition.

21 (H) Rooms, Furnishings, and Equipment.

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

23 (3) Make this information accessible to the public,
24 including on the Internet by means of a hyperlink labeled
25 "Resident's Right to Know" on the Office's World Wide Web
26 home page. Information about facilities licensed under the

1 MR/DD Community Care Act shall be made accessible to the
2 public by the Department of Human Services, including on
3 the Internet by means of a hyperlink labeled "Resident's
4 and Families' Right to Know" on the Department of Human
5 Services' "For Customers" website.

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

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

10 (6) Include in the Office's Consumer Choice
11 Information Report for each type of licensed long term care
12 facility additional information on each licensed long term
13 care facility in the State of Illinois, including
14 information regarding each facility's compliance with the
15 relevant State and federal statutes, rules, and standards;
16 customer satisfaction surveys; and information generated
17 from quality measures developed by the Centers for Medicare
18 and Medicaid Services.

19 (d) Access and visitation rights.

20 (1) In accordance with subparagraphs (A) and (E) of
21 paragraph (3) of subsection (c) of Section 1819 and
22 subparagraphs (A) and (E) of paragraph (3) of subsection
23 (c) of Section 1919 of the Social Security Act, as now or
24 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and
25 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the
26 Older Americans Act of 1965, as now or hereafter amended

1 (42 U.S.C. 3058f), a long term care facility, supportive
2 living facility, assisted living establishment, and shared
3 housing establishment must:

4 (i) permit immediate access to any resident,
5 regardless of age, by a designated ombudsman; ~~and~~

6 (ii) permit representatives of the Office, with
7 the permission of the resident's legal representative
8 or legal guardian, to examine a resident's clinical and
9 other records, regardless of the age of the resident,
10 and if a resident is unable to consent to such review,
11 and has no legal guardian, permit representatives of
12 the Office appropriate access, as defined by the
13 Department, in consultation with the Office, in
14 administrative rules, to the resident's records; and -

15 (iii) permit a representative of the Program to
16 communicate privately and without restriction with any
17 participant who consents to the communication
18 regardless of the consent of, or withholding of consent
19 by, a legal guardian or an agent named in a power of
20 attorney executed by the participant.

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 State Long Term Care Ombudsman ~~Director of~~
23 ~~Aging, in consultation with the Office,~~ shall notify the
24 State's Attorney of the county in which the long term care
25 facility, supportive living facility, or assisted living
26 or shared housing establishment is located, or the Attorney

1 General, of any 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, participant, witness, or employee
11 of a long term care provider unless:

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

16 (2) the complainant, resident, participant, witness,
17 or employee of a long term care provider gives consent
18 orally; and the consent is documented contemporaneously in
19 writing in accordance with such requirements as the
20 Department shall 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. Moneys contained in
14 the fund shall be used to support the purposes of this Section.

15 (k) Each Regional Ombudsman may, in accordance with rules
16 promulgated by the Office, establish a multi-disciplinary team
17 to act in an advisory role for the purpose of providing
18 professional knowledge and expertise in handling complex
19 abuse, neglect, and advocacy issues involving participants.
20 Each multi-disciplinary team may consist of one or more
21 volunteer representatives from any combination of at least 7
22 members from the following professions: banking or finance;
23 disability care; health care; pharmacology; law; law
24 enforcement; emergency responder; mental health care; clergy;
25 coroner or medical examiner; substance abuse; domestic
26 violence; sexual assault; or other related fields. To support

1 multi-disciplinary teams in this role, law enforcement
2 agencies and coroners or medical examiners shall supply records
3 as may be requested in particular cases. The Regional
4 Ombudsman, or his or her designee, of the area in which the
5 multi-disciplinary team is created shall be the facilitator of
6 the multi-disciplinary team.

7 (Source: P.A. 97-38, eff. 6-28-11; 98-380, eff. 8-16-13.)

8 Section 99. Effective date. This Act takes effect January
9 1, 2015.