



Sen. Heather A. Steans

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1 AMENDMENT TO SENATE BILL 798

2 AMENDMENT NO. _____. Amend Senate Bill 798 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 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

1 be provided to Illinois participants for the first time and
2 will produce a cost savings for the State of Illinois by
3 supporting the rebalancing efforts of the Patient Protection
4 and Affordable Care Act.

5 (a) Long Term Care Ombudsman Program. The Department shall
6 establish a Long Term Care Ombudsman Program, through the
7 Office of State Long Term Care Ombudsman ("the Office"), in
8 accordance with the provisions of the Older Americans Act of
9 1965, as now or hereafter amended. The Long Term Care Ombudsman
10 Program is authorized, subject to sufficient appropriations,
11 to advocate on behalf of older persons and persons with
12 disabilities residing in their own homes or community-based
13 settings, relating to matters which may adversely affect the
14 health, safety, welfare, or rights of such individuals.

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

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

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

23 (ii) Communicate privately and without restriction
24 with any resident, regardless of age, who consents to
25 the communication;

26 (iii) Seek consent to communicate privately and

1 without restriction with any participant or resident,
2 regardless of age;

3 (iv) Inspect the clinical and other records of a
4 participant or resident, regardless of age, with the
5 express written consent of the participant or
6 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; and

12 (vi) Subject to permission of the participant or
13 resident requesting services or his or her
14 representative, enter a home or community-based
15 setting.

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

26 (2.5) "Assisted living establishment" and "shared

1 housing establishment" have the meanings given those terms
2 in Section 10 of the Assisted Living and Shared Housing
3 Act.

4 (2.7) "Supportive living facility" means a facility
5 established under Section 5-5.01a of the Illinois Public
6 Aid Code.

7 (2.8) "Community-based setting" means any place of
8 abode other than an individual's private home.

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

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

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

26 (i) A medical assistance waiver administered by

1 the State.

2 (ii) A managed care organization providing care
3 coordination and other services to seniors and persons
4 with disabilities.

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

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

15 The Department, in consultation with the Office, shall
16 promulgate administrative rules in accordance with the
17 provisions of the Older Americans Act of 1965, as now or
18 hereafter amended, to establish the responsibilities of the
19 Department and the Office of State Long Term Care Ombudsman and
20 the designated regional Ombudsman programs. The administrative
21 rules shall include the responsibility of the Office and
22 designated regional programs to investigate and resolve
23 complaints made by or on behalf of residents of long term care
24 facilities, supportive living facilities, and assisted living
25 and shared housing establishments, and participants residing
26 in their own homes or community-based settings, including the

1 option to serve residents and participants under the age of 60,
2 relating to actions, inaction, or decisions of providers, or
3 their representatives, of such facilities and establishments,
4 of public agencies, or of social services agencies, which may
5 adversely affect the health, safety, welfare, or rights of such
6 residents and participants. The Office and designated regional
7 programs may represent all residents and participants, but are
8 not required by this Act to represent persons under 60 years of
9 age, except to the extent required by federal law. When
10 necessary and appropriate, representatives of the Office shall
11 refer complaints to the appropriate regulatory State agency.
12 The Department, in consultation with the Office, shall
13 cooperate with the Department of Human Services and other State
14 agencies in providing information and training to designated
15 regional long term care ombudsman programs about the
16 appropriate assessment and treatment (including information
17 about appropriate supportive services, treatment options, and
18 assessment of rehabilitation potential) of the participants
19 they serve.

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, private
25 homes, or community-based settings. The training must include
26 information specific to assisted living establishments,

1 supportive living facilities, shared housing establishments,
2 private homes, and community-based settings and to the rights
3 of residents and participants guaranteed under the
4 corresponding Acts and administrative rules.

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

7 (1) In collaboration with the Attorney General, create
8 a Consumer Choice Information Report form to be completed
9 by all licensed long term care facilities to aid
10 Illinoisans and their families in making informed choices
11 about long term care. The Office shall create a Consumer
12 Choice Information Report for each type of licensed long
13 term care facility. The Office shall collaborate with the
14 Attorney General and the Department of Human Services to
15 create a Consumer Choice Information Report form for
16 facilities licensed under the MR/DD Community Care Act.

17 (2) Develop a database of Consumer Choice Information
18 Reports completed by licensed long term care facilities
19 that includes information in the following consumer
20 categories:

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

22 (B) Special Services and Amenities.

23 (C) Staffing.

24 (D) Facility Statistics and Resident Demographics.

25 (E) Ownership and Administration.

26 (F) Safety and Security.

1 (G) Meals and Nutrition.

2 (H) Rooms, Furnishings, and Equipment.

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

4 (3) Make this information accessible to the public,
5 including on the Internet by means of a hyperlink labeled
6 "Resident's Right to Know" on the Office's World Wide Web
7 home page. Information about facilities licensed under the
8 MR/DD Community Care Act shall be made accessible to the
9 public by the Department of Human Services, including on
10 the Internet by means of a hyperlink labeled "Resident's
11 and Families' Right to Know" on the Department of Human
12 Services' "For Customers" website.

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

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

17 (6) Include in the Office's Consumer Choice
18 Information Report for each type of licensed long term care
19 facility additional information on each licensed long term
20 care facility in the State of Illinois, including
21 information regarding each facility's compliance with the
22 relevant State and federal statutes, rules, and standards;
23 customer satisfaction surveys; and information generated
24 from quality measures developed by the Centers for Medicare
25 and Medicaid Services.

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; ~~and~~ -

22 (iii) permit a representative of the Program to:

23 (A) communicate privately and without
24 restriction with any resident or participant who
25 consents to the communication; and

26 (B) approach and communicate privately with

1 any resident or participant regardless of the
2 consent of, or withholding of consent by, any
3 health care agent or guardian of the resident or
4 participant.

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

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

19 (f) Business offenses.

20 (1) No person shall:

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

25 (ii) Intentionally retaliate, discriminate
26 against, or effect reprisals against any long term care

1 facility resident or employee for contacting or
2 providing information to any representative of the
3 Office.

4 (2) A violation of this Section is a business offense,
5 punishable by a fine not to exceed \$5,000 for a first
6 offense, \$10,000 for a second offense, and \$15,000 for a
7 third and each subsequent offense. All fines collected
8 under this paragraph shall be deposited into the Long Term
9 Care Ombudsman Fund. ~~\$501.~~

10 (3) The State Long Term Care Ombudsman ~~Director of~~
11 ~~Aging, in consultation with the Office,~~ shall notify the
12 State's Attorney of the county in which the long term care
13 facility, supportive living facility, or assisted living
14 or shared housing establishment is located, or the Attorney
15 General, of any violations of this Section.

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

26 (1) the complainant, resident, participant, witness,

1 or employee of a long term care provider or his or her
2 legal representative consents to the disclosure and the
3 consent is in writing;

4 (2) the complainant, resident, participant, witness,
5 or employee of a long term care provider gives consent
6 orally; and the consent is documented contemporaneously in
7 writing in accordance with such requirements as the
8 Department shall establish; or

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

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

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

24 (j) The Long Term Care Ombudsman Fund is created as a
25 special fund in the State treasury to receive moneys for the
26 express purposes of this Section. All interest earned on moneys

1 in the fund shall be credited to the fund. Moneys contained in
2 the fund shall be used to support the purposes of this Section.

3 (k) Each Regional Ombudsman may, in accordance with rules
4 promulgated by the Office, establish a multi-disciplinary team
5 to act in an advisory role for the purpose of providing
6 professional knowledge and expertise in handling complex
7 abuse, neglect, and advocacy issues involving participants.
8 Each multi-disciplinary team may consist of one or more
9 volunteer representatives from any combination of at least 7
10 members from the following professions: banking or finance;
11 disability care; health care; pharmacology; law; law
12 enforcement; emergency responder; mental health care; clergy;
13 coroner or medical examiner; substance abuse; domestic
14 violence; sexual assault; or other related fields. To support
15 multi-disciplinary teams in this role, law enforcement
16 agencies and coroners or medical examiners shall supply records
17 as may be requested in particular cases. The Regional
18 Ombudsman, or his or her designee, of the area in which the
19 multi-disciplinary team is created shall be the facilitator of
20 the multi-disciplinary team.

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

22 Section 99. Effective date. This Act takes effect January
23 1, 2015."