



Rep. Tom Demmer

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1 AMENDMENT TO HOUSE BILL 2246

2 AMENDMENT NO. _____. Amend House Bill 2246 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" 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;

24 (iii) Seek consent to communicate privately and
25 without restriction with any participant or resident,
26 regardless of age;

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

5 (v) Observe all areas of the long term care
6 facility or supportive living facilities, assisted
7 living or shared housing establishment except the
8 living area of any resident who protests the
9 observation; and

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

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

24 (2.5) "Assisted living establishment" and "shared
25 housing establishment" have the meanings given those terms
26 in Section 10 of the Assisted Living and Shared Housing

1 Act.

2 (2.7) "Supportive living facility" means a facility
3 established under Section 5-5.01a of the Illinois Public
4 Aid Code.

5 (2.8) "Community-based setting" means any place of
6 abode other than an individual's private home.

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

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

20 (4) "Participant" means an older person aged 60 or over
21 or an adult with a disability aged 18 through 59 who is
22 eligible for services under any of the following:

23 (i) A medical assistance waiver administered by
24 the State.

25 (ii) A managed care organization providing care
26 coordination and other services to seniors and persons

1 with disabilities.

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

5 (c) Ombudsman; appointment. The Governor shall appoint,
6 and the Senate shall confirm, a State Long Term Care Ombudsman.
7 The State Long Term Care Ombudsman shall be appointed for a
8 term of 4 years and shall function within the Department and
9 shall report to the Director and the Governor. The Office of
10 State Long Term Care Ombudsman ~~rules. The Office of State Long~~
11 ~~Term Care Ombudsman shall be composed of at least one full-time~~
12 ~~ombudsman and~~ shall include a system of designated regional
13 long term care ombudsman programs. Each regional program shall
14 be designated by the State Long Term Care Ombudsman as a
15 subdivision of the Office and any representative of a regional
16 program shall be treated as a representative of the Office.

17 The State Long Term Care Ombudsman shall function
18 independently within the Department with respect to the
19 operations of the Office, including the performance of
20 investigations and issuance of findings and recommendations.
21 The appropriation for the Office of State Long Term Care
22 Ombudsman shall be separate from the overall appropriation for
23 the Department.

24 The Department, in consultation with the Office, shall
25 promulgate administrative rules in accordance with the
26 provisions of the Older Americans Act of 1965, as now or

1 hereafter amended, to establish the responsibilities of the
2 Department and the Office of State Long Term Care Ombudsman and
3 the designated regional Ombudsman programs. The administrative
4 rules shall include the responsibility of the Office and
5 designated regional programs to investigate and resolve
6 complaints made by or on behalf of residents of long term care
7 facilities, supportive living facilities, and assisted living
8 and shared housing establishments, and participants residing
9 in their own homes or community-based settings, including the
10 option to serve residents and participants under the age of 60,
11 relating to actions, inaction, or decisions of providers, or
12 their representatives, of such facilities and establishments,
13 of public agencies, or of social services agencies, which may
14 adversely affect the health, safety, welfare, or rights of such
15 residents and participants. The Office and designated regional
16 programs may represent all residents and participants, but are
17 not required by this Act to represent persons under 60 years of
18 age, except to the extent required by federal law. When
19 necessary and appropriate, representatives of the Office shall
20 refer complaints to the appropriate regulatory State agency.
21 The Department, in consultation with the Office, shall
22 cooperate with the Department of Human Services and other State
23 agencies in providing information and training to designated
24 regional long term care ombudsman programs about the
25 appropriate assessment and treatment (including information
26 about appropriate supportive services, treatment options, and

1 assessment of rehabilitation potential) of the participants
2 they serve.

3 The State Long Term Care Ombudsman and all other ombudsmen,
4 as defined in paragraph (3.1) of subsection (b) must submit to
5 background checks under the Health Care Worker Background Check
6 Act and receive training, as prescribed by the Illinois
7 Department on Aging, before visiting facilities, private
8 homes, or community-based settings. The training must include
9 information specific to assisted living establishments,
10 supportive living facilities, shared housing establishments,
11 private homes, and community-based settings and to the rights
12 of residents and participants guaranteed under the
13 corresponding Acts and administrative rules.

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

16 (1) In collaboration with the Attorney General, create
17 a Consumer Choice Information Report form to be completed
18 by all licensed long term care facilities to aid
19 Illinoisans and their families in making informed choices
20 about long term care. The Office shall create a Consumer
21 Choice Information Report for each type of licensed long
22 term care facility. The Office shall collaborate with the
23 Attorney General and the Department of Human Services to
24 create a Consumer Choice Information Report form for
25 facilities licensed under the MR/DD Community Care Act.

26 (2) Develop a database of Consumer Choice Information

1 Reports completed by licensed long term care facilities
2 that includes information in the following consumer
3 categories:

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

5 (B) Special Services and Amenities.

6 (C) Staffing.

7 (D) Facility Statistics and Resident Demographics.

8 (E) Ownership and Administration.

9 (F) Safety and Security.

10 (G) Meals and Nutrition.

11 (H) Rooms, Furnishings, and Equipment.

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

13 (3) Make this information accessible to the public,
14 including on the Internet by means of a hyperlink labeled
15 "Resident's Right to Know" on the Office's World Wide Web
16 home page. Information about facilities licensed under the
17 MR/DD Community Care Act shall be made accessible to the
18 public by the Department of Human Services, including on
19 the Internet by means of a hyperlink labeled "Resident's
20 and Families' Right to Know" on the Department of Human
21 Services' "For Customers" website.

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

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

26 (6) Include in the Office's Consumer Choice

1 Information Report for each type of licensed long term care
2 facility additional information on each licensed long term
3 care facility in the State of Illinois, including
4 information regarding each facility's compliance with the
5 relevant State and federal statutes, rules, and standards;
6 customer satisfaction surveys; and information generated
7 from quality measures developed by the Centers for Medicare
8 and Medicaid Services.

9 (d) Access and visitation rights.

10 (1) In accordance with subparagraphs (A) and (E) of
11 paragraph (3) of subsection (c) of Section 1819 and
12 subparagraphs (A) and (E) of paragraph (3) of subsection
13 (c) of Section 1919 of the Social Security Act, as now or
14 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and
15 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the
16 Older Americans Act of 1965, as now or hereafter amended
17 (42 U.S.C. 3058f), a long term care facility, supportive
18 living facility, assisted living establishment, and shared
19 housing establishment must:

20 (i) permit immediate access to any resident,
21 regardless of age, by a designated ombudsman;

22 (ii) permit representatives of the Office, with
23 the permission of the resident's legal representative
24 or legal guardian, to examine a resident's clinical and
25 other records, regardless of the age of the resident,
26 and if a resident is unable to consent to such review,

1 and has no legal guardian, permit representatives of
2 the Office appropriate access, as defined by the
3 Department, in consultation with the Office, in
4 administrative rules, to the resident's records; and

5 (iii) permit a representative of the Program to
6 communicate privately and without restriction with any
7 participant who consents to the communication
8 regardless of the consent of, or withholding of consent
9 by, a legal guardian or an agent named in a power of
10 attorney executed by the participant.

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

19 (e) Immunity. An ombudsman or any representative of the
20 Office participating in the good faith performance of his or
21 her official duties shall have immunity from any liability
22 (civil, criminal or otherwise) in any proceedings (civil,
23 criminal or otherwise) brought as a consequence of the
24 performance of his official duties.

25 (f) Business offenses.

26 (1) No person shall:

1 (i) Intentionally prevent, interfere with, or
2 attempt to impede in any way any representative of the
3 Office in the performance of his official duties under
4 this Act and the Older Americans Act of 1965; or

5 (ii) Intentionally retaliate, discriminate
6 against, or effect reprisals against any long term care
7 facility resident or employee for contacting or
8 providing information to any representative of the
9 Office.

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

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

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

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

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

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

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

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

25 (j) The Long Term Care Ombudsman Fund is created as a
26 special fund in the State treasury to receive moneys for the

1 express purposes of this Section. All interest earned on moneys
2 in the fund shall be credited to the fund. Moneys contained in
3 the fund shall be used to support the purposes of this Section.

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

22 (Source: P.A. 97-38, eff. 6-28-11; 98-380, eff. 8-16-13;
23 98-989, eff. 1-1-15.)".