

# SB4024



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB4024

Introduced 1/21/2022, by Sen. Karina Villa

### SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on the Aging. In a provision requiring the Department on Aging to make certain long term care consumer choice information available to the public on the Internet, removes a reference to the name of the hyperlink "Resident's Right to Know".

LRB102 23286 KTG 32451 b

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 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  
8 of 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  
3 Ombudsman Program is authorized, subject to sufficient  
4 appropriations, to advocate on behalf of older persons and  
5 persons with disabilities residing in their own homes or  
6 community-based settings, relating to matters which may  
7 adversely affect the health, safety, welfare, or rights of  
8 such individuals.

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

11 (1) "Access" means the right to:

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

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

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

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

25 (v) Observe all areas of the long term care  
26 facility or supportive living facilities, assisted

1 living or shared housing establishment except the  
2 living area of any resident who protests the  
3 observation; and

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

8 (2) "Long Term Care Facility" means (i) any facility  
9 as defined by Section 1-113 of the Nursing Home Care Act,  
10 as now or hereafter amended; (ii) any skilled nursing  
11 facility or a nursing facility which meets the  
12 requirements of Section 1819(a), (b), (c), and (d) or  
13 Section 1919(a), (b), (c), and (d) of the Social Security  
14 Act, as now or hereafter amended (42 U.S.C. 1395i-3(a),  
15 (b), (c), and (d) and 42 U.S.C. 1396r(a), (b), (c), and  
16 (d)); (iii) any facility as defined by Section 1-113 of  
17 the ID/DD Community Care Act, as now or hereafter amended;  
18 (iv) any facility as defined by Section 1-113 of MC/DD  
19 Act, as now or hereafter amended; and (v) any facility  
20 licensed under Section 4-105 or 4-201 of the Specialized  
21 Mental Health Rehabilitation Act of 2013, as now or  
22 hereafter amended.

23 (2.5) "Assisted living establishment" and "shared  
24 housing establishment" have the meanings given those terms  
25 in Section 10 of the Assisted Living and Shared Housing  
26 Act.

1           (2.7) "Supportive living facility" means a facility  
2 established under Section 5-5.01a of the Illinois Public  
3 Aid Code.

4           (2.8) "Community-based setting" means any place of  
5 abode other than an individual's private home.

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

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

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

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

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

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

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

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

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

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

1 under the corresponding Acts and administrative rules.

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. The Office shall collaborate with the  
11 Attorney General and the Department of Human Services to  
12 create a Consumer Choice Information Report form for  
13 facilities licensed under the ID/DD Community Care Act or  
14 the MC/DD Act.

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

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

20 (B) Special Services and Amenities.

21 (C) Staffing.

22 (D) Facility Statistics and Resident Demographics.

23 (E) Ownership and Administration.

24 (F) Safety and Security.

25 (G) Meals and Nutrition.

26 (H) Rooms, Furnishings, and Equipment.



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

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

12 (4) Have the authority, with the Attorney General, to  
13 verify that information provided by a facility is  
14 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  
19 care facility additional information on each licensed long  
20 term 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  
25 Medicare 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;

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  
16 and other records, regardless of the age of the  
17 resident, and if a resident is unable to consent to  
18 such review, and has no legal guardian, permit  
19 representatives of the Office appropriate access, as  
20 defined by the Department, in consultation with the  
21 Office, in administrative rules, to the resident's  
22 records; and

23           (iii) permit a representative of the Program to  
24 communicate privately and without restriction with any  
25 participant who consents to the communication  
26 regardless of the consent of, or withholding of

1 consent by, a legal guardian or an agent named in a  
2 power of attorney executed by the participant.

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

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

17 (f) Business offenses.

18 (1) No person shall:

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

23 (ii) Intentionally retaliate, discriminate  
24 against, or effect reprisals against any long term  
25 care facility resident or employee for contacting or  
26 providing information to any representative of the

1 Office.

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

4 (3) The State Long Term Care Ombudsman shall notify  
5 the State's Attorney of the county in which the long term  
6 care facility, supportive living facility, or assisted  
7 living or shared housing establishment is located, or the  
8 Attorney General, of any violations of this Section.

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

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

23 (2) the complainant, resident, participant, witness,  
24 or employee of a long term care provider gives consent  
25 orally; and the consent is documented contemporaneously in  
26 writing in accordance with such requirements as the

1 Department shall establish; or

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

3 (h) Legal representation. The Attorney General shall  
4 provide legal representation to any representative of the  
5 Office against whom suit or other legal action is brought in  
6 connection with the performance of the representative's  
7 official duties, in accordance with the State Employee  
8 Indemnification Act.

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

17 (j) The Long Term Care Ombudsman Fund is created as a  
18 special fund in the State treasury to receive moneys for the  
19 express purposes of this Section. All interest earned on  
20 moneys in the fund shall be credited to the fund. Moneys  
21 contained in the fund shall be used to support the purposes of  
22 this Section.

23 (k) Each Regional Ombudsman may, in accordance with rules  
24 promulgated by the Office, establish a multi-disciplinary team  
25 to act in an advisory role for the purpose of providing  
26 professional knowledge and expertise in handling complex

1 abuse, neglect, and advocacy issues involving participants.  
2 Each multi-disciplinary team may consist of one or more  
3 volunteer representatives from any combination of at least 7  
4 members from the following professions: banking or finance;  
5 disability care; health care; pharmacology; law; law  
6 enforcement; emergency responder; mental health care; clergy;  
7 coroner or medical examiner; substance abuse; domestic  
8 violence; sexual assault; or other related fields. To support  
9 multi-disciplinary teams in this role, law enforcement  
10 agencies and coroners or medical examiners shall supply  
11 records as may be requested in particular cases. The Regional  
12 Ombudsman, or his or her designee, of the area in which the  
13 multi-disciplinary team is created shall be the facilitator of  
14 the multi-disciplinary team.

15 (Source: P.A. 98-380, eff. 8-16-13; 98-989, eff. 1-1-15;  
16 99-180, eff. 7-29-15; 99-712, eff. 8-5-16.)