

HB1301



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1301

Introduced 2/20/2007, by Rep. Joseph M. Lyons

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on Aging. Allows the Long Term Care Ombudsman to communicate with, seek consent of, inspect records of, and do other things concerning nursing home residents, "regardless of age". Effective immediately.

LRB095 09543 CMK 29742 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 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, regardless of the age of the
6 residents, relating to actions, inaction, or decisions of
7 providers, or their representatives, of long term care
8 facilities, of supported living facilities, of assisted living
9 and shared housing establishments, of public agencies, or of
10 social services agencies, which may adversely affect the
11 health, safety, welfare, or rights of such residents. When
12 necessary and appropriate, representatives of the Office shall
13 refer complaints to the appropriate regulatory State agency.
14 The Department, in consultation with the Office, shall
15 cooperate with the Department of Human Services in providing
16 information and training to designated regional long term care
17 ombudsman programs about the appropriate assessment and
18 treatment (including information about appropriate supportive
19 services, treatment options, and assessment of rehabilitation
20 potential) of persons with mental illness (other than
21 Alzheimer's disease and related disorders).

22 The State Long Term Care Ombudsman and all other ombudsmen,
23 as defined in paragraph (3.1) of subsection (b) must submit to
24 background checks under the Health Care Worker Background Check
25 Act and receive training, as prescribed by the Illinois
26 Department on Aging, before visiting facilities. The training

1 must include information specific to assisted living
2 establishments, supportive living facilities, and shared
3 housing establishments and to the rights of residents
4 guaranteed under the corresponding Acts and administrative
5 rules.

6 (d) Access and visitation rights.

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

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

19 (ii) permit representatives of the Office, with
20 the permission of the resident's legal representative
21 or legal guardian, to examine a resident's clinical and
22 other records, regardless of the age of the resident,
23 and if a resident is unable to consent to such review,
24 and has no legal guardian, permit representatives of
25 the Office appropriate access, as defined by the
26 Department, in consultation with the Office, in

1 administrative rules, to the resident's records.

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

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

16 (f) Business offenses.

17 (1) No person shall:

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

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

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

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

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

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

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

1 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 medical
11 supervision, regulation or control of remedial care or
12 treatment of any resident in a long term care facility operated
13 exclusively by and for members or adherents of any church or
14 religious denomination the tenets and practices of which
15 include reliance solely upon spiritual means through prayer for
16 healing.

17 (Source: P.A. 93-241, eff. 7-22-03; 93-878, eff. 1-1-05.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.