



Sen. Dan Kotowski

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1 AMENDMENT TO SENATE BILL 321

2 AMENDMENT NO. _____. Amend Senate Bill 321 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.

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;

1 that is, it means the right to:

2 (i) Enter any long term care facility or assisted
3 living or shared housing establishment or supportive
4 living facility;

5 (ii) Communicate privately and without restriction
6 with any resident, regardless of age, who consents to
7 the communication;

8 (iii) Seek consent to communicate privately and
9 without restriction with any resident, regardless of
10 age;

11 (iv) Inspect the clinical and other records of a
12 resident, regardless of age, with the express written
13 consent of the resident;

14 (v) Observe all areas of the long term care
15 facility or supportive living facilities, assisted
16 living or shared housing establishment except the
17 living area of any resident who protests the
18 observation.

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

1 (2.5) "Assisted living establishment" and "shared
2 housing establishment" have the meanings given those terms
3 in Section 10 of the Assisted Living and Shared Housing
4 Act.

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

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

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

21 (c) Ombudsman; rules. The Office of State Long Term Care
22 Ombudsman shall be composed of at least one full-time ombudsman
23 and shall include a system of designated regional long term
24 care ombudsman programs. Each regional program shall be
25 designated by the State Long Term Care Ombudsman as a
26 subdivision of the Office and any representative of a regional

1 program shall be treated as a representative of the Office.

2 The Department, in consultation with the Office, shall
3 promulgate administrative rules in accordance with the
4 provisions of the Older Americans Act of 1965, as now or
5 hereafter amended, to establish the responsibilities of the
6 Department and the Office of State Long Term Care Ombudsman and
7 the designated regional Ombudsman programs. The administrative
8 rules shall include the responsibility of the Office and
9 designated regional programs to investigate and resolve
10 complaints made by or on behalf of residents of long term care
11 facilities, supportive living facilities, and assisted living
12 and shared housing establishments, including the option to
13 serve residents under the age of 60, relating to actions,
14 inaction, or decisions of providers, or their representatives,
15 of long term care facilities, of supported living facilities,
16 of assisted living and shared housing establishments, of public
17 agencies, or of social services agencies, which may adversely
18 affect the health, safety, welfare, or rights of such
19 residents. The Office and designated regional programs may
20 represent all residents, but are not required by this Act to
21 represent persons under 60 years of age, except to the extent
22 required by federal law. When necessary and appropriate,
23 representatives of the Office shall refer complaints to the
24 appropriate regulatory State agency. The Department, in
25 consultation with the Office, shall cooperate with the
26 Department of Human Services and other State agencies in

1 providing information and training to designated regional long
2 term care ombudsman programs about the appropriate assessment
3 and treatment (including information about appropriate
4 supportive services, treatment options, and assessment of
5 rehabilitation potential) of the residents they serve,
6 including children, persons with mental illness (other than
7 Alzheimer's disease and related disorders), and persons with
8 developmental disabilities.

9 The State Long Term Care Ombudsman and all other ombudsmen,
10 as defined in paragraph (3.1) of subsection (b) must submit to
11 background checks under the Health Care Worker Background Check
12 Act and receive training, as prescribed by the Illinois
13 Department on Aging, before visiting facilities. The training
14 must include information specific to assisted living
15 establishments, supportive living facilities, and shared
16 housing establishments and to the rights of residents
17 guaranteed under the corresponding Acts and administrative
18 rules.

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

21 (1) In collaboration with the Attorney General, create
22 a Consumer Choice Information Report form to be completed
23 by all licensed long term care facilities to aid
24 Illinoisans and their families in making informed choices
25 about long term care. The Office shall create a Consumer
26 Choice Information Report for each type of licensed long

1 term care facility.

2 (2) Develop a database of Consumer Choice Information
3 Reports completed by licensed long term care facilities
4 that includes information in the following consumer
5 categories:

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

7 (B) Special Services and Amenities.

8 (C) Staffing.

9 (D) Facility Statistics and Resident Demographics.

10 (E) Ownership and Administration.

11 (F) Safety and Security.

12 (G) Meals and Nutrition.

13 (H) Rooms, Furnishings, and Equipment.

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

15 (3) Make this information accessible to the public,
16 including on the Internet by means of a hyperlink labeled
17 "Resident's Right to Know" on the Office's World Wide Web
18 home page.

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

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

23 (d) Access and visitation rights.

24 (1) In accordance with subparagraphs (A) and (E) of
25 paragraph (3) of subsection (c) of Section 1819 and
26 subparagraphs (A) and (E) of paragraph (3) of subsection

1 (c) of Section 1919 of the Social Security Act, as now or
2 hereafter amended (42 U.S.C. 1395i-3 (c)(3)(A) and (E) and
3 42 U.S.C. 1396r (c)(3)(A) and (E)), and Section 712 of the
4 Older Americans Act of 1965, as now or hereafter amended
5 (42 U.S.C. 3058f), a long term care facility, supportive
6 living facility, assisted living establishment, and shared
7 housing establishment must:

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

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

19 (2) Each long term care facility, supportive living
20 facility, assisted living establishment, and shared
21 housing establishment shall display, in multiple,
22 conspicuous public places within the facility accessible
23 to both visitors and residents and in an easily readable
24 format, the address and phone number of the Office of the
25 Long Term Care Ombudsman, in a manner prescribed by the
26 Office.

1 (e) Immunity. An ombudsman or any representative of the
2 Office participating in the good faith performance of his or
3 her official duties shall have immunity from any liability
4 (civil, criminal or otherwise) in any proceedings (civil,
5 criminal or otherwise) brought as a consequence of the
6 performance of his official duties.

7 (f) Business offenses.

8 (1) No person shall:

9 (i) Intentionally prevent, interfere with, or
10 attempt to impede in any way any representative of the
11 Office in the performance of his official duties under
12 this Act and the Older Americans Act of 1965; or

13 (ii) Intentionally retaliate, discriminate
14 against, or effect reprisals against any long term care
15 facility resident or employee for contacting or
16 providing information to any representative of the
17 Office.

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

20 (3) The Director of Aging, in consultation with the
21 Office, shall notify the State's Attorney of the county in
22 which the long term care facility, supportive living
23 facility, or assisted living or shared housing
24 establishment is located, or the Attorney General, of any
25 violations of this Section.

26 (g) Confidentiality of records and identities. The

1 Department shall establish procedures for the disclosure by the
2 State Ombudsman or the regional ombudsmen entities of files
3 maintained by the program. The procedures shall provide that
4 the files and records may be disclosed only at the discretion
5 of the State Long Term Care Ombudsman or the person designated
6 by the State Ombudsman to disclose the files and records, and
7 the procedures shall prohibit the disclosure of the identity of
8 any complainant, resident, witness, or employee of a long term
9 care provider unless:

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

14 (2) the complainant, resident, witness, or employee of
15 a long term care provider gives consent orally; and the
16 consent is documented contemporaneously in writing in
17 accordance with such requirements as the Department shall
18 establish; or

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

20 (h) Legal representation. The Attorney General shall
21 provide legal representation to any representative of the
22 Office against whom suit or other legal action is brought in
23 connection with the performance of the representative's
24 official duties, in accordance with the State Employee
25 Indemnification Act.

26 (i) Treatment by prayer and spiritual means. Nothing in

1 this Act shall be construed to authorize or require the medical
2 supervision, regulation or control of remedial care or
3 treatment of any resident in a long term care facility operated
4 exclusively by and for members or adherents of any church or
5 religious denomination the tenets and practices of which
6 include reliance solely upon spiritual means through prayer for
7 healing.

8 (j) The Long Term Care Ombudsman Fund is created as a
9 special fund in the State treasury to receive moneys for the
10 express purposes of this Section. All interest earned on moneys
11 in the fund shall be credited to the fund. Moneys contained in
12 the fund shall be used to support the purposes of this Section.

13 (Source: P.A. 95-620, eff. 9-17-07; 95-823, eff. 1-1-09;
14 revised 9-5-08.)

15 Section 10. The State Finance Act is amended by adding
16 Sections 5.719 and 5.720 as follows:

17 (30 ILCS 105/5.719 new)

18 Sec. 5.719. The Long Term Care Ombudsman Fund.

19 (30 ILCS 105/5.720 new)

20 Sec. 5.720. The Nursing Home Conversion Fund.

21 Section 15. The Nursing Home Care Act is amended by
22 changing Sections 3-103 and 3-308 as follows:

1 (210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)

2 Sec. 3-103. The procedure for obtaining a valid license
3 shall be as follows:

4 (1) Application to operate a facility shall be made to
5 the Department on forms furnished by the Department.

6 (2) All license applications shall be accompanied with
7 an application fee. The fee for an annual license shall be
8 \$995. Facilities that pay a fee or assessment pursuant to
9 Article V-C of the Illinois Public Aid Code shall be exempt
10 from the license fee imposed under this item (2). The fee
11 for a 2-year license shall be double the fee for the annual
12 license set forth in the preceding sentence. The fees
13 collected shall be deposited with the State Treasurer into
14 the Long Term Care Monitor/Receiver Fund, which has been
15 created as a special fund in the State treasury. This
16 special fund is to be used by the Department for expenses
17 related to the appointment of monitors and receivers as
18 contained in Sections 3-501 through 3-517 of this Act, for
19 the enforcement of this Act, and for implementation of the
20 Abuse Prevention Review Team Act. At the end of each fiscal
21 year, any funds in excess of \$1,250,000 ~~\$1,000,000~~ held in
22 the Long Term Care Monitor/Receiver Fund shall be
23 distributed in the following manner: (i) an amount not to
24 exceed \$250,000 shall be deposited into the Long Term Care
25 Ombudsman Fund; (ii) from the remainder, if any, an amount

1 not to exceed \$250,000 shall be deposited into the Nursing
2 Home Conversion Fund; and (iii) the remainder, if any,
3 shall be deposited in the State's General Revenue Fund. The
4 application shall be under oath and the submission of false
5 or misleading information shall be a Class A misdemeanor.
6 The application shall contain the following information:

7 (a) The name and address of the applicant if an
8 individual, and if a firm, partnership, or
9 association, of every member thereof, and in the case
10 of a corporation, the name and address thereof and of
11 its officers and its registered agent, and in the case
12 of a unit of local government, the name and address of
13 its chief executive officer;

14 (b) The name and location of the facility for which
15 a license is sought;

16 (c) The name of the person or persons under whose
17 management or supervision the facility will be
18 conducted;

19 (d) The number and type of residents for which
20 maintenance, personal care, or nursing is to be
21 provided; and

22 (e) Such information relating to the number,
23 experience, and training of the employees of the
24 facility, any management agreements for the operation
25 of the facility, and of the moral character of the
26 applicant and employees as the Department may deem

1 necessary.

2 (3) Each initial application shall be accompanied by a
3 financial statement setting forth the financial condition
4 of the applicant and by a statement from the unit of local
5 government having zoning jurisdiction over the facility's
6 location stating that the location of the facility is not
7 in violation of a zoning ordinance. An initial application
8 for a new facility shall be accompanied by a permit as
9 required by the "Illinois Health Facilities Planning Act".
10 After the application is approved, the applicant shall
11 advise the Department every 6 months of any changes in the
12 information originally provided in the application.

13 (4) Other information necessary to determine the
14 identity and qualifications of an applicant to operate a
15 facility in accordance with this Act shall be included in
16 the application as required by the Department in
17 regulations.

18 (Source: P.A. 93-32, eff. 7-1-03; 93-841, eff. 7-30-04; 94-931,
19 eff. 6-26-06.)

20 (210 ILCS 45/3-308) (from Ch. 111 1/2, par. 4153-308)

21 Sec. 3-308. In the case of a Type "A" violation, a penalty
22 may be assessed from the date on which the violation is
23 discovered. In the case of a Type "B" or Type "C" violation or
24 an administrative warning issued pursuant to Sections 3-401
25 through 3-413 or the rules promulgated thereunder, the facility

1 shall submit a plan of correction as provided in Section 3-303.

2 In the case of a Type "B" violation or an administrative
3 warning issued pursuant to Sections 3-401 through 3-413 or the
4 rules promulgated thereunder, a penalty shall be assessed on
5 the date of notice of the violation, but the Director may
6 reduce the amount or waive such payment for any of the
7 following reasons:

8 (a) The facility submits a true report of correction
9 within 10 days;

10 (b) The facility submits a plan of correction within 10
11 days and subsequently submits a true report of correction
12 within 15 days thereafter;

13 (c) The facility submits a plan of correction within 10
14 days which provides for a correction time that is less than
15 or equal to 30 days and the Department approves such plan;
16 or

17 (d) The facility submits a plan of correction for
18 violations involving substantial capital improvements
19 which provides for correction within the initial 90 day
20 limit provided under Section 3-303.

21 The Director or his or her designee may reduce the amount
22 of a penalty assessed pursuant to Section 3-305. A facility
23 shall submit to the Director a written request for a penalty
24 reduction, in a form prescribed by the Department, which
25 includes an accounting of all costs for goods and services
26 purchased in correcting the violation. A facility that accepts

1 a penalty reduction under this Section waives its right to
2 dispute a notice of violation and any remaining fine or penalty
3 in an administrative hearing. The Director shall consider the
4 following factors ~~in determinations to reduce or waive such~~
5 ~~penalties:~~

6 (1) The gravity of the violation, including the
7 probability that death or serious physical or mental harm
8 to a resident will result or has resulted, the severity of
9 the actual or potential harm, and the extent to which the
10 provisions of the applicable statutes or regulations were
11 violated. ~~The violation has not caused actual harm to a~~
12 ~~resident;~~

13 (2) The reasonable diligence exercised by the licensee
14 and efforts to correct violations. ~~The facility has made a~~
15 ~~diligent effort to correct the violation and to prevent its~~
16 ~~recurrence;~~

17 (3) Any previous violations committed by the licensee.
18 ~~The facility has no record of a pervasive pattern of the~~
19 ~~same or similar violations; and~~

20 (4) The financial benefit to the facility of committing
21 or continuing the violation. ~~The facility has a record of~~
22 ~~substantial compliance with this Act and the regulations~~
23 ~~promulgated hereunder.~~

24 (5) Facility remediation of the problem beyond the
25 minimum requirements established by the applicable
26 regulations.

1 (6) Any other factors deemed important by the Director.

2 In all determinations which result in reduction of a
3 penalty, the Department shall make available to the public,
4 upon request, information detailing those determinations.

5 If a plan of correction is approved and carried out for a
6 Type "C" violation, the fine provided under Section 3-305 shall
7 be suspended for the time period specified in the approved plan
8 of correction. If a plan of correction is approved and carried
9 out for a Type "B" violation or an administrative warning
10 issued pursuant to Sections 3-401 through 3-413 or the rules
11 promulgated thereunder, with respect to a violation that
12 continues after the date of notice of violation, the fine
13 provided under Section 3-305 shall be suspended for the time
14 period specified in the approved plan of correction.

15 If a good faith plan of correction is not received within
16 the time provided by Section 3-303, a penalty may be assessed
17 from the date of the notice of the Type "B" or "C" violation or
18 an administrative warning issued pursuant to Sections 3-401
19 through 3-413 or the rules promulgated thereunder served under
20 Section 3-301 until the date of the receipt of a good faith
21 plan of correction, or until the date the violation is
22 corrected, whichever is earlier. If a violation is not
23 corrected within the time specified by an approved plan of
24 correction or any lawful extension thereof, a penalty may be
25 assessed from the date of notice of the violation, until the
26 date the violation is corrected.

1 (Source: P.A. 87-549.)

2 Section 20. The Older Adult Services Act is amended by
3 changing Section 30 as follows:

4 (320 ILCS 42/30)

5 Sec. 30. Nursing home conversion program.

6 (a) The Department of Public Health, in collaboration with
7 the Department on Aging and the Department of Healthcare and
8 Family Services, shall establish a nursing home conversion
9 program. Start-up grants, pursuant to subsections (l) and (m)
10 of this Section, shall be made available to nursing homes as
11 appropriations permit as an incentive to reduce certified beds,
12 retrofit, and retool operations to meet new service delivery
13 expectations and demands.

14 (b) Grant moneys shall be made available for capital and
15 other costs related to: (1) the conversion of all or a part of
16 a nursing home to an assisted living establishment or a special
17 program or unit for persons with Alzheimer's disease or related
18 disorders licensed under the Assisted Living and Shared Housing
19 Act or a supportive living facility established under Section
20 5-5.01a of the Illinois Public Aid Code; (2) the conversion of
21 multi-resident bedrooms in the facility into single-occupancy
22 rooms; and (3) the development of any of the services
23 identified in a priority service plan that can be provided by a
24 nursing home within the confines of a nursing home or

1 transportation services. Grantees shall be required to provide
2 a minimum of a 20% match toward the total cost of the project.

3 (c) Nothing in this Act shall prohibit the co-location of
4 services or the development of multifunctional centers under
5 subsection (f) of Section 20, including a nursing home offering
6 community-based services or a community provider establishing
7 a residential facility.

8 (d) A certified nursing home with at least 50% of its
9 resident population having their care paid for by the Medicaid
10 program is eligible to apply for a grant under this Section.

11 (e) Any nursing home receiving a grant under this Section
12 shall reduce the number of certified nursing home beds by a
13 number equal to or greater than the number of beds being
14 converted for one or more of the permitted uses under item (1)
15 or (2) of subsection (b). The nursing home shall retain the
16 Certificate of Need for its nursing and sheltered care beds
17 that were converted for 15 years. If the beds are reinstated by
18 the provider or its successor in interest, the provider shall
19 pay to the fund from which the grant was awarded, on an
20 amortized basis, the amount of the grant. The Department shall
21 establish, by rule, the bed reduction methodology for nursing
22 homes that receive a grant pursuant to item (3) of subsection
23 (b).

24 (f) Any nursing home receiving a grant under this Section
25 shall agree that, for a minimum of 10 years after the date that
26 the grant is awarded, a minimum of 50% of the nursing home's

1 resident population shall have their care paid for by the
2 Medicaid program. If the nursing home provider or its successor
3 in interest ceases to comply with the requirement set forth in
4 this subsection, the provider shall pay to the fund from which
5 the grant was awarded, on an amortized basis, the amount of the
6 grant.

7 (g) Before awarding grants, the Department of Public Health
8 shall seek recommendations from the Department on Aging and the
9 Department of Healthcare and Family Services. The Department of
10 Public Health shall attempt to balance the distribution of
11 grants among geographic regions, and among small and large
12 nursing homes. The Department of Public Health shall develop,
13 by rule, the criteria for the award of grants based upon the
14 following factors:

15 (1) the unique needs of older adults (including those
16 with moderate and low incomes), caregivers, and providers
17 in the geographic area of the State the grantee seeks to
18 serve;

19 (2) whether the grantee proposes to provide services in
20 a priority service area;

21 (3) the extent to which the conversion or transition
22 will result in the reduction of certified nursing home beds
23 in an area with excess beds;

24 (4) the compliance history of the nursing home; and

25 (5) any other relevant factors identified by the
26 Department, including standards of need.

1 (h) A conversion funded in whole or in part by a grant
2 under this Section must not:

3 (1) diminish or reduce the quality of services
4 available to nursing home residents;

5 (2) force any nursing home resident to involuntarily
6 accept home-based or community-based services instead of
7 nursing home services;

8 (3) diminish or reduce the supply and distribution of
9 nursing home services in any community below the level of
10 need, as defined by the Department by rule; or

11 (4) cause undue hardship on any person who requires
12 nursing home care.

13 (i) The Department shall prescribe, by rule, the grant
14 application process. At a minimum, every application must
15 include:

16 (1) the type of grant sought;

17 (2) a description of the project;

18 (3) the objective of the project;

19 (4) the likelihood of the project meeting identified
20 needs;

21 (5) the plan for financing, administration, and
22 evaluation of the project;

23 (6) the timetable for implementation;

24 (7) the roles and capabilities of responsible
25 individuals and organizations;

26 (8) documentation of collaboration with other service

1 providers, local community government leaders, and other
2 stakeholders, other providers, and any other stakeholders
3 in the community;

4 (9) documentation of community support for the
5 project, including support by other service providers,
6 local community government leaders, and other
7 stakeholders;

8 (10) the total budget for the project;

9 (11) the financial condition of the applicant; and

10 (12) any other application requirements that may be
11 established by the Department by rule.

12 (j) A conversion project funded in whole or in part by a
13 grant under this Section is exempt from the requirements of the
14 Illinois Health Facilities Planning Act. The Department of
15 Public Health, however, shall send to the Health Facilities
16 Planning Board a copy of each grant award made under this
17 Section.

18 (k) Applications for grants are public information, except
19 that nursing home financial condition and any proprietary data
20 shall be classified as nonpublic data.

21 (l) The Department of Public Health may award grants from
22 the Long Term Care Civil Money Penalties Fund established under
23 Section 1919(h) (2) (A) (ii) of the Social Security Act and 42 CFR
24 488.422(g) if the award meets federal requirements.

25 (m) The Nursing Home Conversion Fund is created as a
26 special fund in the State treasury. Moneys appropriated by the

1 General Assembly or transferred from other sources for the
2 purposes of this Section shall be deposited into the Fund. All
3 interest earned on moneys in the fund shall be credited to the
4 fund. Moneys contained in the fund shall be used to support the
5 purposes of this Section.

6 (Source: P.A. 95-331, eff. 8-21-07.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".