

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Act on the Aging is amended by changing Section 4.04 as follows:

(20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

Sec. 4.04. Long Term Care Ombudsman Program.

(a) Long Term Care Ombudsman Program. The Department shall establish a Long Term Care Ombudsman Program, through the Office of State Long Term Care Ombudsman ("the Office"), in accordance with the provisions of the Older Americans Act of 1965, as now or hereafter amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department, in consultation with the Office, shall promulgate administrative rules in accordance with the provisions of the Older Americans Act of 1965, as now or hereafter amended, to establish the responsibilities of the Department and the Office of State Long Term Care Ombudsman and the designated regional Ombudsman programs. The administrative

rules shall include the responsibility of the Office and designated regional programs to investigate and resolve complaints made by or on behalf of residents of long term care facilities, supportive living facilities, and assisted living and shared housing establishments, including the option to serve residents under the age of 60, relating to actions, inaction, or decisions of providers, or their representatives, of long term care facilities, of supported living facilities, of assisted living and shared housing establishments, of public agencies, or of social services agencies, which may adversely affect the health, safety, welfare, or rights of such residents. The Office and designated regional programs may represent all residents, but are not required by this Act to represent persons under 60 years of age, except to the extent required by federal law. When necessary and appropriate, representatives of the Office shall refer complaints to the appropriate regulatory State agency. The Department, in consultation with the Office, shall cooperate with the Department of Human Services and other State agencies in providing information and training to designated regional long term care ombudsman programs about the appropriate assessment and treatment (including information about appropriate supportive services, treatment options, and assessment of rehabilitation potential) of the residents they serve, including children, persons with mental illness (other than Alzheimer's disease and related disorders), and persons with

developmental disabilities.

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

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

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

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

(A) Medical Care, Services, and Treatment.

(B) Special Services and Amenities.

- (C) Staffing.
- (D) Facility Statistics and Resident Demographics.
- (E) Ownership and Administration.
- (F) Safety and Security.
- (G) Meals and Nutrition.
- (H) Rooms, Furnishings, and Equipment.
- (I) Family, Volunteer, and Visitation Provisions.

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

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

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

(d) Access and visitation rights.

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

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

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

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

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

(f) Business offenses.

(1) No person shall:

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

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

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

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

(g) Confidentiality of records and identities. The Department shall establish procedures for the disclosure by the State Ombudsman or the regional ombudsmen entities of files maintained by the program. The procedures shall provide that the files and records may be disclosed only at the discretion of the State Long Term Care Ombudsman or the person designated by the State Ombudsman to disclose the files and records, and the procedures shall prohibit the disclosure of the identity of

any complainant, resident, witness, or employee of a long term care provider unless:

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

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

(3) the disclosure is required by court order.

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

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

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

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

Section 10. The State Finance Act is amended by adding Sections 5.723 and 5.724 as follows:

(30 ILCS 105/5.723 new)

Sec. 5.723. The Long Term Care Ombudsman Fund.

(30 ILCS 105/5.724 new)

Sec. 5.724. The Nursing Home Conversion Fund.

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

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

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

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

(2) All license applications shall be accompanied with

an application fee. The fee for an annual license shall be \$995. Facilities that pay a fee or assessment pursuant to Article V-C of the Illinois Public Aid Code shall be exempt from the license fee imposed under this item (2). The fee for a 2-year license shall be double the fee for the annual license set forth in the preceding sentence. The fees collected shall be deposited with the State Treasurer into the Long Term Care Monitor/Receiver Fund, which has been created as a special fund in the State treasury. This special fund is to be used by the Department for expenses related to the appointment of monitors and receivers as contained in Sections 3-501 through 3-517 of this Act, for the enforcement of this Act, and for implementation of the Abuse Prevention Review Team Act. The Department may reduce or waive a penalty pursuant to Section 3-308 only if that action will not threaten the ability of the Department to meet the expenses required to be met by the Long Term Care Monitor/Receiver Fund. At the end of each fiscal year, any funds in excess of \$1,000,000 held in the Long Term Care Monitor/Receiver Fund shall be deposited in the State's General Revenue Fund. The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:

- (a) The name and address of the applicant if an individual, and if a firm, partnership, or

association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;

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

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

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

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

(3) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as

required by the "Illinois Health Facilities Planning Act". After the application is approved, the applicant shall advise the Department every 6 months of any changes in the information originally provided in the application.

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

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

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

Sec. 3-308. In the case of a Type "A" violation, a penalty may be assessed from the date on which the violation is discovered. In the case of a Type "B" or Type "C" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 or the rules promulgated thereunder, the facility shall submit a plan of correction as provided in Section 3-303.

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

(a) The facility submits a true report of correction

within 10 days;

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

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

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

The Director or his or her designee may reallocate the amount of a penalty assessed pursuant to Section 3-305. A facility shall submit to the Director a written request for a penalty reduction, in a form prescribed by the Department, which includes an accounting of all costs for goods and services purchased in correcting the violation. The amount by which a penalty is reduced may not be greater than the amount of the costs reported by the facility. A facility that accepts a penalty reallocation under this Section waives its right to dispute a notice of violation and any remaining fine or penalty in an administrative hearing. The Director shall consider the following factors ~~in determinations to reduce or waive such penalties:~~

(1) The violation has not caused actual harm to a

resident.~~+~~

(2) The facility has made a diligent effort to correct the violation and to prevent its recurrence.~~+~~

(3) The facility has no record of a pervasive pattern of the same or similar violations.~~+~~ ~~and~~

(4) The facility did not benefit financially from committing or continuing the violation. ~~The facility has a record of substantial compliance with this Act and the regulations promulgated hereunder.~~

At least annually, and upon request, the Department shall provide a list of all reallocations and the reasons for those reallocations.

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

If a good faith plan of correction is not received within the time provided by Section 3-303, a penalty may be assessed from the date of the notice of the Type "B" or "C" violation or an administrative warning issued pursuant to Sections 3-401

through 3-413 or the rules promulgated thereunder served under Section 3-301 until the date of the receipt of a good faith plan of correction, or until the date the violation is corrected, whichever is earlier. If a violation is not corrected within the time specified by an approved plan of correction or any lawful extension thereof, a penalty may be assessed from the date of notice of the violation, until the date the violation is corrected.

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

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

(320 ILCS 42/30)

Sec. 30. Nursing home conversion program.

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

(b) Grant moneys shall be made available for capital and other costs related to: (1) the conversion of all or a part of a nursing home to an assisted living establishment or a special

program or unit for persons with Alzheimer's disease or related disorders licensed under the Assisted Living and Shared Housing Act or a supportive living facility established under Section 5-5.01a of the Illinois Public Aid Code; (2) the conversion of multi-resident bedrooms in the facility into single-occupancy rooms; and (3) the development of any of the services identified in a priority service plan that can be provided by a nursing home within the confines of a nursing home or transportation services. Grantees shall be required to provide a minimum of a 20% match toward the total cost of the project.

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

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

(e) Any nursing home receiving a grant under this Section shall reduce the number of certified nursing home beds by a number equal to or greater than the number of beds being converted for one or more of the permitted uses under item (1) or (2) of subsection (b). The nursing home shall retain the Certificate of Need for its nursing and sheltered care beds that were converted for 15 years. If the beds are reinstated by the provider or its successor in interest, the provider shall

pay to the fund from which the grant was awarded, on an amortized basis, the amount of the grant. The Department shall establish, by rule, the bed reduction methodology for nursing homes that receive a grant pursuant to item (3) of subsection (b).

(f) Any nursing home receiving a grant under this Section shall agree that, for a minimum of 10 years after the date that the grant is awarded, a minimum of 50% of the nursing home's resident population shall have their care paid for by the Medicaid program. If the nursing home provider or its successor in interest ceases to comply with the requirement set forth in this subsection, the provider shall pay to the fund from which the grant was awarded, on an amortized basis, the amount of the grant.

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

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

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

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

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

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

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

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

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

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

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

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

(1) the type of grant sought;

(2) a description of the project;

(3) the objective of the project;

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

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

(6) the timetable for implementation;

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

(8) documentation of collaboration with other service providers, local community government leaders, and other stakeholders, other providers, and any other stakeholders in the community;

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

(10) the total budget for the project;

(11) the financial condition of the applicant; and

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

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

(k) Applications for grants are public information, except

that nursing home financial condition and any proprietary data shall be classified as nonpublic data.

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

(m) The Nursing Home Conversion Fund is created as a special fund in the State treasury. Moneys appropriated by the General Assembly or transferred from other sources for the purposes of this Section shall be deposited into the Fund. All interest earned on moneys in the fund shall be credited to the fund. Moneys contained in the fund shall be used to support the purposes of this Section.

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

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