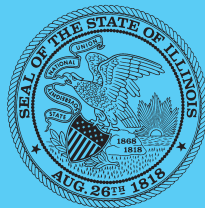


# LAWS FOR OLDER ADULTS

*A resource on laws that affect older adults*



ILLINOIS GENERAL ASSEMBLY

COMMISSION ON GOVERNMENT  
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## **Commission on Government Forecasting & Accountability**

802 Stratton Office Building  
Springfield, Illinois 62706  
Phone: 217.782.5320  
Fax: 217.782.3513  
<http://cgfa.ilga.gov>

# **Laws for Older Adults**

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Revised by David R. Miller, Research Administrator and  
Sarah E. Barlow, Senior Research Analyst



## **Introduction**

This booklet summarizes many Illinois or federal laws and programs for older adults. The information is organized into three broad subjects: Financial and Property Laws; Legal Rights and Protections; and Health-related Programs. If a law applies to people who are at least a particular age, that age is shown in parentheses after the heading on that topic.

Endnotes starting on page 38 give citations to all laws described. Readers can find those laws at many public libraries, or on the Illinois General Assembly's website at [www.ilga.gov](http://www.ilga.gov). If no such sources are available, a state legislator's office can get a copy of a law if given the information in the endnote. The text also lists toll-free numbers and Internet addresses for many programs; the back cover has phone numbers and Internet addresses of major offices that can help older adults.

Illinois seeks to assure all its residents the opportunity to pursue their lifetime goals to the fullest extent possible. We hope this booklet will help you or someone you know do that.

Clayton Klenke  
Executive Director



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## *Financial and Property Laws*

### **Tax and fee reductions or deferrals**

#### *Homestead exemption (65)*

A homeowner who will be at least 65 by the end of an assessment year can get a reduction in the *assessed* value of one residence of \$5,000 downstate, or \$8,000 in Cook County. Starting in tax year 2023, it will be \$8,000 in the “collar” counties also.<sup>1</sup> Illinois counties except Cook assess real estate at one-third of market value;<sup>2</sup> so a \$5,000 reduction makes \$15,000 in market value of a residence tax-free in those counties. Cook County assesses residences with up to six units at 10% of market value,<sup>3</sup> so an \$8,000 reduction effectively exempts \$80,000 of market value there. Special provisions in the law apply to cooperative apartment buildings, residents of life-care facilities, and spouses of persons who formerly qualified but have moved into nursing homes.<sup>4</sup> This exemption is in addition to the general homestead exemption,<sup>5</sup> which allows a reduction in the assessed value of the residence of a taxpayer of any age of up to \$10,000 in Cook County; \$8,000 starting with tax year 2023 in each “collar” county; or \$6,000 in any other county.<sup>6</sup> Application forms can be requested from county assessment offices.



#### *Homestead assessment freeze (65)*

A homeowner who will be at least 65 by the end of the assessment year, and whose annual household income does not exceed the limit for this purpose, can apply for a freeze on the assessed value of the homeowner’s primary residence. The income limit is currently \$65,000.<sup>7</sup>

Special provisions in the law apply to cooperative apartment buildings and life-care facility residents.<sup>8</sup> The house of a person who qualified for the freeze before entering a nursing home remains eligible for the freeze as long as it is either owned by that person or occupied by that person's spouse.<sup>9</sup> The spouse of a deceased person who qualified, if the surviving spouse is ineligible only due to being under 65, can get the freeze for the last year before death and the year of death of the deceased spouse.<sup>10</sup>

### *Property tax deferral (65)*

A homeowner who is at least 65 by June 1 of a year, and has annual household income under \$55,000, may have property taxes payable on the home for that year deferred. The homeowner must have owned the home, or another qualifying home in Illinois, for at least 3 years, and must sign an agreement with the county for tax deferral and recovery. (The homeowner may continue to qualify for deferral while absent up to 1 year in a nursing or sheltered care home.) The Department of Revenue will pay the taxes on the home, up to a cumulative total of 80% of the owner's equity in it. But the total amount deferred per year for one taxpayer cannot exceed \$7,500.<sup>11</sup> After the taxpayer dies, the Department of Revenue will recover from the estate the amount it paid out, including interest at 6% per year (3% per year starting in tax year 2023).<sup>12</sup>

### *Tax exclusion on home sale (any age)*

Federal law allows any taxpayer who owned a home as the taxpayer's principal residence for a total of at least 2 of the last 5 years to exclude from federally taxable income all gain on its sale, up to the limits stated below. The exclusion is available to a couple if at least one of them owned the home and it was the principal residence of them both.<sup>13</sup> The exclusion can be used as often as once every 2 years.<sup>14</sup> The maximum gain excludable per

sale is \$250,000 for one owner, or \$500,000 for a couple filing a joint return.<sup>15</sup> For details, see IRS Publication 523 (available at [www.irs.gov/publications](http://www.irs.gov/publications) or in print at some IRS offices); or call the IRS at (800) 829-1040.

*Automobile registration fee reduction and free transit rides (65)*

Any Illinois resident over 65, whose income is below the limit stated below, can register one passenger car (or other motor vehicle of under 8,000 pounds) for only \$10,<sup>16</sup> and ride local transit vehicles at no charge. To be eligible for these benefits, household income in the preceding year must have been below limits set by the state. The most recent limits at the time of publication were: \$33,562 for a household of one person; \$44,533 for two qualifying persons; or \$55,500 for three or more qualifying persons. Spouses cannot apply separately unless at least one lived in a nursing home, or they were permanently separated and living separately.<sup>17</sup> Applications must be made online at:

<https://www2.illinois.gov/aging/BenefitsAccess/pages/default.aspx>

For help in applying, call the Senior HelpLine at (800) 252-8966.

*Driver's license fee reductions (69)*

Illinois driver's license fees are reduced with age, as follows:<sup>18</sup>

<i>Age</i>	<i>Fee</i>
21 to 68	\$30
69 to 80	5
81 to 86	2
87+	0

### *Automobile insurance (55)*

The rates of automobile liability insurance policies are to reflect “appropriate” reductions for persons over 55, with no recent crashes, who complete the National Safety Council’s Defensive Driving Course or another prevention course approved by the Secretary of State.<sup>19</sup> This does not apply to group automobile insurance under which premiums are averaged for a group rather than determined individually.<sup>20</sup> For information on approved courses, call (312) 814-3121.

### *Camping (62)*

Each week from Monday through Thursday, state residents 62 or older are charged no camping fees at state-operated camping facilities that have no showers or electricity, and only half of regular fees at facilities having showers or electricity.<sup>21</sup>

### *College courses (65)*

State residents 65 or older whose incomes are below the limit for the automobile registration fee reduction and free transit rides, and who have been accepted at an Illinois public university or community college, are exempt from tuition in regularly scheduled courses, if space is available and enough paying students register to meet the minimum course size. This tuition waiver does not apply to courses specifically designed for the elderly.<sup>22</sup>

### **Social Security payments (62 or 66-67)**

Social Security payments include retiree, survivors’, and disability benefits. The Social Security Administration also administers a separate program, called Supplemental Security Income, for persons with very low incomes who are over 65, blind, or disabled.

### *Retiree benefits*

Retiree benefits are available for everyone who has worked at least the minimum amount of time under Social Security and has reached either (a) 62 (for early retirement) or (b) 66 to 67 (based on year of birth) for regular retirement benefits.<sup>23</sup> The monthly benefit depends on the number of years for which Social Security tax was deducted from earnings, and the person's earnings during those years. Persons taking early retirement at 62 will get lower monthly benefits; those retiring between 62 and their regular retirement age will have a partial (prorated) reduction due to early retirement. In either case, the reduction will be permanent.

For persons born before 1955, the regular retirement age is 66. It rises by 2 months for each year of birth after 1954, ending at age 67 for everyone born after 1959.<sup>24</sup>

People who choose not to take Social Security retirement benefits at regular retirement age (because they are still working, or otherwise do not need the money) get an increase in their later monthly Social Security retirement benefits for each month after regular retirement age in which they did not take those benefits, up to age 70. That increase is  $\frac{2}{3}\%$  for each month (8% for each year) beyond regular retirement age in which they do not take Social Security benefits.<sup>25</sup> (Applying for Social Security retiree benefits is separate from applying for Medicare, and need not occur at the same age.) Working past the regular retirement age may also increase later Social Security retiree benefits by adding years of Social Security work credit.

A person intending to retire should apply at the nearest Social Security office, or call the toll-free number below, 90 days before intended retirement (but not more than 90 days before age 62). These offices are listed in most phone directories under "Social

Security Administration” and also under U.S. Government listings. For information on Social Security programs and benefits, call (800) 772-1213 (voice) or (800) 325-0778 (TDD). Or go to:

www.ssa.gov

### *Spousal and survivors’ benefits*

The spouse (in some cases including a divorced spouse) of a person getting retirement benefits is eligible for a separate benefit at age 62 (reduced benefits) or regular retirement age (full benefits). A spouse, or qualifying ex-spouse, who starts getting benefits at the regular retirement age is eligible for an amount equal to half the other spouse’s regular retirement benefit.

The widow(er) of a deceased beneficiary can start getting early benefits at age 60 (50 if the widow(er) is disabled and meets other conditions). Such a person could get full benefits at age 66 if born before 1955 (that age also gradually rises for persons born later, reaching 67 for persons born after 1959). A living or deceased beneficiary’s unmarried child may also qualify for separate benefits until age 18 (until 19 if still in high school, or until any age if disabled before age 22).<sup>26</sup>

### *Supplemental Security Income (SSI)*

This program, which is distinct from the Social Security retiree and survivors’ program, pays monthly incomes to needy persons who are over 65, blind, or disabled, and have little or no regular income or assets that could be converted into money. A person getting regular Social Security retirement benefits may also be eligible for SSI.<sup>27</sup> A description of the program is on the Social Security Administration’s website at:

<http://socialsecurity.gov/pubs/EN-05-11015.pdf>

Applications for SSI should be made to local Social Security offices. A related Illinois program is described next.

### **Aid to the aged (65), blind, or disabled (AABD)**

This Illinois program provides financial and medical aid to persons who are aged, blind, or disabled, and have modest incomes and assets. Depending on income and assets, persons may be eligible if they are (1) 65 or older, (2) visually impaired so as to be unable to do ordinary tasks, or (3) physically or mentally impaired in working. Assets not counted in determining eligibility include a home and attached land; an automobile required for work; assets needed for self-support; and burial funds.<sup>28</sup>

Anyone in a nursing home or similar institution who has paid for care in advance is ineligible until the money paid has been used up.<sup>29</sup> There are other restrictions and conditions on eligibility—many of them similar to those for the federal SSI program. Details are available from the Illinois Department of Human Services' Help Line at (800) 843-6154 (voice) or (866) 324-5553 (TTY).<sup>30</sup>

### **Reverse mortgages**

State law authorizes private lending institutions to make “reverse mortgages” that allow homeowners to borrow against the equity in their homes. Typically, an institution lends the homeowner a set amount per month or quarter. The lender will recover the principal and interest from the equity in the residence when the homeowner dies or sells it.

The state law authorizing reverse mortgages applies to the principal residence of the borrower (which can consist of no more than 4 residential units).<sup>31</sup> Illinois law does not require a borrower

to reach a certain age to get a reverse mortgage. But due to the characteristics of reverse mortgages, lenders would likely offer them only to older people. Any such loan must allow the homeowner to be absent for up to 60 days at a time (up to 1 year if the home is adequately secured against damage or theft) without affecting the loan.<sup>32</sup> These loans must be without recourse to any other assets of the homeowner (meaning that the lender can get repayment only from a sale of the residence, not from the borrower).<sup>33</sup>

After signing reverse mortgage documents, borrowers have 3 days to change their minds before the agreement becomes binding.<sup>34</sup> The lender may not require a borrower to buy policies such as annuities, or life or long-term care insurance, to get a reverse mortgage.<sup>35</sup> Before making a reverse mortgage loan, a lender must give the prospective borrower a list of organizations that offer reverse mortgage counseling.<sup>36</sup> Would-be borrowers should carefully consider whether such a loan is the best way to fund their retirement years. The best candidate for such a loan might be a retiree who owns a residence but has few other assets; needs additional income; does not expect to live longer than the loan payments will last; and does not need or want to leave the residence to any heirs.

## **Estates and wills**

Every adult with property or minor children should make plans for them—usually in a will. Otherwise, the property will be distributed under fixed rules in state law, and a court will award custody of the children without guidance from the parent(s).

The rules in Illinois for distributing property of a person who dies without a will are basically as follows:



*If the person leaves a spouse:*

Half to spouse, and half to descendants if any. If there are no descendants, all to spouse.

*If the person leaves no spouse:*

All to descendants if any; if none, to parent(s) and sibling(s) (or if any siblings are deceased, to their children); if none, half to each set of grandparents (or descendants of deceased grandparents).<sup>37</sup>

A court cannot change these rules for distribution without a will. But a person who makes a will can give away property in any desired manner (subject only to some restrictions to protect a spouse and child(ren), if any). A will is also the place for parents of minor children to recommend a guardian for them. Such a recommendation is not binding on courts, but the court is likely to follow it unless there is a strong reason not to.

Many lawyers will draw up an uncomplicated will for around \$300. An alternative that may be better for some people is setting up one or more *inter vivos* trusts (commonly called “living trusts”). Although they cost more to create than a will, they may simplify administration of estates of considerable size, especially those that include real estate. Creating such a trust puts parts or all of the owner’s property into a form of ownership (a trust) that is controlled by one or more trustees (who can be the owner alone, and/or the intended heirs or others) and held for the eventual benefit of the intended heirs. Upon the death of the owner, the property can go immediately to the heirs, without probate—although provisions can be made for it to go into the temporary control of another trustee (for example, if the heirs are still minors at the time of death). Lawyers familiar with this area of the law can create trusts for these or many other purposes.

Illinois law offers another way to transfer ownership of real property upon death without a will. The owner(s) of residential real property containing 1 to 4 dwelling units (a single-family house, duplex, etc.) can put it into “transfer on death” (TOD) form. To do that, a proper document must be drafted, signed, witnessed, notarized, *and* recorded in the county recorder’s office (the office where real estate deeds are recorded). Upon the death of the owner(s), ownership of the residential property will pass directly to the person(s) named in the document as beneficiary(ies), without going through probate.<sup>38</sup> Financial assets can also be put into TOD<sup>39</sup> (or for bank or similar accounts, POD—payable on death<sup>40</sup>) form. The securities firm, bank, or other holder of such assets can provide forms and instructions for doing this.

There are important limits on the effects of living trusts and TOD or POD designations:

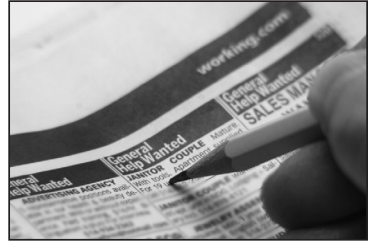
- (1) None of these methods for transferring ownership can avoid federal or state estate taxes, or protect an estate from creditors of the deceased person.
- (2) A TOD designation of residential property applies *only* to the real estate. It does *not* transfer ownership of movable items (tangible personal property) in a residence, such as furniture, electronic devices, clothing, jewelry, and pictures. A will is still needed to transfer ownership of them. But using TOD and/or POD designations to transfer title to a residence and/or financial assets may make the remainder of the estate (which passes by will) small enough to be administered as a “small estate,” simplifying the process.<sup>41</sup>

Due to the complexity of state laws on estates, and of the federal Estate and Gift Tax law, it is important to get good legal counsel on this topic.

## *Legal Rights and Protections*

### **Age discrimination (40)**

Illinois and federal laws prohibit most discrimination due to age, beginning at age 40.



### *Employment*

The Illinois Human Rights Act affects all private firms that employ at least 15 persons in the state for at least 20 weeks per year; all firms with public contracts; and all state and local employers. It also applies to employment agencies and unions. Religious bodies are generally exempt.<sup>42</sup>

The Act generally prohibits unfavorable treatment of applicants or employees due to being over age 40.<sup>43</sup> However, an employee who is 65 or older, and for the last 2 years has been in an executive position and whose annual retirement benefits based on employer contributions alone would be at least \$44,000, can be compulsorily retired.<sup>44</sup> Also, employers can limit eligibility for apprenticeship programs to persons between ages 18 and 40.<sup>45</sup>

The federal Age Discrimination in Employment Act applies to any firm “in an industry affecting commerce” (which includes nearly all nonpublic employers) that employs at least 20 employees for at least 20 weeks per year.<sup>46</sup> It also applies to employment agencies, unions, and state and local governments.<sup>47</sup>

Similarly to the Illinois act, it prohibits unfavorable treatment of applicants or employees due to being over age 40, but does not prohibit compulsory retirement at age 65 of executives who have pension plans like those described above for the Illinois Human Rights Act.<sup>48</sup> The Act also allows actions under a valid seniority system, employee benefit plan, or voluntary early-retirement incentive plan, if they meet standards set in the Act.<sup>49</sup>

You should note that these provisions do not prohibit *all* unfavorable treatment of persons over 40; they prohibit only unfavorable treatment *due to age*. Further, they allow such treatment if it is based on valid, provable grounds such as inability of most persons past a certain age to fill the requirements of a rigorous occupation safely. But the courts require strong evidence before accepting such grounds.

### *Real estate transactions*

The Illinois Human Rights Act prohibits discrimination in real estate transactions by owners, sellers, and brokers due to the age of anyone, starting at 40.<sup>50</sup> The Act also prohibits discrimination because a person is blind or hearing-impaired, or uses a guide dog.<sup>51</sup> Rentals of apartments in owner-occupied buildings with up to 4 units, and private sales of single-family homes, are exempt.<sup>52</sup>

### *Financial transactions*

The Illinois Human Rights Act generally prohibits discrimination due to age in financial transactions.<sup>53</sup> However, issuers of credit cards can ask about age and other facts for the purpose of predicting continuation of income.<sup>54</sup>

### *Public accommodations*

The Illinois Human Rights Act prohibits discrimination due to age by businesses that provide goods, travel, recreation, and similar services to the general public.<sup>55</sup> Private clubs not connected to places of public accommodation are exempt.<sup>56</sup>

For help with discrimination questions, call the Illinois Department of Human Rights at one of the following numbers:

Chicago area	(312) 814-6200 (866) 740-3953 (TTY)
Central Illinois	(217) 785-5100 (866) 740-3953 (TTY)
Southern Illinois	(618) 993-7463 (866) 740-3953 (TTY)

## **Consumer fraud**

### *Ways to avoid fraud*

Consumer fraud can affect persons of almost any age; but some perpetrators target retired persons—especially those with homes or other valuable property. They may claim that a house needs costly repairs, or that an investment they are selling is a “sure thing.” With today’s widespread use of the Internet, many such schemes have moved online. The best defenses against fraud are asking questions, and checking up on the company that a seller claims to represent. Here are some warning signs of fraud:

- Requests for sensitive information. A common trick for obtaining confidential information is to pretend (in a phone call

or email message) to be from a government agency, bank, or company or organization that people might trust with personal information. Legitimate businesses and government agencies should never ask for passwords, bank account numbers, or other sensitive information in unsolicited phone calls, or in email messages. If you ever get such a request, ask for the caller's or sender's name, department, and extension; then call the main number for the business or agency shown in a phone directory, on your credit card, or in another trusted source—not the number given by the caller or email sender, which could be the number of a confederate pretending to work at that institution.

- Pressure to sign immediately. There is rarely a good reason why a deal can't wait until you think it over and get advice. Pressure to sign suggests that it might not look as attractive if investigated.
- Insistence on payment in cash. There is no good reason for a seller to require payment in cash, instead of by check or credit card, for items that are not delivered immediately. Such a demand suggests that the seller is at least trying to evade taxes; and a person who cheats all taxpayers probably would not mind cheating you. Also, paying cash in advance prevents you from stopping payment of a check, or asserting defenses against the seller in the case of a credit card sale, if the goods do not arrive or are defective, or the services that were promised are not provided.
- Telephone "investment" pitches. Even if not actually fraudulent, these often provide large commissions to sellers, and usually get buyers into investments whose risks they do not understand. No one should buy any securities; insurance products sold as investment or retirement plans; real estate

(such as a vacation home) that is too far away to examine; or any other purported investment without getting and reading a detailed description of it (usually called a “prospectus” or “property report”). Also, a person who is not an experienced investor should not make an investment before discussing it with a trusted investment advisor.

You should be especially suspicious if a person selling something *promises* returns much higher than are available from conventional accounts that pay interest (such as bank accounts and money-market or bond mutual funds). This is a red flag, warning that the “investment”—even if not fraudulent—is much riskier than it seems. Such extravagant promises are common in “Ponzi” schemes, in which a promoter claims to be investing money for high returns, but actually is using investments by new customers to pay current customers who want to take their money out. Such a financial pyramid is certain to fail, because no promoter can keep finding more and more customers forever.

- “Prize” notifications. Someone may call or email, claiming that you won a big prize but must pay taxes or “shipping” charges to get it. The caller may then ask you to provide a credit card number or bank account number, or to mail the company a check for “taxes.” A request for payment to get a “prize” virtually guarantees that the scheme is a fraud. The same is true of a claim that you won a contest you haven’t entered. Giving out information such as credit card or bank account numbers, or sending a check, to someone you haven’t heard of is a quick way to be a victim.
- Home repair solicitations. Few reputable repair companies call on homeowners offering to fix their houses. But con artists may go around offering “discounts” on home repair, or claiming to be official “inspectors.” Once inside, they

often “find” (or create) major problems that must be repaired at once—by them, of course. No one should let in a stranger without getting adequate identification. Nor should anyone agree to repairs, either orally or in writing, without first getting estimates from other repair businesses. Illinois law requires home repair providers to give each prospective customer a pamphlet entitled “Home Repair: Know Your Consumer Rights” before the customer signs a contract authorizing repairs. The pamphlet lists ways to avoid potential scams, and gives information on what terms should be included in a contract.<sup>57</sup>

Anyone who suspects fraud in a business dealing should call the Attorney General’s office at one of these numbers:

Chicago area      (800) 386-5438  
                              (800) 964-3013 (TTY)

Central Illinois    (800) 243-0618  
                              (877) 844-5461 (TTY)

Southern Illinois (800) 243-0607  
                              (877) 675-9339 (TTY)

More detailed information on avoiding fraud and identity theft (along with other useful topics) can be found on these Internet sites:

[www.ag.state.il.us/consumers](http://www.ag.state.il.us/consumers) (Illinois Attorney General)

<https://consumer.ftc.gov/features/identity-theft> (Federal Trade Commission)



## **Violent crime (60)**

Illinois allows courts to impose heavier penalties for violent crimes if they are committed against persons who are 60 or over. Causing bodily harm is aggravated battery if the victim is 60 or over, with a possible penalty of up to 5 years in prison.<sup>58</sup> During sentencing for any felony, if the victim was at least 60 the court can consider that fact as a ground for imposing up to twice the normal maximum term.<sup>59</sup>

Victims who suffer economic loss from violent crime (or the family members of victims) can seek compensation under the Crime Victims Compensation Act.<sup>60</sup> For a victim to be eligible, police must have been notified within 72 hours after the crime (unless good cause for delay is shown);<sup>61</sup> the victim must have cooperated fully with them;<sup>62</sup> and the victim must file an application either within 5 years after the crime or within 1 year after someone is criminally charged with committing it.<sup>63</sup> An exception applies to victims of sexual assault or abuse, who have up to 7 days to notify authorities. For those victims, obtaining an order of protection or a civil no-contact order, or seeking sexual assault evidence collection and medical care at a hospital, counts as notification of and cooperation with law enforcement.<sup>64</sup>

Information and forms are available at <https://illinoisattorneygeneral.gov/consumers/onlineforms.html> or from the Attorney General's offices in several cities around the state. The main phone number for the program is (800) 228-3368; the TTY number is (877) 398-1130.

## **Elder abuse (60)**

Elder abuse can include physical, sexual, or emotional abuse; confinement; passive neglect; willful deprivation; or misusing or

withholding a vulnerable adult's financial resources.<sup>65</sup> Illinois requires numerous kinds of professionals and other workers in social services, education, and medical fields to report suspected elder abuse if an apparent victim is unable to seek assistance.<sup>66</sup> Anyone who is a victim of elder abuse, or suspects that someone else is a victim, should call the Illinois Department on Aging's Adult Protective Services Hotline at (866) 800-1409 (24-hour voice) or (888) 206-1327 (TTY).

### **Grandchild visitation**

Older adults sometimes wonder whether there are legal grounds for getting court orders allowing them to visit grandchildren—typically if the grandchildren's parents are divorced or were never married to each other, or one of them has died. Illinois court decisions say that a child's parents have the primary right to decide whether other persons can visit the child. On the other hand, Illinois has statutory provisions seeking to allow grandparents to get court-ordered visitation of grandchildren in limited situations.<sup>67</sup> Those provisions say that a grandparent or great-grandparent can seek a court order for visitation with a child who is at least 1 year old (but not that a visitation order must be granted) in any of several kinds of situations involving “an unreasonable denial of visitation by a parent.” They include these:

- (1) The other parent is deceased or has been missing for at least 90 days.
- (2) A parent is legally incompetent.
- (3) A parent has been in jail or prison for at least the last 90 days.
- (4) The parents are divorced or legally separated (or a divorce

proceeding or other court proceeding involving parental responsibilities or child visitation is underway), *and* at least one parent does not object to the visitation.

- (5) The parents are neither married nor living together, but the child’s parentage has been legally established.<sup>68</sup>

The statute clearly says that a person filing such a petition for visitation has the burden of showing that denial of visitation by the parent(s) harms the child.<sup>69</sup> The law lists 12 factors for courts to consider when deciding whether to grant such visitation.<sup>70</sup>

No law gives grandparents or great-grandparents a right to visitation. They must come within the statutory requirements, and must overcome the presumption that a child’s parent(s) can best decide whether to allow others to visit the child.

## **Health-related Programs**

### **Medicare**

This federal program helps people who are at least 65 (and some younger persons) pay for medical care and related services. Those who are eligible can get Medicare coverage in a variety of ways. The following describes mostly so-called “Original Medicare”—in which the federal agency that administers Medicare makes payments directly for medical services. Other options are available in many localities through private companies whose programs are approved and subsidized by that federal agency. One major category of such private programs—Medicare Advantage plans—is discussed below.



The following is only a general summary of Medicare programs. People who need to enroll in or change their Medicare coverage should consult (or ask a trusted family member or advisor to consult) the Medicare website ([www.medicare.gov](http://www.medicare.gov)) for more details.

### *Part A*

Part A offers hospital insurance to persons who are 65 or older, or disabled. The following categories of people usually qualify for Part A without paying premiums:

- A person who has worked a total of at least 10 years (whether or not consecutive) under Social Security, and the spouse of such a person—in each case if at least 65. (Unlike Social Security retirement benefits, described earlier, regular Medicare eligibility starts at 65 regardless of year of birth. Persons who start getting Social Security or Railroad Retirement Board benefits at age 65 are also automatically enrolled in Part A.)
- A person under 65 who, for the last 24 months, has qualified for Social Security disability, disabled widow(er)'s, or disabled child's benefits.
- A person with end-stage renal (kidney) disease who has enough work credit under Social Security; and (subject to additional requirements) the spouse, or child under age 25, of such a person.

A person who is over 65 but in none of those categories (or a person with a disability who has returned to work) must pay a monthly premium (as much as \$499 in 2022). The initial enrollment period for those persons is from 3 months before the month in which they turn 65 until 3 months after the month they

turn 65; enrolling after the first 3 months will delay the start of coverage. They can also enroll in a later year between January and March, with coverage to begin in July, but will have to pay higher premiums for late enrollment.<sup>71</sup>

Part A covers several kinds of medical services. (The description here is of “Original Medicare.” Many people covered by Medicare can choose optional managed-care plans that offer more benefits but may require paying extra premiums.)

Eligibility for coverage under Part A is determined by the “benefit period” (sometimes called a “spell of illness”). The benefit period begins when a recipient is admitted to a hospital or skilled nursing facility, and ends when the recipient has been out of inpatient care for 60 consecutive days. There is no limit on how many benefit periods a recipient may have; but each benefit period brings a new deductible.<sup>72</sup> In 2022 that deductible is \$1,556.<sup>73</sup>

Part A covers the following services:

- Inpatient hospital services for up to 90 days per “benefit period.” Days 1 through 60 are completely covered after the \$1,566 deductible. For days 61 through 90, the patient must pay \$389 per day. For stays exceeding 90 days, the services can be covered by “lifetime reserve days” (a patient can receive up to 60 days of coverage over a lifetime). For each lifetime reserve day used, the patient must pay \$778.<sup>74</sup>
- Extended care (such as in a nursing home) after an inpatient hospital stay of at least 3 days, lasting up to 100 days per “benefit period” (also with payment as described below). Days 1 through 20 are completely covered. The recipient must pay \$194.50 per day for days 21 through 100, and all costs after day 100 in the same benefit period.<sup>75</sup>

- Home health services. The recipient pays nothing for Medicare-approved services, and 20% of the Medicare-approved amount for durable medical equipment (such as walkers, wheelchairs, and hospital beds).
- Transfusions. The recipient pays nothing if the hospital got the blood from a blood bank at no charge. If the hospital had to pay for the blood, the recipient pays the hospital's costs for the first 3 pints received as an inpatient (unless the recipient or another person donates to replace what is used).
- Limited hospice care.<sup>76</sup>

### *Part B*

This program, which is optional for persons eligible for Medicare, offers additional insurance for doctors' fees for inpatient care; outpatient services; home health services not covered by Part A; durable medical equipment; emergency ambulance service; and many preventive services. Persons receiving Social Security retirement benefits get Part B automatically at age 65, unless they decline it to avoid paying the premiums. (Persons who, after age 65, continue to be covered by a group health plan provided by their (or a spouse's) employer or union should sign up within 8 months after the end of (a) employment or (b) that coverage—whichever ends first. Persons not enrolling by then will have annual opportunities to enroll, but will miss some benefits until they do.<sup>77</sup>) The monthly premium for Part B in 2022 is \$170.10 for most people, but is higher for recipients whose modified adjusted gross incomes in 2022 exceeded \$91,000 for an individual filer or \$182,000 for joint filers.<sup>78</sup>

Part B will pay 80% of an amount set by the federal Medicare agency for each service after an annual deductible (\$233 in 2022). If a provider charges more than that amount for a service, the

patient's responsibility to the provider is not limited to 20% of the federally set amount. Providers advertising that they accept Medicare "assignment" have agreed to take the federally set amount as full payment from their Medicare patients, so those patients normally pay only 20% of that amount as a copayment.<sup>79</sup> People who do not sign up for Part B when they first become eligible must generally pay a 10% higher premium for each 12-month period that passes before they sign up for it. But a person who delays taking Part B because the person or a spouse (or, for people with disabilities, a family member) is working, and therefore has group health insurance, may not have to pay the higher premium.<sup>80</sup>

### *Part C (Medicare Advantage plans)*

Medicare Advantage plans, offered in many areas, are privately administered health plans that are approved and partly funded by Medicare as alternatives to "Original Medicare." (The federal Medicare agency pays a private administrator a monthly amount per Medicare Advantage enrollee; the enrollee pays any monthly premium beyond that amount.) A number of Medicare Advantage plan types are offered, including Preferred Provider Organizations (PPOs), Health Maintenance Organizations (HMOs), Private Fee-for-Service (PFFS) Plans, Medical Savings Accounts (MSAs), and Special Needs Plans (SNPs). Coverage and fees vary by plan. These plans must cover all services covered by Medicare Parts A and B—except clinical trials, hospice services, and benefits added to Parts A and B too recently to be included in them; but "Original Medicare" will still help cover some of those costs. Medicare Advantage plans may also offer other services that "Original Medicare" does not, such as fitness programs and some vision, dental, and hearing services. During an annual enrollment period, recipients can move between Medicare Advantage Plans, or between a Medicare Advantage plan and "Original Medicare" (Parts A and B).<sup>81</sup>

An interactive Medicare Plan Finder can be used to search for information on plans in any ZIP Code:

[www.medicare.gov/plan-compare](http://www.medicare.gov/plan-compare)

### *Part D*

Part D plans are optional plans, offered by private companies, that pay part or all of the cost of approved prescription drugs, up to annual limits. Such a plan may either (1) provide prescription coverage for recipients who have Parts A and B, or (2) be part of a Medicare Advantage plan under Part C. In either case, recipients may have to pay a monthly premium, an annual deductible, and copayments or co-insurance.<sup>82</sup>

As in Part B, it is important to enroll as soon as you become eligible. Most persons who enroll later must pay a monthly late-enrollment penalty of roughly 1% of the current monthly premium for every month after they became eligible to join a Part D plan until they joined. These higher premiums change as current monthly premiums change, and must be paid for as long as the recipient has a Part D plan.<sup>83</sup> Recipients can enroll when they become eligible for Medicare, and can join, switch, or drop a Part D plan between October 15 and December 7 each year.<sup>84</sup>

### *Low-income subsidies for Part D*

Medicare recipients with low incomes and limited “resources” (basically meaning assets, excluding some things such as a home and car) are eligible for assistance (called “Extra Help”) in paying monthly premiums, annual deductibles, and any co-insurance or copayments. In addition, they have no “coverage gap” (commonly called the “doughnut hole”) in Part D. Income and resource limits for eligibility in 2021 were:



	<i>Individual</i>	<i>Married and living with spouse but no dependents</i>
Income	\$19,320	\$26,130
Resources	14,790	29,520

In addition, Medicare recipients automatically qualify for this assistance if they have full Medicaid coverage; belong to a “Medicare Savings Program” sponsored by their state’s Medicaid program; or get Supplemental Security Income (SSI) but not Medicaid.<sup>85</sup>

The Senior Health Insurance Program of the Illinois Department on Aging can provide, through the Senior HelpLine, information and individual counseling on coverage under Medicare Parts A through D; long-term-care insurance; Medicare claims and appeals; and rights of Medicare recipients. The number for the HelpLine is (800) 252-8966 (voice) or 711 (Telecommunication Relay Service). The Senior Health Insurance Program website is:

<https://www2.illinois.gov/aging/ship/Pages/default.aspx>

## **Older Americans Act and related programs**

Federal grants to states support a wide range of programs under the Older Americans Act and other laws. Some funding for these programs also comes from the state and local governments. Services available include adult day care; household chore assistance; group or home-delivered meals; education and training; employment assistance; senior centers; transportation and escort; home visitation; health care; legal assistance; and long-term-care

ombudsman services.<sup>86</sup> For information on eligibility and services, call the Illinois Department on Aging's Senior HelpLine at (800) 252-8966 (voice) or (888) 206-1327 (TTY).

### **Programs for special health needs**

The Department on Aging has a Community Care Program to help older persons avoid unnecessarily or prematurely going into nursing homes. To be eligible, an applicant must be at least 60; show need for long-term care; and have nonexempt assets under \$17,500. (A home, personal furnishings, and car, plus a few other kinds of property, are exempt.)<sup>87</sup> The Program offers three basic kinds of services:

- Case management, including assessment of clients and planning of services for them.
- “Homemaker” services to help clients with non-medical personal tasks, such as bathing, dressing, and grooming; meal preparation; shopping; cleaning; and laundry.
- Adult day services, including social activities and nutritious meals. It may also include health care and nursing services.

The program is available to persons with Alzheimer's disease and other kinds of mental and physical impairments. For more information, call the Senior HelpLine.

The Illinois Department of Public Health supervises a service network and regional centers for Alzheimer's patients under the Alzheimer's Disease Assistance Act.<sup>88</sup> The state has three regional centers. The Rush Center in Chicago at (312) 947-7232 and the Northwestern Center at (312) 908-9339 serve nine northeastern Illinois counties: Cook, DuPage, Grundy, Kane,

Kankakee, Kendall, Lake, McHenry, and Will. The rest of the state is served by the Southern Illinois University Center in Springfield at (217) 545-8000.<sup>89</sup> General information, and referrals to the state’s various Alzheimer’s programs, are available from the Department on Aging’s Senior HelpLine.

### **Area Agencies on Aging**

Thirteen Area Agencies on Aging throughout Illinois conduct outreach activities designed to inform senior citizens of public benefits and services for which they may be eligible, connect them to this assistance, and encourage them to participate in local senior programs. For more information call the Department on Aging’s Senior HelpLine, or find your local Area Agency on Aging by going to:

<https://webapps.illinois.gov/AGE/ProviderProfileSearch/Search>

and using the dropdown lists in the “Service Type” and “County” spaces.

### **Nursing home regulation and costs**

Illinois’ Nursing Home Care Act<sup>90</sup> is designed to protect the health, safety, and civil rights of people in nursing homes who may be unable to protect themselves. The Illinois Department of Public Health enforces the Act. Many nursing homes are also regulated under the federal Medicare and/or state Medicaid programs.

#### *Classification of facilities*

Nursing homes (legally called “long-term care facilities”<sup>91</sup>) are classified in laws by the level of medical and other services they

offer. A “skilled nursing facility” provides continuous nursing care 24 hours a day for a serious or long-term illness.<sup>92</sup> Other nursing facilities provide rehabilitation services for people who are injured, disabled, or sick.<sup>93</sup> There are also facilities providing lesser levels of care, such as “sheltered care,” for people who can function on their own but need some help with activities such as bathing and eating.<sup>94</sup>

Nearly all privately owned facilities for long-term care, along with homes operated by the Illinois Department of Veterans’ Affairs, must be licensed.<sup>95</sup> The Illinois Department of Public Health can suspend, revoke, or refuse to renew a license for a substantial violation of the Act or regulations under it.<sup>96</sup> Some municipalities also have ordinances licensing nursing homes; in those localities, nursing homes must comply with both state and local requirements.<sup>97</sup>

The Department can visit a nursing home and determine whether it complies with the Act (and a municipality regulating nursing homes may inspect for compliance with its ordinance). Nursing homes are required to keep complete copies of the last 5 years’ state inspection reports. These reports must be available for public inspection at nursing facilities.<sup>98</sup>

The Attorney General, the local state’s attorney, and other law enforcement agencies must also inform the Department of any violations they learn of.<sup>99</sup>

### *Screening of applicants*

Persons 18 or older who seek admission to a nursing facility must be screened to determine their need for such services.<sup>100</sup>

### *Consequences of violations*

The Department has several options if it finds that a home violates regulations or ordinances.<sup>101</sup> These include fines that can range from \$250 to \$25,000 depending on the severity of a violation.<sup>102</sup> Any licensee that intentionally fails to correct a violation; prevents or interferes with the examination of relevant records or evidence; retaliates or discriminates against a resident for providing information to an official about an alleged violation; files false, incomplete, or misleading information; or operates an unlicensed facility can also be fined up to \$10,000 and may face criminal misdemeanor charges.<sup>103</sup>

### *Nursing home agreements and rights of residents*

The Act has numerous provisions to protect residents of nursing homes.<sup>104</sup> Before signing an agreement with a nursing home, a person should consult a lawyer, the Social Security office, and/or the local Department of Healthcare and Family Services office. Major rights stated in Illinois law are summarized below.

#### *Visits*

A resident can be visited between 10 a.m. and 8 p.m. by members of the general public, including relatives and representatives of community legal services organizations, unless a visit is for commercial purposes or would threaten residents or facility property. A resident has a right to terminate a visit at any time.<sup>105</sup>

#### *Personal property*

Residents may keep personal belongings in their immediate living quarters. The nursing home is to provide space for such property, and a way to protect small valuables either in residents'

rooms or in another place to which residents have daily access. The home is to make efforts to prevent loss of residents' property, and have procedures for prompt investigation of complaints of theft.<sup>106</sup> A nursing home is to keep any funds of a resident up to \$100 available for the resident's use; any amount beyond \$100 is to be put into an interest-bearing account. The resident or resident's guardian is to get at least a quarterly accounting of the home's safekeeping of these funds.<sup>107</sup>

### *Religion, medical treatment, privacy*

Residents are to be allowed free exercise of religion;<sup>108</sup> their choice of personal physicians (at their own expense unless paid for by insurance);<sup>109</sup> privacy with respect to their medical and personal care;<sup>110</sup> and private, uncensored communication by mail or phone.<sup>111</sup> They are not to be restrained unless medically necessary, and are not to be abused or neglected.<sup>112</sup>

### *Married residents*

Married couples who live in the same facility are to be allowed to live in the same room unless there is no room in the facility or the residents' attending physician deems such a living arrangement medically inadvisable.<sup>113</sup>

### *Involuntary transfer or discharge*

A nursing home can transfer or discharge a resident against the resident's wishes for only four reasons: (1) medical reasons; (2) the resident's safety; (3) the safety of other residents, the staff, or visitors; or (4) late payment or nonpayment of charges—except as prohibited by the Medicare and Medicaid titles of the Social Security Act.<sup>114</sup> A home must generally give a resident 21 days' written notice of a transfer or discharge, and discuss it with the resident (except in cases of medical emergency or danger to

others).<sup>115</sup> It must offer the resident counseling before a transfer or discharge.<sup>116</sup>

### *Complaints*

A resident may complain to the Illinois Department of Public Health and request an investigation. The request can be made in writing, by telephone, by electronic means, or in person. The Department must record any oral complaint in writing, and ask for the complainant's name, address, and telephone number. But the Department is required to investigate a complaint even without such identifying information.<sup>117</sup>

Upon receiving a complaint charging abuse or neglect, the Department is to investigate it within 7 days (or if it alleges imminent danger, within 24 hours).<sup>118</sup> Other provisions allow a dissatisfied complainant to request a hearing before a Department hearing officer.<sup>119</sup> Complaints can be made to the Department of Public Health at (800) 252-4343; the TTY number is (800) 547-0466.

The Department posts information on enforcement actions against specific nursing homes on the Internet. To check whether a home has had recent enforcement actions, visit:

[http://dph.illinois.gov/topics-services/health-care-regulation/  
nursing-homes](http://dph.illinois.gov/topics-services/health-care-regulation/nursing-homes)

### *Paying for care*

In a limited number of situations, Medicare will pay for skilled nursing care in a nursing home that is certified to care for Medicare patients. Veterans may also be eligible for federal benefits to help pay the costs of care in nursing homes.

The Medicaid program funded through the Illinois Department of Healthcare and Family Services will pay for skilled or intermediate nursing care in nursing homes that participate in Medicaid, but only for persons with limited incomes and assets.<sup>120</sup> If a person getting Medicaid for care in a nursing home is married, the law usually allows the couple to divide their assets, and allows the spouse not in the nursing home to keep some assets without disqualifying the spouse in the nursing home for Medicaid.<sup>121</sup> This is referred to as “prevention of spousal impoverishment” (or simply the “spousal impoverishment” provisions).

The amount that the spouse not in a nursing home can keep is adjusted annually for inflation; it was \$109,560 when this booklet was printed.<sup>122</sup> That amount is in addition to the value of the couple’s house, household goods, a car, and a few other kinds of property that the spouse not in a nursing home can also keep without disqualifying the other spouse for Medicaid.<sup>123</sup> In addition, the spouse not in the nursing home may keep any income of up to \$2,739 per month when this booklet was printed. If that spouse’s income is not that high, the nursing home resident may transfer up to enough income for the other spouse to reach that total.<sup>124</sup>

The Department of Healthcare and Family Services administers Medicaid funding; the Department on Aging assesses persons 60 or older for eligibility for care in nursing homes under Medicaid. It can be contacted at (800) 252-8966 (voice or TTY) for a referral to one of its local offices for that purpose.

Several insurers offer coverage for some or all of the costs of care in a nursing home (or in some cases, of in-home care). If you or someone you know would like to buy such insurance, keep in mind that it becomes more expensive—and may even become unavailable—as the person to be insured gets older and



in poorer health. Thus, it is wise to start looking into such insurance by middle age. (Insurance may still be available around retirement age for a person who is in generally good health, but it will be costly.) The Department on Aging can give the names and phone numbers of companies offering such insurance. If you want such insurance, be sure to check with several companies and compare their benefits. Such policies offer coverage at various levels and for various lengths of time.

Persons concerned about running out of money while in a nursing home may want to consider a “partnership” insurance policy for long-term care, which would cover a particular dollar amount of long-term care costs. If the policy is kept in force and the insured person eventually needs long-term care, the insurer will pay for it until that dollar limit is exhausted. After that, Medicaid will pay for all additional long-term care that is needed. What makes a “partnership” policy different from other long-term-care insurance policies is that Medicaid’s asset disregard (the part of a person’s net financial worth that Medicaid is not allowed to collect to recoup its costs) increases by \$1 for each \$1 paid out by the insurance policy. For example, if a person’s partnership policy pays \$250,000 in long-term-care benefits, the person is permitted to keep—and pass on to heirs—up to \$250,000, exempt from collection by Medicaid.<sup>125</sup> For information, contact the Senior Health Insurance Program (SHIP) through the Senior HelpLine at (800) 252-8966 (voice).

### **Guardians for disabled adults**

Any person over age 18 who is unable to handle personal medical and/or financial affairs can have a guardian (or guardians) appointed to do so. An adult who is not yet disabled can designate someone to become a guardian in case of later disability.

There are two basic types of guardians for adults:

- (1) A “guardian of the person” oversees the person’s physical well-being, including place of residence and way of life. If a person with a guardian has minor or other dependent children, this guardian will normally get custody of them.
- (2) A “guardian of the estate” oversees the person’s assets and income, managing them to provide support for the person and for any minor or other dependent children.

A court may appoint either or both kinds of guardians for a person. The two kinds of guardianship may be exercised by the same person or by different persons. Any guardianship powers are exercised under the general control of the court that appointed the guardian.<sup>126</sup>

A public agency or nonprofit corporation can be appointed as a guardian of the person, estate, or both. A trust company can be appointed as guardian of an estate.<sup>127</sup> There is also a Public Guardian in each county, and a State Guardian, who can be appointed if no one else is able and willing to serve.<sup>128</sup>

The law also allows appointment of “standby” and “short-term” guardians for a disabled adult, to act in place of regular guardians who have died or are temporarily unavailable.<sup>129</sup>

An adult “of sound mind and memory” who wants to designate a future guardian or guardians should do so in a formal writing. It is best to have the designation executed and attested in the same way as a will. In any event, relatives and friends should be informed of the designation so they can tell the court if the person becomes unable to take care of personal affairs. The court is not required to choose the designated person(s) as guardian(s), but usually will do so.<sup>130</sup>

The statutory provisions on guardianship are complex, so they should be carefully read and discussed with a legal advisor before being used.

## **Living wills and powers of attorney**

Many people fear someday lying in a hospital unconscious or otherwise unable to make and communicate decisions about their care. Illinois has four laws designed to help in such situations. Each is described below.

### *Power of attorney for health care*

One law allows creation of a “power of attorney for health care.” Any adult, by creating such a document, can give authority to another person (called the “agent”) to make personal medical decisions, starting at some future date or when a stated condition occurs. Powers over health care that may be given include: (1) the right to be informed, (2) the right to consent to treatment; and (3) the right to control the health care of a minor child of the person who granted the power of attorney. No person who is providing health care to a patient can act as that patient’s agent under this law.<sup>131</sup>

The text of a power of attorney for health care (with spaces for stating choices) is set forth in the law, and is available from many health-care providers. Starting January 1, 2023, it can be signed, witnessed, and stored electronically as an alternative to a paper form.<sup>132</sup> A person should carefully read the form, or have it explained by a knowledgeable person, before deciding whether to sign it and what options to select in it.

### *Living will*

Another law, the Illinois Living Will Act, generally allows any competent adult to order that in case of terminal illness, measures that would only prolong the dying process not be used. It allows the making of a “declaration,” whose suggested text says in crucial part:

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.<sup>133</sup>

The suggested text of the declaration has other provisions that are not quoted above to save space. A declaration must be signed by the person making it, or by someone else at that person’s direction, and witnessed by at least two adults.<sup>134</sup> The law allows the declaration to include “other specific directions” in addition to those listed in the law.<sup>135</sup> (As examples, a person could require that the declaration take effect only if two physicians declare the illness to be terminal, or only if the next-of-kin agrees.) A lawyer should be asked to check any proposed declaration that includes such added provisions, in case there is a problem with their clarity or effect. Forms containing the suggested text are available from the Illinois Department on Aging, and at some hospitals and other medical facilities.

It is important to keep in mind that the patient can override or revoke such a declaration **at any time, either orally or in writing**. The declaration merely speaks for a patient who is unable to make decisions and/or unable to communicate.

If you are (or know someone who is) interested in this law, be sure to read all of it<sup>136</sup> before deciding to make a declaration under it (or recommending that someone else do so). Not everyone will want to have such a declaration. It is entirely the patient's choice.

The following describes a more specific medical document that may be appropriate for patients with life-threatening or terminal conditions if they want to limit medical efforts to keep them alive.

### *Practitioner Orders for Life-Sustaining Treatment (POLST)*

Persons being admitted to a health-care facility may be invited to fill out a form called "Practitioner Orders for Life-Sustaining Treatment" (POLST). It is a medical document stating what kinds of actions the patient wants to be taken in a medical emergency, such as if breathing stops. It has various boxes that the patient can check to indicate the level of medical intervention wanted in such a situation. The patient should discuss those choices with a medical provider before checking any boxes and signing the form. To be effective, the form must be witnessed, and a medical provider must sign it to indicate the provider's belief that the orders in the form are consistent with the patient's medical condition and preferences. Each person should carefully think about the options in the form, and discuss them with a medical and/or other advisor, before filling in the form. A blank

POLST form is linked from this page on the Illinois Department of Public Health website:

<https://dph.illinois.gov/content/dam/soi/en/web/idph/files/forms/polstform.pdf>

(or go to [www.dph.illinois.gov](http://www.dph.illinois.gov) and search for “POLST”).<sup>137</sup>

### *Health-care surrogate*

If a patient has no agent with a power of attorney for health care, another law allows a doctor, nurse, or hospital to ask a “surrogate” for the patient to decide whether to forgo life-sustaining treatment. The law lists the following order of priority for who can be such a surrogate: the patient’s guardian of the person (if any); spouse; adult son or daughter; parent; adult sibling; adult grandchild; close friend; or guardian of the estate (if any).<sup>138</sup> Although this law can help a person who has no power of attorney for health care, living will, or POLST, signing one or more of those documents can reduce uncertainty (and possible lawsuits) over control of medical treatments.

## **Notes**

The citations below to “ILCS” mean the Illinois Compiled Statutes—the state’s official code of laws, which is available on the Internet at [www.ilga.gov](http://www.ilga.gov) and in many libraries in books. As an example of an ILCS citation, “125 ILCS 20/1” means the Illinois Compiled Statutes, chapter 125, act 20, section 1. Citations to “Ill. Adm. Code” refer to the Illinois Administrative Code—the compilation of all regulations that agencies have adopted to implement Illinois laws. A few citations below are to U.S.

Code (the federal code of laws), which is available online at <http://uscode.house.gov/> and in print in many libraries. A citation to it has the form “12 U.S. Code sec. 345.” This means the United States Code, Title 12, section 345.

Other abbreviations used in these notes are:

“sec.” or “secs.”: section or sections

“ff.”: and the following sections

1. 35 ILCS 200/15-170.
2. 35 ILCS 200/16-65.
3. Cook County Code of Ordinances, subsecs. 74-63(2) and 74-64(2).
4. 35 ILCS 200/15-170 (b) and (c).
5. 35 ILCS 200/15-175.
6. 35 ILCS 200/15-175.
7. 35 ILCS 200/15-172(b) (definition of “base amount”) and 15-172(c).
8. 35 ILCS 200/15-172(c), fifth unnumbered paragraph.
9. 35 ILCS 200/15-172(c), sixth unnumbered paragraph.
10. 35 ILCS 200/15-172(c), seventh unnumbered paragraph.
11. 320 ILCS 30/3, paragraph (1).
12. 320 ILCS 30/1 ff.
13. 26 U.S. Code subsecs. 121(a) and (b).
14. 26 U.S. Code subsec. 121(b)(3).
15. 26 U.S. Code subsecs. 121(b)(1) and (2).
16. 625 ILCS 5/3-806.3, first and fourth paragraphs.
17. “Eligibility and Frequently Asked Questions” (for the Benefit Access program), downloaded July 18, 2022 from Illinois Department on Aging Internet site.
18. 625 ILCS 5/6-118.
19. 215 ILCS 5/143.29(a).
20. 215 ILCS 5/143.29(e)(4).

21. 20 ILCS 805/805-305.
22. 110 ILCS 990/0.01 ff.
23. Social Security Administration, “Retirement Benefits” (Pub. 05-10035, January 2022), pp. 3-4 (available on SSA Internet site).
24. 42 U.S. Code subsec. 416(I).
25. 42 U.S. Code subsec. 402(w)(1) and (6)(D).
26. 42 U.S. Code subsec. 402(d)(1) (especially subparagraph (B)).
27. 42 U.S. Code secs. 1381 ff.; Social Security Administration, “A Guide to Supplemental Security Income (SSI) for Groups and Organizations” (Pub. 05-11015, March 2022, available on SSA Internet site).
28. 305 ILCS 5/3-1 ff.; 89 Ill. Adm. Code secs. 113.1 ff.
29. 305 ILCS 5/3-1.5.
30. “Aid to the Aged, Blind, and Disabled (AABD)” (available on Illinois Department of Human Services Internet site).
31. 765 ILCS 945/5 (definition of “reverse mortgage”).
32. 765 ILCS 945/10(b).
33. 765 ILCS 945/5 (definition of “reverse mortgage”) and 945/10(c).
34. 765 ILCS 945/20.
35. 765 ILCS 945/25.
36. 765 ILCS 945/15(b).
37. 755 ILCS 5/2-1.
38. 755 ILCS 27/1 ff.
39. 815 ILCS 10/0.01 ff.
40. 205 ILCS 625/2(a) and 625/4.
41. See 755 ILCS 5/25-1 ff.
42. 775 ILCS 5/2-101(B).
43. 775 ILCS 5/1-103(A), 5/1-103(Q) and 5/2-102.
44. 775 ILCS 5/2-104(A)(5)(b).
45. 775 ILCS 5/1-103(A).
46. 29 U.S. Code subsec. 630(b).
47. 29 U.S. Code subsecs. 623(a) to (c), and 630(a) and (b).
48. 29 U.S. Code subsec. 631(c).



49. 29 U.S. Code subsec. 623(f)(2).
50. 775 ILCS 5/1-103(Q) and 5/3-102.
51. 775 ILCS 5/3-104.1.
52. 775 ILCS 5/3-106(A) to (C).
53. 775 ILCS 5/1-103(Q) and 5/4-102.
54. 775 ILCS 5/4-104(B).
55. 775 ILCS 5/1-103(Q) and 5/5-102.
56. 775 ILCS 5/5-103(A).
57. 815 ILCS 513/20(a) and (b).
58. 720 ILCS 5/12-3.05(d)(1) and (h); 730 ILCS 5/5-4.5-40(a).
59. 730 ILCS 5/5-5-3.2(b)(3)(ii) and 5/5-8-2.
60. 740 ILCS 45/1 ff.
61. 740 ILCS 45/6.1(b).
62. 740 ILCS 45/6.1(c).
63. 740 ILCS 45/6.1(a).
64. 740 ILCS 45/6.1(b-1).
65. “Reporting Abuse: What Professionals Need to Know” (available on Illinois Department on Aging Internet site).
66. 320 ILCS 20/2(f-5) and 20/4(a-5).
67. See primarily 750 ILCS 5/602.9.
68. 750 ILCS 5/602.9(c)(1).
69. 750 ILCS 5/602.9(b)(4).
70. 750 ILCS 5/602.9(b)(5) and (c)(2).
71. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & You 2022* (product 10050, Dec. 2021), pp. 17-18 and 22 (available at <https://www.medicare.gov/media/10991>).
72. *Medicare & You 2022*, p. 121, definition of “Benefit period.”
73. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, “2022 Medicare Costs” (information sheet, product 11579, Nov. 2021), first page.
74. “2022 Medicare Costs,” first page.
75. “2022 Medicare Costs,” first page.
76. *Medicare & You 2022*, pp. 26 and 43.

77. *Medicare & You 2022*, pp. 17-18 and 29; U.S. Social Security Administration, “How to Apply for Medicare Part B During Your Special Enrollment Period” (Pub. 05-10012, Jan. 2021), (available at <https://www.ssa.gov/pubs/EN-05-10012.pdf>).
78. *Medicare & You 2022*, p. 23; “2022 Medicare Costs,” second page.
79. *Medicare & You 2022*, p. 29.
80. *Medicare & You 2022*, p. 17-18 and 23.
81. *Medicare & You 2022*, pp. 61-62.
82. *Medicare & You 2022*, pp. 79 and 81-82.
83. *Medicare & You 2022*, pp. 83-84.
84. *Medicare & You 2022*, p. 80.
85. *Medicare & You 2022*, pp. 91-93.
86. These programs are authorized by 42 U.S. Code secs. 3001 ff., and 20 ILCS 105/1 ff.
87. 89 Ill. Adm. Code secs. 240.710, 240.810, and 240.815.
88. 410 ILCS 405/1 ff.
89. Illinois Department of Public Health, Alzheimer’s Disease State Plan, 2020-2023 Report and Recommendations, p. 24 (Sept. 2020), downloaded from IDPH Internet site.
90. 210 ILCS 45/1-101 ff.
91. See 210 ILCS 45/1-113, first paragraph.
92. See 42 U.S. Code sec. 1395i-3 (definition for purposes of Medicare program).
93. See 42 U.S. Code subsec. 1396r(a)(1)(B).
94. See 42 U.S. Code subsec. 1396r(a)(1)(C) and 210 ILCS 45/1-124.
95. 210 ILCS 45/3-102 and 45/1-113.
96. 210 ILCS 45/3-119.
97. See 210 ILCS 45/3-106.
98. 210 ILCS 45/3-107 and 45/3-210.
99. 210 ILCS 45/3-107.1.
100. 210 ILCS 45/2-201.5.

101. 210 ILCS 45/3-303. The types of violations involved are defined in 210 ILCS 45/1-128.5 (Type “AA”), 45/1-129 (Type “A”), and 45/1-130 (Type “B”), and 45/1-132 (Type “C”).
102. 210 ILCS 45/3-305(1) to (3).
103. 210 ILCS 45/3-318 and 45/3-103(2).
104. See 210 ILCS 45/2-101 ff.
105. 210 ILCS 45/2-110 and 45/1-121.
106. 210 ILCS 45/2-103.
107. 210 ILCS 45/2-201.
108. 210 ILCS 45/2-109.
109. 210 ILCS 45/2-104.
110. 210 ILCS 45/2-105.
111. 210 ILCS 45/2-108.
112. 210 ILCS 45/2-106 and 45/2-107.
113. 210 ILCS 45/2-108(e).
114. 210 ILCS 45/3-401. Nursing homes that take Medicaid patients are also prohibited from discharging them because they are on Medicaid (210 ILCS 45/3-401.1).
115. 210 ILCS 45/3-402 and 45/3-408.
116. 210 ILCS 45/3-409.
117. 210 ILCS 45/3-702(a).
118. 210 ILCS 45/3-702(d).
119. 210 ILCS 45/3-702(g).
120. See 305 ILCS 5/5-1 ff.
121. See 305 ILCS 5/5-4(a), second paragraph; 42 U.S. Code subsec. 1396r-5(f); and 89 Ill. Adm. Code sec. 120.379.
122. Illinois Department of Human Services, “Long Term Care Services and Information for Couples,” p. 4 (HFS 3191, rev. Feb. 2015, available on Department of Human Services Internet site); Illinois Department of Healthcare and Family Services, “Prevention of Spousal Impoverishment Standards for 2022” (Provider Notice, Jan. 1, 2022), downloaded from DHFS Internet site.
123. 42 U.S. Code subsecs. 1382(b) and 1396r-5(d).

124. “Long Term Care Services and Information for Couples” at p. 4; “Prevention of Spousal Impoverishment Standards for 2022”.
125. See 215 ILCS 132/15(b)(1).
126. 755 ILCS 5/11a-3, 5/11a-17, and 5/11a-18.
127. 755 ILCS 5/11a-5.
128. 755 ILCS 5/13-1 ff. and 20 ILCS 3955/30 and 3955/31.
129. See primarily 755 ILCS 5/11a-3.1, 5/11a-3.2, 5/11a-8.1, 5/11a-18.2, and 5/11a-18.3.
130. 755 ILCS 5/11a-6.
131. 755 ILCS 45/4-1 ff.
132. 755 ILCS 45/4-4.1, 45/4-7, and 45/4-10, each as amended by P.A. 102-794 (eff. Jan. 1, 2023).
133. 755 ILCS 35/3(e), second paragraph of declaration.
134. 755 ILCS 35/3(b).
135. 755 ILCS 35/3(e), introductory paragraph.
136. 755 ILCS 35/1 to 35/9.
137. More information on the Illinois Department of Public Health POLST form is at 755 ILCS 40/65.
138. 755 ILCS 40/1 ff. See particularly 755 ILCS 40/25.

## COMMISSION OVERVIEW

The Commission on Government Forecasting & Accountability is a bipartisan legislative support service agency responsible for advising the Illinois General Assembly on economic and fiscal policy issues and for providing objective policy research for legislators and legislative staff. The Commission's board is comprised of twelve legislators—split evenly between the House and Senate and between Democrats and Republicans. Effective December 10, 2018, pursuant to P.A. 100-1148 the former Legislative Research Unit was merged into the Commission.

The Commission has three internal units—Revenue, Pensions, and Research, each of which has a staff of analysts and researchers who analyze policy proposals, legislation, state revenues & expenditures, and benefit programs, and who provide research services to members and staff of the General Assembly. The Commission's staff fulfills the statutory obligations set forth in the Commission on Government Forecasting and Accountability Act (25 ILCS 155/), the State Debt Impact Note Act (25 ILCS 65/), the Illinois Pension Code (40 ILCS 5/), the Pension Impact Note Act (25 ILCS 55/), the State Facilities Closure Act (30 ILCS 608/), the State Employees Group Insurance Act of 1971 (5 ILCS 375/), the Public Safety Employee Benefits Act (820 ILCS 320/), the Legislative Commission Reorganization Act of 1984 (25 ILCS 130/), and the Reports to the Commission on Government Forecasting and Accountability Act (25 ILCS 110/).

- The **Revenue Unit** issues an annual revenue estimate, reports monthly on the state's financial and economic condition, and prepares bill analyses and debt impact notes on proposed legislation having a financial impact on the State. The Unit publishes a number of statutorily mandated reports, as well as on-demand reports, including the *Monthly Briefing* newsletter and annually, the *Budget Summary*, *Capital Plan Analysis*, *Illinois Economic Forecast Report*, *Wagering in Illinois Update*, and *Liabilities of the State Employees' Group Insurance Program*, among others. The Unit's staff also fulfills the agency's obligations set forth in the State Facilities Closure Act.
- The **Pension Unit** prepares pension impact notes on proposed pension legislation and publishes several statutorily mandated reports including the *Financial Condition of the Illinois State Retirement Systems*, the *Financial Condition of Illinois Public Pension Systems* and the *Fiscal Analysis of the Downstate Police & Fire Pension Funds in Illinois*. The Unit's staff also fulfills the statutory responsibilities set forth in the Public Safety Employee Benefits Act.
- The **Research Unit** primarily performs research and provides information as may be requested by members of the General Assembly or legislative staffs. Additionally, the Unit maintains a research library and, per statute, collects information concerning state government and the general welfare of the state, examines the effects of constitutional provisions and previously enacted statutes, and considers public policy issues and questions of state-wide interest. Additionally, the Unit publishes *First Reading*, a quarterly newsletter which includes abstracts of annual reports or special studies from other state agencies, the *Illinois Tax Handbook for Legislators*, *Federal Funds to State Agencies*, various reports detailing appointments to State Boards and Commissions, the *1970 Illinois Constitution Annotated for Legislators*, the *Roster of Illinois Legislators*, and numerous special topic publications.

# How to Get Information From Public Agencies

## Illinois Department on Aging

[www.state.il.us/aging](http://www.state.il.us/aging) ..... (800) 252-8966 (voice)  
(888) 206-1327 (TTY)

The Department administers many programs for senior residents. It is the first place to contact for most types of information or assistance.

## Social Security Administration

[www.ssa.gov](http://www.ssa.gov) ..... (800) 772-1213 (voice\*)  
(800) 325-0778 (TTY)

\* This number provides automated information and some automated services. It also offers the option of speaking with a representative between 6 a.m. and 6 p.m. (Illinois time) on Monday through Friday. The best days to call are Wednesday through Friday.

## Medicare

[www.medicare.gov](http://www.medicare.gov)

## Nursing home regulation and information

Information and suggestions on how to choose a nursing home:

[www.idph.state.il.us/public/books/nhtoc.htm](http://www.idph.state.il.us/public/books/nhtoc.htm)

Information on individual nursing homes by locality:

<https://ltc.dph.illinois.gov/webapp/LTCApp/ltc.jsp>

Assessment of need for care (required for Medicaid funding):

(800) 252-8966 voice

## State government home page

[www.illinois.gov](http://www.illinois.gov)

[www.ilga.gov](http://www.ilga.gov)