

1 AN ACT concerning senior citizens.

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

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

6 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

7 Sec. 4.04. Long Term Care Ombudsman Program.

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

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

15 (1) "Access" has the same meaning as in Section
16 1-104 of the Nursing Home Care Act, as now or hereafter
17 amended; that is, it means the right to:

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

21 (ii) Communicate privately and without
22 restriction with any resident who consents to the
23 communication;

24 (iii) Seek consent to communicate privately
25 and without restriction with any resident;

26 (iv) Inspect the clinical and other records of
27 a resident with the express written consent of the
28 resident;

29 (v) Observe all areas of the long term care
30 facility or supportive living facilities, assisted
31 living or shared housing establishment except the

1 living area of any resident who protests the
2 observation.

3 (2) "Long Term Care Facility" means (i) any
4 facility as defined by Section 1-113 of the Nursing Home
5 Care Act, as now or hereafter amended; and (ii) any
6 skilled nursing facility or a nursing facility which
7 meets the requirements of Section 1819(a), (b), (c), and
8 (d) or Section 1919(a), (b), (c), and (d) of the Social
9 Security Act, as now or hereafter amended (42 U.S.C.
10 1395i-3(a), (b), (c), and (d) and 42 U.S.C. 1396r(a),
11 (b), (c), and (d)).

12 (2.5) "Assisted living establishment" and "shared
13 housing establishment" have the meanings given those
14 terms in Section 10 of the Assisted Living and Shared
15 Housing Act.

16 (2.7) "Supportive living facility" means a facility
17 established under Section 5-5.01a of the Illinois Public
18 Aid Code.

19 (3) "State Long Term Care Ombudsman" means any
20 person employed by the Department to fulfill the
21 requirements of the Office of State Long Term Care
22 Ombudsman as required under the Older Americans Act of
23 1965, as now or hereafter amended, and Departmental
24 policy.

25 (3.1) "Ombudsman" means, or any designated
26 representative of a regional sub-State long term care
27 ombudsman program; provided that the representative,
28 whether he is paid for or volunteers his ombudsman
29 services, shall be qualified and designated by the Office
30 authorized by the Department to perform the duties of an
31 ombudsman as specified by the Department in rules and in
32 accordance with the provisions of the Older Americans Act
33 of 1965, as now or hereafter amended.

34 (c) Ombudsman; rules. The Office of State Long Term Care

1 Ombudsman shall be composed of at least one full-time
2 ombudsman ~~within-the-Department~~ and shall include a system of
3 designated regional sub-State long term care ombudsman
4 programs. Each regional sub-State program shall be designated
5 by the State Long Term Care Ombudsman Department as a
6 subdivision of the Office and any representative of a
7 regional sub-State program shall be treated as a
8 representative of the Office.

9 The Department, in consultation with the Office, shall
10 promulgate administrative rules in accordance with the
11 provisions of the Older Americans Act of 1965, as now or
12 hereafter amended, to establish the responsibilities of the
13 Department and the Office of State Long Term Care Ombudsman
14 and the designated regional Ombudsman programs. The
15 administrative rules shall include the responsibility of the
16 Office and designated regional programs to investigate and
17 resolve complaints made by or on behalf of residents of long
18 term care facilities, supportive living facilities, and
19 assisted living and shared housing establishments relating to
20 actions, inaction, or decisions of providers, or their
21 representatives, of long term care facilities, of supported
22 living facilities, of assisted living and shared housing
23 establishments, of public agencies, or of social services
24 agencies, which may adversely affect the health, safety,
25 welfare, or rights of such residents. When necessary and
26 appropriate, representatives of the Office shall refer
27 complaints to the appropriate regulatory State agency. The
28 Department, in consultation with the Office, shall cooperate
29 with the Department of Human Services in providing
30 information and training to designated regional sub-State
31 long term care ombudsman programs about the appropriate
32 assessment and treatment (including information about
33 appropriate supportive services, treatment options, and
34 assessment of rehabilitation potential) of persons with

1 mental illness (other than Alzheimer's disease and related
2 disorders).

3 (d) Access and visitation rights.

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

14 (i) permit immediate access to any resident by
15 a designated an ombudsman; and

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

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

33 (e) Immunity. An ombudsman or any other representative
34 of the Office participating in the good faith performance of

1 his or her official duties shall have immunity from any
2 liability (civil, criminal or otherwise) in any proceedings
3 (civil, criminal or otherwise) brought as a consequence of
4 the performance of his official duties.

5 (f) Business offenses.

6 (1) No person shall:

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

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

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

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

25 (g) Confidentiality of records and identities. The
26 Department shall establish procedures for the disclosure by
27 the State Ombudsman or the regional ombudsmen entities of
28 files maintained by the program. The procedures shall provide
29 that the files and records may be disclosed only at the
30 discretion of the State Long Term Care Ombudsman or the
31 person designated by the State Ombudsman to disclose the
32 files and records, and the procedures shall prohibit the
33 disclosure of the identity of any complainant, resident,
34 witness, or employee of a long term care provider unless:

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

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

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

11 ~~No files or records maintained by the Office of State~~
 12 ~~Long-Term-Care-Ombudsman shall be disclosed unless the State~~
 13 ~~Ombudsman or the ombudsman having the authority over the~~
 14 ~~disposition of such files authorizes the disclosure in~~
 15 ~~writing. The ombudsman shall not disclose the identity of any~~
 16 ~~complainant, resident, witness or employee of a long term~~
 17 ~~care provider involved in a complaint or report unless such~~
 18 ~~person or such person's guardian or legal representative~~
 19 ~~consents in writing to the disclosure, or the disclosure is~~
 20 ~~required by court order.~~

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

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

1 (Source: P.A. 90-639, eff. 1-1-99; 91-174, eff. 7-16-99;
2 91-656, eff. 1-1-01; 91-799, eff. 6-13-00.)

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