



Sen. William Delgado

Filed: 5/17/2013

09800HB1191sam002

LRB098 06199 KTG 45951 a

1 AMENDMENT TO HOUSE BILL 1191

2 AMENDMENT NO. _____. Amend House Bill 1191 as follows:

3 on page 1, line 5, by replacing "Section 4.01" with "Sections
4 4.01 and 4.04"; and

5 on page 8, immediately after line 1, by inserting the
6 following:

7 "(20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

8 Sec. 4.04. Long Term Care Ombudsman Program. The purpose of
9 the Long Term Care Ombudsman Program is to ensure that older
10 persons and persons with disabilities receive quality
11 services. This is accomplished by providing advocacy services
12 for residents of long term care facilities and participants
13 receiving home care and community-based care. Managed care is
14 increasingly becoming the vehicle for delivering health and
15 long-term services and supports to seniors and persons with

1 disabilities, including dual eligible participants. The
2 additional ombudsman authority will allow advocacy services to
3 be provided to Illinois participants for the first time and
4 will produce a cost savings for the State of Illinois by
5 supporting the rebalancing efforts of the Patient Protection
6 and Affordable Care Act.

7 (a) Long Term Care Ombudsman Program. The Department shall
8 establish a Long Term Care Ombudsman Program, through the
9 Office of State Long Term Care Ombudsman ("the Office"), in
10 accordance with the provisions of the Older Americans Act of
11 1965, as now or hereafter amended. The Long Term Care Ombudsman
12 Program is authorized, subject to sufficient appropriations,
13 to advocate on behalf of older persons and persons with
14 disabilities residing in their own homes or community-based
15 settings, relating to matters which may adversely affect the
16 health, safety, welfare, or rights of such individuals.

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

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

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

25 (ii) Communicate privately and without restriction
26 with any resident, regardless of age, who consents to

1 the communication;

2 (iii) Seek consent to communicate privately and
3 without restriction with any participant or resident,
4 regardless of age;

5 (iv) Inspect the clinical and other records of a
6 participant or resident, regardless of age, with the
7 express written consent of the participant or
8 resident;

9 (v) Observe all areas of the long term care
10 facility or supportive living facilities, assisted
11 living or shared housing establishment except the
12 living area of any resident who protests the
13 observation; and -

14 (vi) Subject to permission of the participant or
15 resident requesting services or his or her
16 representative, enter a home or community-based
17 setting.

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

1 Care Act, as now or hereafter amended.

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

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

9 (2.8) "Community-based setting" means any place of
10 abode other than an individual's private home.

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

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

25 (4) "Participant" means an older person or persons with
26 disabilities who are eligible for services under any of the

1 following:

2 (i) A medical assistance waiver administered by
3 the State.

4 (ii) A managed care organization providing care
5 coordination and other services to seniors and persons
6 with disabilities.

7 (5) "Resident" means an older individual who resides in
8 a long-term care facility.

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

16 The Department, in consultation with the Office, shall
17 promulgate administrative rules in accordance with the
18 provisions of the Older Americans Act of 1965, as now or
19 hereafter amended, to establish the responsibilities of the
20 Department and the Office of State Long Term Care Ombudsman and
21 the designated regional Ombudsman programs. The administrative
22 rules shall include the responsibility of the Office and
23 designated regional programs to investigate and resolve
24 complaints made by or on behalf of residents of long term care
25 facilities, supportive living facilities, and assisted living
26 and shared housing establishments, and participants residing

1 in their own homes or community-based settings, including the
2 option to serve residents and participants under the age of 60,
3 relating to actions, inaction, or decisions of providers, or
4 their representatives, of such ~~long term care facilities,~~ ~~of~~
5 ~~supported living facilities,~~ ~~of assisted living~~ and ~~shared~~
6 ~~housing~~ establishments, of public agencies, or of social
7 services agencies, which may adversely affect the health,
8 safety, welfare, or rights of such residents and participants.
9 The Office and designated regional programs may represent all
10 residents and participants, but are not required by this Act to
11 represent persons under 60 years of age, except to the extent
12 required by federal law. When necessary and appropriate,
13 representatives of the Office shall refer complaints to the
14 appropriate regulatory State agency. The Department, in
15 consultation with the Office, shall cooperate with the
16 Department of Human Services and other State agencies in
17 providing information and training to designated regional long
18 term care ombudsman programs about the appropriate assessment
19 and treatment (including information about appropriate
20 supportive services, treatment options, and assessment of
21 rehabilitation potential) of the participants ~~residents~~ they
22 serve, ~~including children, persons with mental illness (other~~
23 ~~than Alzheimer's disease and related disorders), and persons~~
24 ~~with developmental disabilities.~~

25 The State Long Term Care Ombudsman and all other ombudsmen,
26 as defined in paragraph (3.1) of subsection (b) must submit to

1 background checks under the Health Care Worker Background Check
2 Act and receive training, as prescribed by the Illinois
3 Department on Aging, before visiting facilities, private
4 homes, or community-based settings. The training must include
5 information specific to assisted living establishments,
6 supportive living facilities, ~~and~~ shared housing
7 establishments, private homes, and community-based settings
8 and to the rights of residents and participants guaranteed
9 under the corresponding Acts and administrative rules.

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

12 (1) In collaboration with the Attorney General, create
13 a Consumer Choice Information Report form to be completed
14 by all licensed long term care facilities to aid
15 Illinoisans and their families in making informed choices
16 about long term care. The Office shall create a Consumer
17 Choice Information Report for each type of licensed long
18 term care facility. The Office shall collaborate with the
19 Attorney General and the Department of Human Services to
20 create a Consumer Choice Information Report form for
21 facilities licensed under the MR/DD Community Care Act.

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

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

- 1 (B) Special Services and Amenities.
- 2 (C) Staffing.
- 3 (D) Facility Statistics and Resident Demographics.
- 4 (E) Ownership and Administration.
- 5 (F) Safety and Security.
- 6 (G) Meals and Nutrition.
- 7 (H) Rooms, Furnishings, and Equipment.
- 8 (I) Family, Volunteer, and Visitation Provisions.
- 9 (3) Make this information accessible to the public,
10 including on the Internet by means of a hyperlink labeled
11 "Resident's Right to Know" on the Office's World Wide Web
12 home page. Information about facilities licensed under the
13 MR/DD Community Care Act shall be made accessible to the
14 public by the Department of Human Services, including on
15 the Internet by means of a hyperlink labeled "Resident's
16 and Families' Right to Know" on the Department of Human
17 Services' "For Customers" website.
- 18 (4) Have the authority, with the Attorney General, to
19 verify that information provided by a facility is accurate.
- 20 (5) Request a new report from any licensed facility
21 whenever it deems necessary.
- 22 (6) Include in the Office's Consumer Choice
23 Information Report for each type of licensed long term care
24 facility additional information on each licensed long term
25 care facility in the State of Illinois, including
26 information regarding each facility's compliance with the

1 relevant State and federal statutes, rules, and standards;
2 customer satisfaction surveys; and information generated
3 from quality measures developed by the Centers for Medicare
4 and Medicaid Services.

5 (d) Access and visitation rights.

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

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

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

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

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

15 (f) Business offenses.

16 (1) No person shall:

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

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

26 (2) A violation of this Section is a business offense,

1 punishable by a fine not to exceed \$501.

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

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

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

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

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

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

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

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

21 (Source: P.A. 96-328, eff. 8-11-09; 96-758, eff. 8-25-09;
22 96-1372, eff. 7-29-10; 97-38, eff. 6-28-11.)".