



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4508

by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on the Aging. Expands the Department on Aging's Long Term Care Ombudsman Program to include advocacy services for residents of community-integrated living arrangements. Makes changes to provisions concerning access and visitation rights. Defines "community-integrated living arrangements". Effective immediately.

LRB099 16059 KTG 40382 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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. The purpose of
8 the Long Term Care Ombudsman Program is to ensure that older
9 persons and persons with disabilities receive quality
10 services. This is accomplished by providing advocacy services
11 for residents of long term care facilities and participants
12 receiving home care and community-based care. Managed care is
13 increasingly becoming the vehicle for delivering health and
14 long-term services and supports to seniors and persons with
15 disabilities, including dual eligible participants. The
16 additional ombudsman authority will allow advocacy services to
17 be provided to Illinois participants for the first time and
18 will produce a cost savings for the State of Illinois by
19 supporting the rebalancing efforts of the Patient Protection
20 and Affordable Care Act.

21 (a) Long Term Care Ombudsman Program. The Department shall
22 establish a Long Term Care Ombudsman Program, through the
23 Office of State Long Term Care Ombudsman ("the Office"), in

1 accordance with the provisions of the Older Americans Act of
2 1965, as now or hereafter amended. The Long Term Care Ombudsman
3 Program is authorized, subject to sufficient appropriations,
4 to advocate on behalf of older persons and persons with
5 disabilities residing in their own homes or community-based
6 settings, relating to matters which may adversely affect the
7 health, safety, welfare, or rights of such individuals.

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

10 (1) "Access" means the right to:

11 (i) Enter any long term care facility or assisted
12 living or shared housing establishment or supportive
13 living facility or community-integrated living
14 arrangement;

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

18 (iii) Seek consent to communicate privately and
19 without restriction with any participant or resident,
20 regardless of age;

21 (iv) Inspect the clinical and other records of a
22 participant or resident, regardless of age, with the
23 express written consent of the participant or
24 resident;

25 (v) Observe all areas of the long term care
26 facility or supportive living facilities,

1 community-integrated living arrangement, or assisted
2 living or shared housing establishment except the
3 living area of any resident who protests the
4 observation; and

5 (vi) Subject to permission of the participant or
6 resident requesting services or his or her
7 representative, enter a home or community-based
8 setting.

9 (2) "Long Term Care Facility" means (i) any facility as
10 defined by Section 1-113 of the Nursing Home Care Act, as
11 now or hereafter amended; (ii) any skilled nursing facility
12 or a nursing facility which meets the requirements of
13 Section 1819(a), (b), (c), and (d) or Section 1919(a), (b),
14 (c), and (d) of the Social Security Act, as now or
15 hereafter amended (42 U.S.C. 1395i-3(a), (b), (c), and (d)
16 and 42 U.S.C. 1396r(a), (b), (c), and (d)); (iii) any
17 facility as defined by Section 1-113 of the ID/DD Community
18 Care Act, as now or hereafter amended; and (iv) any
19 facility as defined by Section 1-113 of MC/DD Act, as now
20 or hereafter amended.

21 (2.5) "Assisted living establishment" and "shared
22 housing establishment" have the meanings given those terms
23 in Section 10 of the Assisted Living and Shared Housing
24 Act.

25 (2.7) "Supportive living facility" means a facility
26 established under Section 5-5.01a of the Illinois Public

1 Aid Code.

2 (2.8) "Community-based setting" means any place of
3 abode other than an individual's private home.

4 (2.9) "Community-integrated living arrangement" has
5 the meaning ascribed to that term in subsection (d) of
6 Section 3 of the Community-Integrated Living Arrangements
7 Licensure and Certification Act.

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

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

21 (4) "Participant" means an older person aged 60 or over
22 or an adult with a disability aged 18 through 59 who is
23 eligible for services under any of the following:

24 (i) A medical assistance waiver administered by
25 the State.

26 (ii) A managed care organization providing care

1 coordination and other services to seniors and persons
2 with disabilities.

3 (5) "Resident" means an older person aged 60 or over or
4 an adult with a disability aged 18 through 59 who resides
5 in a long-term care facility.

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

13 The Department, in consultation with the Office, shall
14 promulgate administrative rules in accordance with the
15 provisions of the Older Americans Act of 1965, as now or
16 hereafter amended, to establish the responsibilities of the
17 Department and the Office of State Long Term Care Ombudsman and
18 the designated regional Ombudsman programs. The administrative
19 rules shall include the responsibility of the Office and
20 designated regional programs to investigate and resolve
21 complaints made by or on behalf of residents of long term care
22 facilities, supportive living facilities, community-integrated
23 living arrangements, and assisted living and shared housing
24 establishments, and participants residing in their own homes or
25 community-based settings, including the option to serve
26 residents and participants under the age of 60, relating to

1 actions, inaction, or decisions of providers, or their
2 representatives, of such facilities and establishments, of
3 public agencies, or of social services agencies, which may
4 adversely affect the health, safety, welfare, or rights of such
5 residents and participants. The Office and designated regional
6 programs may represent all residents and participants, but are
7 not required by this Act to represent persons under 60 years of
8 age, except to the extent required by federal law. When
9 necessary and appropriate, representatives of the Office shall
10 refer complaints to the appropriate regulatory State agency.
11 The Department, in consultation with the Office, shall
12 cooperate with the Department of Human Services and other State
13 agencies in providing information and training to designated
14 regional long term care ombudsman programs about the
15 appropriate assessment and treatment (including information
16 about appropriate supportive services, treatment options, and
17 assessment of rehabilitation potential) of the participants
18 they serve.

19 The State Long Term Care Ombudsman and all other ombudsmen,
20 as defined in paragraph (3.1) of subsection (b) must submit to
21 background checks under the Health Care Worker Background Check
22 Act and receive training, as prescribed by the Illinois
23 Department on Aging, before visiting facilities, private
24 homes, or community-based settings. The training must include
25 information specific to assisted living establishments,
26 supportive living facilities, community-integrated living

1 arrangements, shared housing establishments, private homes,
2 and community-based settings and to the rights of residents and
3 participants guaranteed under the corresponding Acts and
4 administrative rules.

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

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

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

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

23 (B) Special Services and Amenities.

24 (C) Staffing.

25 (D) Facility Statistics and Resident Demographics.

26 (E) Ownership and Administration.

1 (F) Safety and Security.

2 (G) Meals and Nutrition.

3 (H) Rooms, Furnishings, and Equipment.

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

5 (3) Make this information accessible to the public,
6 including on the Internet by means of a hyperlink labeled
7 "Resident's Right to Know" on the Office's World Wide Web
8 home page. Information about facilities licensed under the
9 ID/DD Community Care Act or the MC/DD Act shall be made
10 accessible to the public by the Department of Human
11 Services, including on the Internet by means of a hyperlink
12 labeled "Resident's and Families' Right to Know" on the
13 Department of Human Services' "For Customers" website.

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

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

18 (6) Include in the Office's Consumer Choice
19 Information Report for each type of licensed long term care
20 facility additional information on each licensed long term
21 care facility in the State of Illinois, including
22 information regarding each facility's compliance with the
23 relevant State and federal statutes, rules, and standards;
24 customer satisfaction surveys; and information generated
25 from quality measures developed by the Centers for Medicare
26 and Medicaid Services.

1 (d) Access and visitation rights.

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

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

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

24 (iii) permit a representative of the Program to
25 communicate privately and without restriction with any
26 participant who consents to the communication

1 regardless of the consent of, or withholding of consent
2 by, a legal guardian or an agent named in a power of
3 attorney executed by the participant.

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

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

18 (f) Business offenses.

19 (1) No person shall:

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

24 (ii) Intentionally retaliate, discriminate
25 against, or effect reprisals against any long term care
26 facility resident or employee for contacting or

1 providing information to any representative of the
2 Office.

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

5 (3) The State Long Term Care Ombudsman shall notify the
6 State's Attorney of the county in which the long term care
7 facility, supportive living facility, community-integrated
8 living arrangement, or assisted living or shared housing
9 establishment is located, or the Attorney General, of any
10 violations of this Section.

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

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

25 (2) the complainant, resident, participant, witness,
26 or employee of a long term care provider gives consent

1 orally; and the consent is documented contemporaneously in
2 writing in accordance with such requirements as the
3 Department shall establish; or

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

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

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

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

24 (k) Each Regional Ombudsman may, in accordance with rules
25 promulgated by the Office, establish a multi-disciplinary team
26 to act in an advisory role for the purpose of providing

1 professional knowledge and expertise in handling complex
2 abuse, neglect, and advocacy issues involving participants.
3 Each multi-disciplinary team may consist of one or more
4 volunteer representatives from any combination of at least 7
5 members from the following professions: banking or finance;
6 disability care; health care; pharmacology; law; law
7 enforcement; emergency responder; mental health care; clergy;
8 coroner or medical examiner; substance abuse; domestic
9 violence; sexual assault; or other related fields. To support
10 multi-disciplinary teams in this role, law enforcement
11 agencies and coroners or medical examiners shall supply records
12 as may be requested in particular cases. The Regional
13 Ombudsman, or his or her designee, of the area in which the
14 multi-disciplinary team is created shall be the facilitator of
15 the multi-disciplinary team.

16 (Source: P.A. 98-380, eff. 8-16-13; 98-989, eff. 1-1-15;
17 99-180, eff. 7-29-15.)

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