



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB2715

Introduced 1/10/2024, by Sen. Lakesia Collins

#### SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on the Aging. Provides that all records containing resident, participant, and complainant information collected by the Long Term Care Ombudsman Program are confidential and shall not be disclosed outside of the program without a lawful subpoena or the permission of the State Ombudsman. Permits the State Ombudsman, at his or her discretion, to disclose resident or participant information if it is in the best interest of the resident or participant. Requires the Department on Aging to establish procedures for the disclosure of program records by the State Ombudsman. Provides that the procedures shall prohibit disclosure of a resident's identity in case records unless the resident gives consent.

LRB103 36720 KTG 66830 b

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  
8 of 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  
3 Ombudsman Program is authorized, subject to sufficient  
4 appropriations, to advocate on behalf of older persons and  
5 persons with disabilities residing in their own homes or  
6 community-based settings, relating to matters which may  
7 adversely affect the health, safety, welfare, or rights of  
8 such individuals.

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

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

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

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 and copy the clinical and other  
22 records of a participant or resident, regardless of  
23 age, with the express written consent of the  
24 participant or resident;

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

1 living or shared housing establishment except the  
2 living area of any resident who protests the  
3 observation; and

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

8 (2) "Long Term Care Facility" means (i) any facility  
9 as defined by Section 1-113 of the Nursing Home Care Act,  
10 as now or hereafter amended; (ii) any skilled nursing  
11 facility or a nursing facility which meets the  
12 requirements of Section 1819(a), (b), (c), and (d) or  
13 Section 1919(a), (b), (c), and (d) of the Social Security  
14 Act, as now or hereafter amended (42 U.S.C. 1395i-3(a),  
15 (b), (c), and (d) and 42 U.S.C. 1396r(a), (b), (c), and  
16 (d)); (iii) any facility as defined by Section 1-113 of  
17 the ID/DD Community Care Act, as now or hereafter amended;  
18 (iv) any facility as defined by Section 1-113 of MC/DD  
19 Act, as now or hereafter amended; and (v) any facility  
20 licensed under Section 4-105 or 4-201 of the Specialized  
21 Mental Health Rehabilitation Act of 2013, as now or  
22 hereafter amended.

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

1           (2.7) "Supportive living facility" means a facility  
2 established under Section 5-5.01a of the Illinois Public  
3 Aid Code.

4           (2.8) "Community-based setting" means any place of  
5 abode other than an individual's private home.

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

11           (3.1) "Ombudsman" means any designated representative  
12 of the State Long Term Care Ombudsman Program; provided  
13 that the representative, whether he is paid for or  
14 volunteers his ombudsman services, shall be qualified and  
15 designated by the Office to perform the duties of an  
16 ombudsman as specified by the Department in rules and in  
17 accordance with the provisions of the Older Americans Act  
18 of 1965, as now or hereafter amended.

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

22           (i) A medical assistance waiver administered by  
23 the State.

24           (ii) A managed care organization providing care  
25 coordination and other services to seniors and persons  
26 with disabilities.

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

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

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

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

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

1 under the corresponding Acts and administrative rules.

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

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

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

- 19 (A) Medical Care, Services, and Treatment.  
20 (B) Special Services and Amenities.  
21 (C) Staffing.  
22 (D) Facility Statistics and Resident Demographics.  
23 (E) Ownership and Administration.  
24 (F) Safety and Security.  
25 (G) Meals and Nutrition.  
26 (H) Rooms, Furnishings, and Equipment.



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

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

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

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

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

24 (d) Access and visitation rights.

25 (1) In accordance with subparagraphs (A) and (E) of  
26 paragraph (3) of subsection (c) of Section 1819 and

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

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

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

21                   (iii) permit a representative of the Program to  
22                   communicate privately and without restriction with any  
23                   participant who consents to the communication  
24                   regardless of the consent of, or withholding of  
25                   consent by, a legal guardian or an agent named in a  
26                   power of attorney executed by the participant.

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  
23                   care 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 State Long Term Care Ombudsman shall notify  
3 the State's Attorney of the county in which the long term  
4 care facility, supportive living facility, or assisted  
5 living or shared housing establishment is located, or the  
6 Attorney General, of any violations of this Section.

7 (g) Confidentiality of records and identities. All records  
8 containing resident, participant, and complainant information  
9 collected by the Long Term Care Ombudsman Program are  
10 confidential and shall not be disclosed outside of the program  
11 without a lawful subpoena or the permission of the State  
12 Ombudsman. The State Ombudsman, at his or her discretion, may  
13 disclose resident or participant information if it is in the  
14 best interest of the resident or participant. The Department  
15 shall establish procedures for the disclosure of program  
16 records by the State Ombudsman. ~~The or the regional ombudsmen~~  
17 ~~entities of files maintained by the program. The procedures~~  
18 ~~shall provide that the files and records may be disclosed only~~  
19 ~~at the discretion of the State Long Term Care Ombudsman or the~~  
20 ~~person designated by the State Ombudsman to disclose the files~~  
21 ~~and records, and the~~ procedures shall prohibit the disclosure  
22 of the identity of any complainant, resident, participant,  
23 witness, or employee of a long term care provider in case  
24 records unless:

25 (1) the complainant, resident, participant, witness,  
26 or employee of a long term care provider or his or her

1 legal representative consents to the disclosure and the  
2 consent is in writing;

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

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

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

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

24 (j) The Long Term Care Ombudsman Fund is created as a  
25 special fund in the State treasury to receive moneys for the  
26 express purposes of this Section. All interest earned on

1 moneys in the fund shall be credited to the fund. Moneys  
2 contained in the fund shall be used to support the purposes of  
3 this Section.

4 (k) Each Regional Ombudsman may, in accordance with rules  
5 promulgated by the Office, establish a multi-disciplinary team  
6 to act in an advisory role for the purpose of providing  
7 professional knowledge and expertise in handling complex  
8 abuse, neglect, and advocacy issues involving participants.  
9 Each multi-disciplinary team may consist of one or more  
10 volunteer representatives from any combination of at least 7  
11 members from the following professions: banking or finance;  
12 disability care; health care; pharmacology; law; law  
13 enforcement; emergency responder; mental health care; clergy;  
14 coroner or medical examiner; substance abuse; domestic  
15 violence; sexual assault; or other related fields. To support  
16 multi-disciplinary teams in this role, law enforcement  
17 agencies and coroners or medical examiners shall supply  
18 records as may be requested in particular cases. The Regional  
19 Ombudsman, or his or her designee, of the area in which the  
20 multi-disciplinary team is created shall be the facilitator of  
21 the multi-disciplinary team.

22 (Source: P.A. 102-1033, eff. 1-1-23; 103-329, eff. 1-1-24.)