



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/4/2004, by Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04
225 ILCS 46/15

from Ch. 23, par. 6104.04

Amends the Illinois Act on the Aging. Provides that regional long term care ombudsman programs may use trained volunteers to make routine visits to facilities licensed or certified under the Nursing Home Care Act, the Assisted Living and Shared Housing Act, and the Social Security Act or to any other facility for which long term care ombudsmen are obligated to visit either by federal or State law. Sets forth requirements for the volunteers. Amends the Health Care Worker Background Check Act. Includes a trained-volunteer program operated by a regional long term care ombudsman program within the definition of "health care employer". Effective immediately.

LRB093 19921 BDD 45664 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning the Department on Aging.

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 shall
9 establish a Long Term Care Ombudsman Program, through the
10 Office of State Long Term Care Ombudsman ("the Office"), in
11 accordance with the provisions of the Older Americans Act of
12 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 1-104
16 of the Nursing Home Care Act, as now or hereafter amended;
17 that is, it means the right to:

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

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

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

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

28 (v) Observe all areas of the long term care
29 facility or supportive living facilities, assisted
30 living or shared housing establishment except the
31 living area of any resident who protests the
32 observation.

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

9 (2.5) "Assisted living establishment" and "shared
10 housing establishment" have the meanings given those terms
11 in Section 10 of the Assisted Living and Shared Housing
12 Act.

13 (2.7) "Supportive living facility" means a facility
14 established under Section 5-5.01a of the Illinois Public
15 Aid Code.

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

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

29 (c) Ombudsman; rules. The Office of State Long Term Care
30 Ombudsman shall be composed of at least one full-time ombudsman
31 and shall include a system of designated regional long term
32 care ombudsman programs. Each regional program shall be
33 designated by the State Long Term Care Ombudsman as a
34 subdivision of the Office and any representative of a regional
35 program shall be treated as a representative of the Office.

36 The Department, in consultation with the Office, shall

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

26 Regional long term care ombudsman programs may use trained
27 volunteers to make routine visits to facilities licensed or
28 certified under the Nursing Home Care Act, the Assisted Living
29 and Shared Housing Act, and the Social Security Act or to any
30 other facility for which long term care ombudsman are obligated
31 to visit either by federal or State law. Volunteers may not be
32 used to investigate or resolve complaints where a violation of
33 federal or State law is at issue. All volunteers must submit to
34 background checks under the Health Care Worker Background Check
35 Act and receive training, as prescribed by the Illinois
36 Department on Aging, before visiting facilities. The training

1 must include information specific to assisted living
2 establishments, supportive living facilities, and shared
3 housing establishments and to the rights of residents
4 guaranteed under the corresponding Acts and administrative
5 rules.

6 (d) Access and visitation rights.

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

17 (i) permit immediate access to any resident by a
18 designated ombudsman; and

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

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

36 (e) Immunity. An ombudsman or any representative of the

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

6 (f) Business offenses.

7 (1) No person shall:

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

12 (ii) Intentionally retaliate, discriminate
13 against, or effect reprisals against any long term care
14 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 offense,
18 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 in
21 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 the
27 State Ombudsman or the regional ombudsmen entities of files
28 maintained by the program. The procedures shall provide that
29 the files and records may be disclosed only at the discretion
30 of the State Long Term Care Ombudsman or the person designated
31 by the State Ombudsman to disclose the files and records, and
32 the procedures shall prohibit the disclosure of the identity of
33 any complainant, resident, witness, or employee of a long term
34 care provider unless:

35 (1) the complainant, resident, witness, or employee of
36 a long term care provider or his or her legal

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

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

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

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

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

23 (Source: P.A. 93-241, eff. 7-22-03.)

24 Section 10. The Health Care Worker Background Check Act is
25 amended by changing Section 15 as follows:

26 (225 ILCS 46/15)

27 Sec. 15. Definitions. For the purposes of this Act, the
28 following definitions apply:

29 "Applicant" means an individual seeking employment with a
30 health care employer who has received a bona fide conditional
31 offer of employment.

32 "Conditional offer of employment" means a bona fide offer
33 of employment by a health care employer to an applicant, which
34 is contingent upon the receipt of a report from the Department

1 of State Police indicating that the applicant does not have a
2 record of conviction of any of the criminal offenses enumerated
3 in Section 25.

4 "Direct care" means the provision of nursing care or
5 assistance with feeding, dressing, movement, bathing,
6 toileting, or other personal needs. The entity responsible for
7 inspecting and licensing, certifying, or registering the
8 health care employer may, by administrative rule, prescribe
9 guidelines for interpreting this definition with regard to the
10 health care employers that it licenses.

11 "Health care employer" means:

12 (1) the owner or licensee of any of the following:

13 (i) a community living facility, as defined in the
14 Community Living Facilities Act;

15 (ii) a life care facility, as defined in the Life Care
16 Facilities Act;

17 (iii) a long-term care facility, as defined in the
18 Nursing Home Care Act;

19 (iv) a home health agency, as defined in the Home
20 Health Agency Licensing Act;

21 (v) a full hospice, as defined in the Hospice Program
22 Licensing Act;

23 (vi) a hospital, as defined in the Hospital Licensing
24 Act;

25 (vii) a community residential alternative, as defined
26 in the Community Residential Alternatives Licensing Act;

27 (viii) a nurse agency, as defined in the Nurse Agency
28 Licensing Act;

29 (ix) a respite care provider, as defined in the Respite
30 Program Act;

31 (ix-a) an establishment licensed under the Assisted
32 Living and Shared Housing Act;

33 (x) a supportive living program, as defined in the
34 Illinois Public Aid Code;

35 (xi) early childhood intervention programs as
36 described in 59 Ill. Adm. Code 121;

1 (xii) the University of Illinois Hospital, Chicago;

2 (xiii) programs funded by the Department on Aging
3 through the Community Care Program;

4 (xiv) programs certified to participate in the
5 Supportive Living Program authorized pursuant to Section
6 5-5.01a of the Illinois Public Aid Code;

7 (xv) programs listed by the Emergency Medical Services
8 (EMS) Systems Act as Freestanding Emergency Centers;

9 (xvi) locations licensed under the Alternative Health
10 Care Delivery Act;

11 (2) a day training program certified by the Department of
12 Human Services; ~~or~~

13 (3) a community integrated living arrangement operated by a
14 community mental health and developmental service agency, as
15 defined in the Community-Integrated Living Arrangements
16 Licensing and Certification Act; or

17 (4) a trained-volunteer program operated by a regional long
18 term care ombudsman program under Section 4.04 of the Illinois
19 Act on the Aging.

20 "Initiate" means the obtaining of the authorization for a
21 record check from a student, applicant, or employee. The
22 educational entity or health care employer or its designee
23 shall transmit all necessary information and fees to the
24 Illinois State Police within 10 working days after receipt of
25 the authorization.

26 (Source: P.A. 91-598, eff. 1-1-00; 91-656, eff. 1-1-01; 92-16,
27 eff. 6-28-01.)

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.