

1 AN ACT in relation to health facilities.

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

4 Section 1. Short title. This Act may be cited as the
5 Assisted Living and Shared Housing Ombudsman Act.

6 Section 5. Findings. The General Assembly finds that the
7 establishment of an assisted living and shared housing
8 ombudsman program is consistent with the Assisted Living and
9 Shared Housing Act as articulated in Section 5 of that Act.
10 Assisted living and shared housing establishments are
11 distinctively different from traditional nursing homes, both
12 in structure and philosophy. Concepts of privacy,
13 independence, autonomy, negotiated risk, and the right of the
14 residents to direct the scope of services they receive,
15 including the right to refuse services, are unique to
16 assisted living and shared housing establishments.

17 Section 10. Definitions. In this Act:

18 "Access" means to do any of the following:

- 19 (1) Enter an establishment.
- 20 (2) Communicate privately and without restriction
21 with any resident at the request of the resident or after
22 seeking and receiving the consent of the resident.
- 23 (3) Seek consent to communicate privately and
24 without restriction with any resident.
- 25 (4) Inspect the records of a resident with the
26 express consent of the resident, the resident's
27 representative, or the resident's legal representative or
28 legal guardian.
- 29 (5) Observe all common areas of the establishment.
- 30 (6) Enter any private residence contained in the

1 establishment after the consent of the resident has been
2 sought and received.

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

6 "Department" means the Department on Aging.

7 "Establishment" means an assisted living or shared
8 housing establishment.

9 "Negotiated risk" has the same meaning given the term in
10 Section 10 of the Assisted Living and Shared Housing Act.

11 "Ombudsman" means an individual employed or contracted
12 with to fulfill the requirements of this Act.

13 "Resident" means a person residing in an establishment.

14 "Resident's representative" has the same meaning given
15 the term in the Assisted Living and Shared Housing Act.

16 Section 15. Duties of the Department.

17 (a) The Department shall establish an Assisted Living
18 and Shared Housing Ombudsman program. The Department shall
19 adopt rules to establish the structure of the program; the
20 qualifications, duties, and training of the ombudsman; and
21 methods for complaint resolution.

22 (b) The Department shall cooperate with, seek the advice
23 of, and collaborate with the Assisted Living and Shared
24 Housing Quality of Life Advisory Committee as required by
25 Section 130 of the Assisted Living and Shared Housing Act.

26 Section 20. Ombudsman's functions.

27 (a) The ombudsman shall evaluate complaints received by
28 and on behalf of residents and, as appropriate, respond as
29 follows:

30 (1) Resolve complaints made by or on behalf of a
31 resident relating to an action, failure to act, or
32 decision of an establishment.

1 (2) Assist a resident in understanding his or her
2 living situation and in making informed decisions.

3 (3) Report to the Department of Public Health any
4 violations of the Assisted Living and Shared Housing Act
5 or any abuse, neglect, or financial exploitation observed
6 by the ombudsman or reported to the ombudsman.

7 (4) Take other actions as permitted by rules
8 adopted by the Department.

9 (d) An ombudsman must respect the desires of a resident
10 as expressed by the resident or described by the resident's
11 representative, including those outlined in a resident's
12 negotiated risk agreement. All action taken by an ombudsman
13 must be in the best interest of the resident.

14 (e) An ombudsman may not violate any right granted a
15 resident under this Act or the Assisted Living and Shared
16 Housing Ombudsman Act.

17 (f) Nothing in this Act grants an ombudsman access that
18 violates any right granted to a resident under the Assisted
19 Living and Shared Housing Act.

20 Section 25. Establishment requirements.

21 (a) An establishment must permit access to the
22 establishment.

23 (b) An establishment must permit access to the residents
24 for the purpose of seeking consent. At the request of a
25 resident or with the consent of a resident, an establishment
26 must permit access to the resident and the resident's
27 records.

28 (c) Every establishment must display the address and
29 phone number of the ombudsman program in a manner that is
30 accessible to the residents and the residents' families.

31 (d) An establishment may not violate any right granted a
32 resident under this Act.

1 Section 30. Immunity. An ombudsman is immune from any
2 liability (civil, criminal, or otherwise) in any proceeding
3 (civil, criminal, or otherwise) brought as a consequence of
4 the good faith performance of his or her duty executed within
5 the guidelines set forth in this Act.

6 Section 35. Business offenses.

7 (a) A person or entity may not do any of the following:

8 (1) Intentionally prevent an ombudsman from
9 performing his or her duties under this Act, or interfere
10 with or attempt to impede an ombudsman in any way in the
11 performance of those duties.

12 (2) Intentionally retaliate, discriminate against,
13 or effect reprisals against an assisted living or shared
14 housing resident or employee for contacting or providing
15 information to an ombudsman.

16 (b) A violation of this Section is a petty offense,
17 punishable by a fine not to exceed \$501.

18 (c) The Director of Aging shall notify the State's
19 Attorney of the county in which the assisted living or shared
20 housing establishment is located, or the Attorney General, of
21 any violations of this Section.

22 Section 40. Confidentiality of records and identities.
23 No files or records maintained by an ombudsman may be
24 disclosed unless the ombudsman having the authority over the
25 disposition of the files authorizes the disclosure in
26 writing. An ombudsman may not disclose the identity of any
27 complainant, resident, witness, or employee of an
28 establishment involved in a complaint or report unless the
29 person or the person's guardian or legal representative
30 consents in writing to the disclosure, or unless the
31 disclosure is required by court order.

1 Section 45. Legal representation. The Attorney General
2 shall provide legal representation to an ombudsman against
3 whom a legal action is brought in connection with the
4 performance of the ombudsman's official duties, in accordance
5 with the State Employee Indemnification Act.

6 Section 50. Treatment by prayer and spiritual means.
7 Nothing in this Act shall be construed to authorize or
8 require the medical supervision, regulation, or control of
9 remedial care or treatment of any resident in an assisted
10 living or shared housing establishment operated exclusively
11 by and for members or adherents of any church or religious
12 denomination the tenets and practices of which include
13 reliance solely upon spiritual means through prayer for
14 healing.

15 Section 90. The Illinois Act on the Aging is amended by
16 changing Section 4.04 as follows:

17 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

18 Sec. 4.04. Long Term Care Ombudsman Program.

19 (a) Long Term Care Ombudsman Program. The Department
20 shall establish a Long Term Care Ombudsman Program, through
21 the Office of State Long Term Care Ombudsman ("the Office"),
22 in accordance with the provisions of the Older Americans Act
23 of 1965, as now or hereafter amended.

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

26 (1) "Access" has the same meaning as in Section
27 1-104 of the Nursing Home Care Act, as now or hereafter
28 amended; that is, it means the right to:

29 (i) Enter any long term care facility or
30 assisted-living-or-shared-housing-establishment;

31 (ii) Communicate privately and without

1 restriction with any resident who consents to the
2 communication;

3 (iii) Seek consent to communicate privately
4 and without restriction with any resident;

5 (iv) Inspect the clinical and other records of
6 a resident with the express written consent of the
7 resident;

8 (v) Observe all areas of the long term care
9 facility ~~or assisted-living-or-shared-housing~~
10 establishment except the living area of any resident
11 who protests the observation.

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

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

25 (3) "Ombudsman" means any person employed by the
26 Department to fulfill the requirements of the Office, or
27 any representative of a sub-State long term care
28 ombudsman program; provided that the representative,
29 whether he is paid for or volunteers his ombudsman
30 services, shall be qualified and authorized by the
31 Department to perform the duties of an ombudsman as
32 specified by the Department in rules.

33 (c) Ombudsman; rules. The Office of State Long Term Care
34 Ombudsman shall be composed of at least one full-time

1 ombudsman within the Department and shall include a system of
2 designated sub-State long term care ombudsman programs. Each
3 sub-State program shall be designated by the Department as a
4 subdivision of the Office and any representative of a
5 sub-State program shall be treated as a representative of the
6 Office.

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

29 (d) Access and visitation rights.

30 (1) In accordance with subparagraphs (A) and (E) of
31 paragraph (3) of subsection (c) of Section 1819 and
32 subparagraphs (A) and (E) of paragraph (3) of subsection
33 (c) of Section 1919 of the Social Security Act, as now or
34 hereafter amended (42 U.S.C. 1395i-3 (c)(3)(A) and (E)

1 and 42 U.S.C. 1396r (c)(3)(A) and (E)), and Section 712
2 of the Older Americans Act of 1965, as now or hereafter
3 amended (42 U.S.C. 3058f), a long term care facility,
4 ~~assisted---living---establishment,---and---shared---housing~~
5 ~~establishment~~ must:

6 (i) permit immediate access to any resident by
7 an ombudsman; and

8 (ii) permit representatives of the Office,
9 with the permission of the resident's legal
10 representative or legal guardian, to examine a
11 resident's clinical and other records, and if a
12 resident is unable to consent to such review, and
13 has no legal guardian, permit representatives of the
14 Office appropriate access, as defined by the
15 Department in administrative rules, to the
16 resident's records.

17 (2) Each long term care facility,~~---assisted---living~~
18 ~~establishment,---and---shared---housing---establishment~~ shall
19 display, in multiple, conspicuous public places within
20 the facility accessible to both visitors and patients and
21 in an easily readable format, the address and phone
22 number of the Office, in a manner prescribed by the
23 Office.

24 (e) Immunity. An ombudsman or any other representative
25 of the Office participating in the good faith performance of
26 his or her official duties shall have immunity from any
27 liability (civil, criminal or otherwise) in any proceedings
28 (civil, criminal or otherwise) brought as a consequence of
29 the performance of his official duties.

30 (f) Business offenses.

31 (1) No person shall:

32 (i) Intentionally prevent, interfere with, or
33 attempt to impede in any way any representative of
34 the Office in the performance of his official duties

1 under this Act and the Older Americans Act of 1965;
2 or

3 (ii) Intentionally retaliate, discriminate
4 against, or effect reprisals against any long term
5 care facility resident or employee for contacting or
6 providing information to any representative of the
7 Office.

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

10 (3) The Director of Aging shall notify the State's
11 Attorney of the county in which the long term care
12 facility is located, or the Attorney General, of any
13 violations of this Section.

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

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

31 (i) Treatment by prayer and spiritual means. Nothing in
32 this Act shall be construed to authorize or require the
33 medical supervision, regulation or control of remedial care
34 or treatment of any resident in a long term care facility

1 operated exclusively by and for members or adherents of any
2 church or religious denomination the tenets and practices of
3 which include reliance solely upon spiritual means through
4 prayer for healing.

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

7 Section 95. The Assisted Living and Shared Housing Act
8 is amended by changing Sections 125 and 130 as follows:

9 (210 ILCS 9/125)

10 Sec. 125. Assisted Living and Shared Housing Advisory
11 Board.

12 (a) The Governor shall appoint the Assisted Living and
13 Shared Housing Advisory Board which shall be responsible for
14 advising the Director in all aspects of the administration of
15 the Act.

16 (b) The Board shall be comprised of the following
17 persons:

18 (1) the Director who shall serve as chair, ex
19 officio and nonvoting;

20 (2) the Director of Aging who shall serve as
21 vice-chair, ex officio and nonvoting;

22 (3) one representative each of the Departments of
23 Public Health, Public Aid, and Human Services, the
24 Department on Aging, the Office of the State Fire
25 Marshal, and the Illinois Housing Development Authority,
26 all nonvoting members;

27 (4) an ~~the~~--State ombudsman serving under the
28 Assisted Living and Shared Housing Ombudsman Act, or his
29 or her designee;

30 (5) one representative of the Association of Area
31 Agencies on Aging;

32 (6) four members selected from the recommendations

1 by provider organizations whose membership consist of
2 nursing care or assisted living establishments;

3 (7) one member selected from the recommendations of
4 provider organizations whose membership consists of home
5 health agencies;

6 (8) two residents of assisted living or shared
7 housing establishments;

8 (9) three members selected from the
9 recommendations of consumer organizations which engage
10 solely in advocacy or legal representation on behalf of
11 the senior population;

12 (10) one member who shall be a physician;

13 (11) one member who shall be a registered
14 professional nurse selected from the recommendations of
15 professional nursing associations; and

16 (12) two citizen members with expertise in the area
17 of gerontology research or legal research regarding
18 implementation of assisted living statutes.

19 (c) Members of the Board created by this Act shall be
20 appointed to serve for terms of 3 years. All members shall be
21 appointed by January 1, 2001. One third of the Board
22 members' initial terms shall expire in one year; one third in
23 2 years, and one third in 3 years. A member's term does not
24 expire until a successor is appointed by the Governor. Any
25 member appointed to fill a vacancy occurring prior to the
26 expiration of the term for which his or her predecessor was
27 appointed shall be appointed for the remainder of that term.
28 The Board shall meet at the call of the Director. The
29 affirmative vote of 9 members of the Board shall be
30 necessary for Board action. Members of this Board shall
31 receive no compensation for their services, however,
32 resident members shall be reimbursed for their actual
33 expenses.

34 (d) The Board shall be provided copies of all

1 administrative rules and changes to administrative rules for
 2 review and comment prior to notice being given to the public.
 3 If the Board, having been asked for its review, fails to
 4 advise the Department within 90 days, the rules shall be
 5 considered acted upon.

6 (Source: P.A. 91-656, eff. 1-1-01.)

7 (210 ILCS 9/130)

8 Sec. 130. Assisted Living and Shared Housing Quality of
 9 Life Advisory Committee.

10 (a) For the purpose of this Section only, "Department"
 11 means the Department on Aging and "Director" means the
 12 Director of Aging.

13 (b) There shall be established within the Department on
 14 Aging the Assisted Living and Shared Housing Quality of Life
 15 Advisory Committee. The committee shall give advice to the
 16 Department on activities of an the assisted-living ombudsman
 17 serving under the Assisted Living and Shared Housing
 18 Ombudsman Act and all other matters deemed relevant by the
 19 Director and to the Director of Public Health on the delivery
 20 of personal care services, the unique needs and concerns of
 21 seniors residing in housing projects, and all other issues
 22 affecting the quality of life of residents. At least 3
 23 members of the committee must serve on the Assisted Living
 24 and Shared Housing Advisory Board. The committee shall be
 25 comprised of 19 members appointed by the Governor and
 26 composed of the following persons or their designees: an
 27 ombudsman serving under the Assisted Living and Shared
 28 Housing Ombudsman Act the-State-Ombudsman; the Director of
 29 the Division of Long Term Care; the Director of the Division
 30 of Older American Services; one member representing the
 31 Department of Public Health; one member representing the Area
 32 Agencies on Aging; one member representing agencies providing
 33 case coordination services; 3 members each representing

1 different provider organizations whose membership consists of
2 residential facilities serving seniors; 2 members
3 representing providers of community care services; ~~one member~~
4 ~~representing--the--Community---Based---Residential---Facility~~
5 ~~projects~~; one member representing the Department of Public
6 Aid's Supportive Living Facilities; two residents of assisted
7 living or shared housing establishments; 2 members
8 representing consumer groups that engage solely in advocacy
9 or legal representation on behalf of the senior population;
10 and 2 citizen members with expertise in either gerontology
11 research or legal research regarding the implementation of
12 assisted living statutes.

13 The Director or his or her designee shall serve as the ex
14 officio and nonvoting chair. The Director of Public Health
15 or his or her designee shall serve as the ex officio and
16 nonvoting vice-chair. A quorum shall consist of 10 voting
17 members and all decisions shall be made by simple majority.
18 Members of the committee shall serve for 3 years or until a
19 replacement has been named. Initial appointments shall have
20 staggered terms to permit no more than one-third of the
21 committee to be reappointed each year. Members of the
22 committee shall not receive compensation for their services
23 or expenses, except resident members, who shall be reimbursed
24 for actual expenses. The committee shall review and comment
25 on proposed rules to be promulgated pursuant to this Act by
26 the Director or the Director of Public Health. The Director
27 of Public Health shall provide copies of rules pursuant to
28 subsection (h) of Section 110. The Director shall provide
29 the committee copies of all administrative rules and changes
30 to administrative rules for review and comment prior to
31 notice being given to the public. If the committee, having
32 been asked for its review, fails to respond within 90 days,
33 the rules shall be considered acted upon.

34 (c) The Department shall conduct a study or contract for

1 the conducting of a study to review the effects of this Act
2 on the availability of housing for seniors. The study shall
3 evaluate whether (i) sufficient housing exists to meet the
4 needs of Illinois seniors for housing, (ii) the services
5 available under this Act meet the needs of Illinois seniors,
6 (iii) the private sector marketplace is an adequate supplier
7 of housing with services for seniors, and (iv) any other
8 consideration the Department and the Department of Public
9 Health deem relevant. The Department of Public Health
10 Assisted Living and Shared Housing Advisory Board shall serve
11 in an advisory capacity to the Department and the Committee
12 in the development of this report.

13 (d) The study mandated by subsection (c) shall be
14 completed and its findings and recommendations reported to
15 the General Assembly no later than January 1, 2003.

16 (Source: P.A. 91-656, eff. 1-1-01.)

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