**Section 955.310 Department Findings of Abuse, Neglect, or Misappropriation of Property**

a) Definitions. As used in thisSection:

1) *"Abuse" means any physical or mental injury or sexual assault inflicted on a* client, patient, or *resident, other than by accidental means, in a* health care *facility*. (Section 1-103 of the Nursing Home Care Act and Section 27(a) of the Act)

2) *"Neglect" means a* health care *facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a* client, patient, or *resident.* (Section 1-117 of the Nursing Home Care Act and Section 27(a) of the Act)

3) *"Misappropriate property of a resident" means the deliberate misplacement, exploitation, or wrongful temporary or permanent use of a* client's, patient's, or *resident's belongings or money without the* client's, patient's, or *resident's consent*. (Section 1-116.5 of the Nursing Home Care Act and Section 27(a) of the Act)

b) *If the Department finds that an employee or former employee has abused or neglected a resident or misappropriated property of a resident,* or any other applicable finding*, then the Department shall notify the employee or individual of this finding by certified mail sent to the address contained in the Health Care Worker Registry*. (Section 27(a) of the Act) Notices and citations sent by certified mail that have been returned to the Department as unclaimed or refused by the addressee shall be considered served. The notice of the finding issued by the Department may assert any of the following:

1) *The employee, or former employee, has abused a resident.*

2) *The employee, or former employee, has neglected a resident.*

3) *The employee, or former employee, has misappropriated resident property.*

4) *The employee, or former employee, has been convicted of*:

A) *A felony;*

B) *A misdemeanor, an essential element of which is dishonesty; or*

C) *Any crime that is directly related to the duties of an employee, a* certified *nursing assistant, habilitation aide, or child care aide.* (Section 28(a) of the Act)

c) The *notice shall include a clear and concise statement of the grounds denoting abuse, neglect, theft, or other applicable finding*. (Section 28(a) of the Act) Additionally, the notice shall:

1) *Give the employee or individual an opportunity to contest the finding in a hearing before the Department or to submit a written response to the findings in lieu of requesting a hearing*;(Section 27(a) of the Act) and

2) Comply with 77 Ill. Adm. Code 100, Subpart B.

d) The employee shall have 30 days after the date of receipt of the notice to request a hearing. The employee shall submit a written request for a hearing to the Department at the address identified in the notice. A failure to request a hearing by the employee within this timeframe shall constitute a waiver of the right to a hearing.

e) *The Department* has *the authority to hold hearings* on contested findings of abuse, neglect, misappropriation of property, or any other applicable finding.

1) Hearings *shall* *be conducted by the Director, or by an individual designated by the Director as hearing officer to conduct the hearing.* (Section 27(b) of the Act)

2) *The procedure governing hearings* conducted under this Section *shall be in accordance with* 77 Ill. Adm. Code 100, Subpart B. In the event of a conflict between 77 Ill. Adm. Code 100, Subpart B and this Part, this Part shall prevail. (Section 27(c) of the Act)

3) *A full and complete record shall be kept of all proceedings, including the notice of hearing, and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director or the Director's designee.* (Section 27(c) of the Act)

4) *The Department may issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records, or memoranda.*

A) *All subpoenas and subpoenas duces tecum issued under the Act* and this subsection (e)(4) *may be served by mail or by any person of legal age.*

B) *The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the courts of this State. The fees will be paid when the witness is excused from further attendance.*

C) *When the witness is subpoenaed at the instance of the Department, the fees will be paid in the same manner as other expenses of the Department.*

D) *When the witness is subpoenaed at the instance of any other party to any such proceeding, the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned.*

E) *A subpoena or subpoena duces tecum issued pursuant to this* subsection (e)(4) *shall be served in the same manner as a subpoena issued by a circuit court.* (Section 27(d) of the Act)

5) *All testimony will be reported but need not be transcribed unless the decision is sought to be reviewed under* Article III of the Code of Civil Procedure*. A copy or copies of the transcript and record of the proceedings may be obtained by any interested party subsequent to payment to the Department of the cost of preparing the copy or copies*. (Section 27(c) of the Act)

6) *On the basis of a hearing, or upon default of the employee, the Director will make a determination specifying his or her findings and conclusions. A copy of the determination will be sent by certified mail, return receipt requested, or served personally upon the employee to the address last provided by the employee to the Department.* (Section 27(b) of the Act)

7) *All final administrative decisions of the Department under the Act* and this Part *are subject to judicial review under* Article III of the Code of Civil Procedure *and* 77 Ill. Adm. Code 100.17*. For purposes of this subsection* (e)(7)*, "administrative decision" has the meaning provided in Section 3-101 of the Code of Civil Procedure.* (Section 27(c) of the Act)

f) *If, after a hearing, or if the employee or former employee does not* timely *request a hearing, the Department finds that the employee or former employee abused a resident, neglected a resident, or misappropriated resident property or makes any other applicable finding as set forth* in this Section*, the finding shall be* denotedon *the Health Care Worker Registry. If the employee chooses to make a statement, a clear and accurate summary* shall also be denoted on the Registry.(Section 27(e) of the Act)

(Source: Added at 43 Ill. Reg. 3665, effective March 1, 2019)