

1 AN ACT regarding abused and neglected residents of long  
2 term care facilities.

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

5 Section 5. The Abused and Neglected Long Term Care  
6 Facility Residents Reporting Act is amended by changing  
7 Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8 as follows:

8 (210 ILCS 30/6.2) (from Ch. 111 1/2, par. 4166.2)

9 (Section scheduled to be repealed on January 1, 2002)

10 Sec. 6.2. Inspector General.

11 (a) The Governor shall appoint, and the Senate shall  
12 confirm, an Inspector General who shall function within the  
13 Department of Human Services and report to the Secretary of  
14 Human Services and the Governor. The Inspector General shall  
15 investigate reports of suspected abuse or neglect (as those  
16 terms are defined in Section 3 of this Act) of patients or  
17 residents in any mental health or developmental disabilities  
18 facility operated by the Department of Human Services and  
19 shall have authority to investigate and take immediate action  
20 on reports of abuse or neglect of recipients, whether  
21 patients or residents, in any mental health or developmental  
22 disabilities facility or program that is licensed or  
23 certified by the Department of Human Services (as successor  
24 to the Department of Mental Health and Developmental  
25 Disabilities) or that is funded by the Department of Human  
26 Services (as successor to the Department of Mental Health and  
27 Developmental Disabilities) and is not licensed or certified  
28 by any agency of the State. At the specific, written request  
29 of an agency of the State other than the Department of Human  
30 Services (as successor to the Department of Mental Health and  
31 Developmental Disabilities), the Inspector General may

1 cooperate in investigating reports of abuse and neglect of  
2 persons with mental illness or persons with developmental  
3 disabilities. The Inspector General shall have no  
4 supervision over or involvement in routine, programmatic,  
5 licensure, or certification operations of the Department of  
6 Human Services or any of its funded agencies.

7 The Inspector General shall promulgate rules establishing  
8 minimum requirements for reporting allegations of abuse and  
9 neglect and initiating, conducting, and completing  
10 investigations. The promulgated rules shall clearly set  
11 forth that in instances where 2 or more State agencies could  
12 investigate an allegation of abuse or neglect, the Inspector  
13 General shall not conduct an investigation that is redundant  
14 to an investigation conducted by another State agency. The  
15 rules shall establish criteria for determining, based upon  
16 the nature of the allegation, the appropriate method of  
17 investigation, which may include, but need not be limited to,  
18 site visits, telephone contacts, or requests for written  
19 responses from agencies. The rules shall also clarify how  
20 the Office of the Inspector General shall interact with the  
21 licensing unit of the Department of Human Services in  
22 investigations of allegations of abuse or neglect. Any  
23 allegations or investigations of reports made pursuant to  
24 this Act shall remain confidential until a final report is  
25 completed. The resident or patient who allegedly was abused  
26 or neglected and his or her legal guardian shall be informed  
27 by the facility or agency of the report of alleged abuse or  
28 neglect. Final reports regarding unsubstantiated or unfounded  
29 allegations shall remain confidential, except that final  
30 reports may be disclosed pursuant to Section 6 of this Act.

31 The Inspector General shall be appointed for a term of 4  
32 years.

33 (b) The Inspector General shall within 24 hours after  
34 receiving a report of suspected abuse or neglect determine

1 whether the evidence indicates that any possible criminal act  
2 has been committed. If he determines that a possible criminal  
3 act has been committed, or that special expertise is required  
4 in the investigation, he shall immediately notify the  
5 Department of State Police. The Department of State Police  
6 shall investigate any report indicating a possible murder,  
7 rape, or other felony. All investigations conducted by the  
8 Inspector General shall be conducted in a manner designed to  
9 ensure the preservation of evidence for possible use in a  
10 criminal prosecution.

11 (b-5) The Inspector General shall make a determination  
12 to accept or reject a preliminary report of the investigation  
13 of alleged abuse or neglect based on established  
14 investigative procedures. The facility or agency may request  
15 clarification or reconsideration based on additional  
16 information. For cases where the allegation of abuse or  
17 neglect is substantiated, the Inspector General shall require  
18 the facility or agency to submit a written response. The  
19 written response from a facility or agency shall address in a  
20 concise and reasoned manner the actions that the agency or  
21 facility will take or has taken to protect the resident or  
22 patient from abuse or neglect, prevent reoccurrences, and  
23 eliminate problems identified and shall include  
24 implementation and completion dates for all such action.

25 (c) The Inspector General shall, within 10 calendar days  
26 after the transmittal date of a completed investigation where  
27 abuse or neglect is substantiated or administrative action is  
28 recommended, provide a complete report on the case to the  
29 Secretary of Human Services and to the agency in which the  
30 abuse or neglect is alleged to have happened. The complete  
31 report shall include a written response from the agency or  
32 facility operated by the State to the Inspector General that  
33 addresses in a concise and reasoned manner the actions that  
34 the agency or facility will take or has taken to protect the

1 resident or patient from abuse or neglect, prevent  
2 reoccurrences, and eliminate problems identified and shall  
3 include implementation and completion dates for all such  
4 action. The Secretary of Human Services shall accept or  
5 reject the response and establish how the Department will  
6 determine whether the facility or program followed the  
7 approved response. The Secretary may require Department  
8 personnel to visit the facility or agency for training,  
9 technical assistance, programmatic, licensure, or  
10 certification purposes. Administrative action, including  
11 sanctions, may be applied should the Secretary reject the  
12 response or should the facility or agency fail to follow the  
13 approved response. The facility or agency shall inform the  
14 resident or patient and the legal guardian whether the  
15 reported allegation was substantiated, unsubstantiated, or  
16 unfounded. There shall be an appeals process for any person  
17 or agency that is subject to any action based on a  
18 recommendation or recommendations.

19 (d) The Inspector General may recommend to the  
20 Departments of Public Health and Human Services sanctions to  
21 be imposed against mental health and developmental  
22 disabilities facilities under the jurisdiction of the  
23 Department of Human Services for the protection of residents,  
24 including appointment of on-site monitors or receivers,  
25 transfer or relocation of residents, and closure of units.  
26 The Inspector General may seek the assistance of the Attorney  
27 General or any of the several State's attorneys in imposing  
28 such sanctions.

29 (e) The Inspector General shall establish and conduct  
30 periodic training programs for Department employees  
31 concerning the prevention and reporting of neglect and abuse.

32 (f) The Inspector General shall at all times be granted  
33 access to any mental health or developmental disabilities  
34 facility operated by the Department, shall establish and

1     conduct unannounced site visits to those facilities at least  
 2     once annually, and shall be granted access, for the purpose  
 3     of investigating a report of abuse or neglect, to any  
 4     facility or program funded by the Department that is subject  
 5     under the provisions of this Section to investigation by the  
 6     Inspector General for a report of abuse or neglect.

7           (g) Nothing in this Section shall limit investigations  
 8     by the Department of Human Services that may otherwise be  
 9     required by law or that may be necessary in that Department's  
 10    capacity as the central administrative authority responsible  
 11    for the operation of State mental health and developmental  
 12    disability facilities.

13           (h) (Blank) ~~This Section is repealed on January 17, 2002.~~  
 14    (Source: P.A. 90-252, eff. 7-29-97; 90-512, eff. 8-22-97;  
 15    90-655, eff. 7-30-98; 91-169, eff. 7-16-99.)

16           (210 ILCS 30/6.3) (from Ch. 111 1/2, par. 4166.3)

17           (Section scheduled to be repealed on January 1, 2002)

18           Sec. 6.3. Quality Care Board. There is created, within  
 19    the Department of Human Services' Office of the Inspector  
 20    General, a Quality Care Board to be composed of 7 members  
 21    appointed by the Governor with the advice and consent of the  
 22    Senate. One of the members shall be designated as chairman  
 23    by the Governor. Of the initial appointments made by the  
 24    Governor, 4 Board members shall each be appointed for a term  
 25    of 4 years and 3 members shall each be appointed for a term  
 26    of 2 years. Upon the expiration of each member's term, a  
 27    successor shall be appointed for a term of 4 years. In the  
 28    case of a vacancy in the office of any member, the Governor  
 29    shall appoint a successor for the remainder of the unexpired  
 30    term.

31           Members appointed by the Governor shall be qualified by  
 32    professional knowledge or experience in the area of law,  
 33    investigatory techniques, or in the area of care of the

1 mentally ill or developmentally disabled. Two members  
 2 appointed by the Governor shall be persons with a disability  
 3 or a parent of a person with a disability. Members shall  
 4 serve without compensation, but shall be reimbursed for  
 5 expenses incurred in connection with the performance of their  
 6 duties as members.

7 The Board shall meet quarterly, and may hold other  
 8 meetings on the call of the chairman. Four members shall  
 9 constitute a quorum. The Board may adopt rules and  
 10 regulations it deems necessary to govern its own procedures.

11 ~~This Section is repealed on January 17, 2002.~~

12 (Source: P.A. 91-169, eff. 7-16-99.)

13 (210 ILCS 30/6.4) (from Ch. 111 1/2, par. 4166.4)

14 (Section scheduled to be repealed on January 1, 2002)

15 Sec. 6.4. Scope and function of the Quality Care Board.  
 16 The Board shall monitor and oversee the operations, policies,  
 17 and procedures of the Inspector General to assure the prompt  
 18 and thorough investigation of allegations of neglect and  
 19 abuse. In fulfilling these responsibilities, the Board may  
 20 do the following:

21 (1) Provide independent, expert consultation to the  
 22 Inspector General on policies and protocols for  
 23 investigations of alleged neglect and abuse.

24 (2) Review existing regulations relating to the  
 25 operation of facilities under the control of the  
 26 Department.

27 (3) Advise the Inspector General as to the content  
 28 of training activities authorized under Section 6.2.

29 (4) Recommend policies concerning methods for  
 30 improving the intergovernmental relationships between the  
 31 office of the Inspector General and other State or  
 32 federal agencies.

33 ~~This Section is repealed on January 17, 2002.~~

1 (Source: P.A. 91-169, eff. 7-16-99.)

2 (210 ILCS 30/6.5) (from Ch. 111 1/2, par. 4166.5)

3 (Section scheduled to be repealed on January 1, 2002)

4 Sec. 6.5. Investigators. Within 60 days after the  
5 effective date of this amendatory Act of 1992, the Inspector  
6 General shall establish a comprehensive program to ensure  
7 that every person employed or newly hired to conduct  
8 investigations shall receive training on an on-going basis  
9 concerning investigative techniques, communication skills,  
10 and the appropriate means of contact with persons admitted or  
11 committed to the mental health or developmental disabilities  
12 facilities under the jurisdiction of the Department of Human  
13 Services.

14 ~~This Section is repealed on January 1, 2002.~~

15 (Source: P.A. 91-169, eff. 7-16-99.)

16 (210 ILCS 30/6.6) (from Ch. 111 1/2, par. 4166.6)

17 (Section scheduled to be repealed on January 1, 2002)

18 Sec. 6.6. Subpoenas; testimony; penalty. The Inspector  
19 General shall have the power to subpoena witnesses and compel  
20 the production of books and papers pertinent to an  
21 investigation authorized by this Act, provided that the power  
22 to subpoena or to compel the production of books and papers  
23 shall not extend to the person or documents of a labor  
24 organization or its representatives insofar as the person or  
25 documents of a labor organization relate to the function of  
26 representing an employee subject to investigation under this  
27 Act. Mental health records of patients shall be confidential  
28 as provided under the Mental Health and Developmental  
29 Disabilities Confidentiality Act. Any person who fails to  
30 appear in response to a subpoena or to answer any question or  
31 produce any books or papers pertinent to an investigation  
32 under this Act, except as otherwise provided in this Section,

1 or who knowingly gives false testimony in relation to an  
2 investigation under this Act is guilty of a Class A  
3 misdemeanor.

4 ~~This Section is repealed on January 17, 2002.~~

5 (Source: P.A. 91-169, eff. 7-16-99.)

6 (210 ILCS 30/6.7) (from Ch. 111 1/2, par. 4166.7)

7 (Section scheduled to be repealed on January 1, 2002)

8 Sec. 6.7. Annual report. The Inspector General shall  
9 provide to the General Assembly and the Governor, no later  
10 than January 1 of each year, a summary of reports and  
11 investigations made under this Act for the prior fiscal year  
12 with respect to residents of institutions under the  
13 jurisdiction of the Department. The report shall detail the  
14 imposition of sanctions and the final disposition of those  
15 recommendations. The summaries shall not contain any  
16 confidential or identifying information concerning the  
17 subjects of the reports and investigations. The report shall  
18 also include a trend analysis of the number of reported  
19 allegations and their disposition, for each facility and  
20 Department-wide, for the most recent 3-year time period and a  
21 statement, for each facility, of the staffing-to-patient  
22 ratios. The ratios shall include only the number of direct  
23 care staff. The report shall also include detailed  
24 recommended administrative actions and matters for  
25 consideration by the General Assembly.

26 ~~This Section is repealed on January 17, 2002.~~

27 (Source: P.A. 91-169, eff. 7-16-99.)

28 (210 ILCS 30/6.8) (from Ch. 111 1/2, par. 4166.8)

29 (Section scheduled to be repealed on January 1, 2002)

30 Sec. 6.8. Program audit. The Auditor General shall  
31 conduct a biennial program audit of the office of the  
32 Inspector General in relation to the Inspector General's



1 compliance with this Act. The audit shall specifically  
 2 include the Inspector General's effectiveness in  
 3 investigating reports of alleged neglect or abuse of  
 4 residents in any facility operated by the Department and in  
 5 making recommendations for sanctions to the Departments of  
 6 Human Services and Public Health. The Auditor General shall  
 7 conduct the program audit according to the provisions of the  
 8 Illinois State Auditing Act and shall report its findings to  
 9 the General Assembly no later than January 1 of each  
 10 odd-numbered year.

11 ~~This Section is repealed on January 17, 2002.~~

12 (Source: P.A. 91-169, eff. 7-16-99.).

13 Section 10. The Mental Health and Developmental  
 14 Disabilities Confidentiality Act is amended by changing  
 15 Section 10 as follows:

16 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

17 Sec. 10. (a) Except as provided herein, in any civil,  
 18 criminal, administrative, or legislative proceeding, or in  
 19 any proceeding preliminary thereto, a recipient, and a  
 20 therapist on behalf and in the interest of a recipient, has  
 21 the privilege to refuse to disclose and to prevent the  
 22 disclosure of the recipient's record or communications.

23 (1) Records and communications may be disclosed in  
 24 a civil, criminal or administrative proceeding in which  
 25 the recipient introduces his mental condition or any  
 26 aspect of his services received for such condition as an  
 27 element of his claim or defense, if and only to the  
 28 extent the court in which the proceedings have been  
 29 brought, or, in the case of an administrative proceeding,  
 30 the court to which an appeal or other action for review  
 31 of an administrative determination may be taken, finds,  
 32 after in camera examination of testimony or other

1 evidence, that it is relevant, probative, not unduly  
2 prejudicial or inflammatory, and otherwise clearly  
3 admissible; that other satisfactory evidence is  
4 demonstrably unsatisfactory as evidence of the facts  
5 sought to be established by such evidence; and that  
6 disclosure is more important to the interests of  
7 substantial justice than protection from injury to the  
8 therapist-recipient relationship or to the recipient or  
9 other whom disclosure is likely to harm. Except in a  
10 criminal proceeding in which the recipient, who is  
11 accused in that proceeding, raises the defense of  
12 insanity, no record or communication between a therapist  
13 and a recipient shall be deemed relevant for purposes of  
14 this subsection, except the fact of treatment, the cost  
15 of services and the ultimate diagnosis unless the party  
16 seeking disclosure of the communication clearly  
17 establishes in the trial court a compelling need for its  
18 production. However, for purposes of this Act, in any  
19 action brought or defended under the Illinois Marriage  
20 and Dissolution of Marriage Act, or in any action in  
21 which pain and suffering is an element of the claim,  
22 mental condition shall not be deemed to be introduced  
23 merely by making such claim and shall be deemed to be  
24 introduced only if the recipient or a witness on his  
25 behalf first testifies concerning the record or  
26 communication.

27 (2) Records or communications may be disclosed in a  
28 civil proceeding after the recipient's death when the  
29 recipient's physical or mental condition has been  
30 introduced as an element of a claim or defense by any  
31 party claiming or defending through or as a beneficiary  
32 of the recipient, provided the court finds, after in  
33 camera examination of the evidence, that it is relevant,  
34 probative, and otherwise clearly admissible; that other

1           satisfactory evidence is not available regarding the  
2           facts sought to be established by such evidence; and that  
3           disclosure is more important to the interests of  
4           substantial justice than protection from any injury which  
5           disclosure is likely to cause.

6           (3) In the event of a claim made or an action filed  
7           by a recipient, or, following the recipient's death, by  
8           any party claiming as a beneficiary of the recipient for  
9           injury caused in the course of providing services to such  
10          recipient, the therapist and other persons whose actions  
11          are alleged to have been the cause of injury may disclose  
12          pertinent records and communications to an attorney or  
13          attorneys engaged to render advice about and to provide  
14          representation in connection with such matter and to  
15          persons working under the supervision of such attorney or  
16          attorneys, and may testify as to such records or  
17          communication in any administrative, judicial or  
18          discovery proceeding for the purpose of preparing and  
19          presenting a defense against such claim or action.

20          (4) Records and communications made to or by a  
21          therapist in the course of examination ordered by a court  
22          for good cause shown may, if otherwise relevant and  
23          admissible, be disclosed in a civil, criminal, or  
24          administrative proceeding in which the recipient is a  
25          party or in appropriate pretrial proceedings, provided  
26          such court has found that the recipient has been as  
27          adequately and as effectively as possible informed before  
28          submitting to such examination that such records and  
29          communications would not be considered confidential or  
30          privileged. Such records and communications shall be  
31          admissible only as to issues involving the recipient's  
32          physical or mental condition and only to the extent that  
33          these are germane to such proceedings.

34          (5) Records and communications may be disclosed in

1 a proceeding under the Probate Act of 1975, to determine  
2 a recipient's competency or need for guardianship,  
3 provided that the disclosure is made only with respect to  
4 that issue.

5 (6) Records and communications may be disclosed  
6 when such are made during treatment which the recipient  
7 is ordered to undergo to render him fit to stand trial on  
8 a criminal charge, provided that the disclosure is made  
9 only with respect to the issue of fitness to stand trial.

10 (7) Records and communications of the recipient may  
11 be disclosed in any civil or administrative proceeding  
12 involving the validity of or benefits under a life,  
13 accident, health or disability insurance policy or  
14 certificate, or Health Care Service Plan Contract,  
15 insuring the recipient, but only if and to the extent  
16 that the recipient's mental condition, or treatment or  
17 services in connection therewith, is a material element  
18 of any claim or defense of any party, provided that  
19 information sought or disclosed shall not be redisclosed  
20 except in connection with the proceeding in which  
21 disclosure is made.

22 (8) Records or communications may be disclosed when  
23 such are relevant to a matter in issue in any action  
24 brought under this Act and proceedings preliminary  
25 thereto, provided that any information so disclosed shall  
26 not be utilized for any other purpose nor be redisclosed  
27 except in connection with such action or preliminary  
28 proceedings.

29 (9) Records and communications of the recipient may  
30 be disclosed in investigations of and trials for homicide  
31 when the disclosure relates directly to the fact or  
32 immediate circumstances of the homicide.

33 (10) Records and communications of a deceased  
34 recipient may be disclosed to a coroner conducting a

1 preliminary investigation into the recipient's death  
2 under Section 3-3013 of the Counties Code. However,  
3 records and communications of the deceased recipient  
4 disclosed in an investigation shall be limited solely to  
5 the deceased recipient's records and communications  
6 relating to the factual circumstances of the incident  
7 being investigated in a mental health facility.

8 (11) Records and communications of a recipient  
9 shall be disclosed in a proceeding where a petition or  
10 motion is filed under the Juvenile Court Act of 1987 and  
11 the recipient is named as a parent, guardian, or legal  
12 custodian of a minor who is the subject of a petition for  
13 wardship as described in Section 2-3 of that Act or a  
14 minor who is the subject of a petition for wardship as  
15 described in Section 2-4 of that Act alleging the minor  
16 is abused, neglected, or dependent or the recipient is  
17 named as a parent of a child who is the subject of a  
18 petition, supplemental petition, or motion to appoint a  
19 guardian with the power to consent to adoption under  
20 Section 2-29 of the Juvenile Court Act of 1987.

21 (b) Before a disclosure is made under subsection (a),  
22 any party to the proceeding or any other interested person  
23 may request an in camera review of the record or  
24 communications to be disclosed. The court or agency  
25 conducting the proceeding may hold an in camera review on its  
26 own motion. When, contrary to the express wish of the  
27 recipient, the therapist asserts a privilege on behalf and in  
28 the interest of a recipient, the court may require that the  
29 therapist, in an in camera hearing, establish that disclosure  
30 is not in the best interest of the recipient. The court or  
31 agency may prevent disclosure or limit disclosure to the  
32 extent that other admissible evidence is sufficient to  
33 establish the facts in issue. The court or agency may enter  
34 such orders as may be necessary in order to protect the

1 confidentiality, privacy, and safety of the recipient or of  
2 other persons. Any order to disclose or to not disclose  
3 shall be considered a final order for purposes of appeal and  
4 shall be subject to interlocutory appeal.

5 (c) A recipient's records and communications may be  
6 disclosed to a duly authorized committee, commission or  
7 subcommittee of the General Assembly which possesses subpoena  
8 and hearing powers, upon a written request approved by a  
9 majority vote of the committee, commission or subcommittee  
10 members. The committee, commission or subcommittee may  
11 request records only for the purposes of investigating or  
12 studying possible violations of recipient rights. The  
13 request shall state the purpose for which disclosure is  
14 sought.

15 The facility shall notify the recipient, or his guardian,  
16 and therapist in writing of any disclosure request under this  
17 subsection within 5 business days after such request. Such  
18 notification shall also inform the recipient, or guardian,  
19 and therapist of their right to object to the disclosure  
20 within 10 business days after receipt of the notification and  
21 shall include the name, address and telephone number of the  
22 committee, commission or subcommittee member or staff person  
23 with whom an objection shall be filed. If no objection has  
24 been filed within 15 business days after the request for  
25 disclosure, the facility shall disclose the records and  
26 communications to the committee, commission or subcommittee.  
27 If an objection has been filed within 15 business days after  
28 the request for disclosure, the facility shall disclose the  
29 records and communications only after the committee,  
30 commission or subcommittee has permitted the recipient,  
31 guardian or therapist to present his objection in person  
32 before it and has renewed its request for disclosure by a  
33 majority vote of its members.

34 Disclosure under this subsection shall not occur until

1 all personally identifiable data of the recipient and  
2 provider are removed from the records and communications.  
3 Disclosure under this subsection shall not occur in any  
4 public proceeding.

5 (d) No party to any proceeding described under  
6 paragraphs (1), (2), (3), (4), (7), or (8) of subsection (a)  
7 of this Section, nor his or her attorney, shall serve a  
8 subpoena seeking to obtain access to records or  
9 communications under this Act unless the subpoena is  
10 accompanied by a written order issued by a judge, authorizing  
11 the disclosure of the records or the issuance of the  
12 subpoena. No person shall comply with a subpoena for records  
13 or communications under this Act, unless the subpoena is  
14 accompanied by a written order authorizing the issuance of  
15 the subpoena or the disclosure of the records.

16 (e) When a person has been transported by a peace  
17 officer to a mental health facility, then upon the request of  
18 a peace officer, if the person is allowed to leave the mental  
19 health facility within 48 hours of arrival, excluding  
20 Saturdays, Sundays, and holidays, the facility director shall  
21 notify the local law enforcement authority prior to the  
22 release of the person. The local law enforcement authority  
23 may re-disclose the information as necessary to alert the  
24 appropriate enforcement or prosecuting authority.

25 (f) A recipient's records and communications shall be  
26 disclosed to the Inspector General of the Department of Human  
27 Services within 10 business days of a request by the  
28 Inspector General in the course of an investigation  
29 authorized by the Abused and Neglected Long Term Care  
30 Facility Residents Reporting Act and applicable rule. The  
31 request shall be in writing and signed by the Inspector  
32 General or his or her designee. The request shall state the  
33 purpose for which disclosure is sought. Any person who  
34 knowingly and willfully refuses to comply with such a request

1 is guilty of a Class A misdemeanor.

2 (Source: P.A. 90-608, eff. 6-30-98; 91-726, eff. 6-2-00.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.