

AN ACT concerning regulation.

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

Section 5. The Mental Health and Developmental Disabilities Administrative Act is amended by changing Section 7.3 as follows:

(20 ILCS 1705/7.3)

Sec. 7.3. Nurse aide registry; finding of abuse or neglect. The Department shall require that no facility, service agency, or support agency providing mental health or developmental disability services that is licensed, certified, operated, or funded by the Department shall employ a person, in any capacity, who is identified by the nurse aide registry as having been subject of a substantiated finding of abuse or neglect of a service recipient. Any owner or operator of a community agency who is identified by the nurse aide registry as having been the subject of a substantiated finding of abuse or neglect of a service recipient is prohibited from any involvement in any capacity with the provision of Department funded mental health or developmental disability services. The Department shall establish and maintain the rules that are necessary or appropriate to effectuate the intent of this Section. The provisions of this Section shall not apply to any facility, service agency, or support agency licensed or certified by a State agency other than the Department, unless operated by the Department of Human Services.

(Source: P.A. 92-473, eff. 1-1-02.)

Section 10. The Abused and Neglected Long Term Care Facility Residents Reporting Act is amended by changing Section 6.2 as follows:

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

Sec. 6.2. Inspector General.

(a) The Governor shall appoint, and the Senate shall confirm, an Inspector General. The Inspector General shall be appointed for a term of 4 years and shall function within the Department of Human Services and report to the Secretary of Human Services and the Governor. The Inspector General shall function independently within the Department of Human Services with respect to the operations of the office, including the performance of investigations and issuance of findings and recommendations. The appropriation for the Office of Inspector General shall be separate from the overall appropriation for the Department of Human Services. The Inspector General shall investigate reports of suspected abuse or neglect (as those terms are defined in Section 3 of this Act) of patients or residents in any mental health or developmental disabilities facility operated by the Department of Human Services and shall have authority to investigate and take immediate action on reports of abuse or neglect of recipients, whether patients or residents, in any mental health or developmental disabilities facility or program that is licensed or certified by the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) or that is funded by the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) and is not licensed or certified by any agency of the State. At the specific, written request of an agency of the State other than the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), the Inspector General may cooperate in investigating reports of abuse and neglect of persons with mental illness or persons with developmental disabilities. The Inspector General shall have no supervision over or involvement in routine, programmatic, licensure, or certification operations of the Department of Human Services or any of its funded agencies.

The Inspector General shall promulgate rules establishing

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

When the Office of the Inspector General has substantiated a case of abuse or neglect, the Inspector General shall include in the final report any mitigating or aggravating circumstances that were identified during the investigation. Upon determination that a report of neglect is substantiated, the Inspector General shall then determine whether such neglect rises to the level of egregious neglect.

(b) The Inspector General shall, within 24 hours after determining that a reported allegation of suspected abuse or neglect indicates that any possible criminal act has been committed or that special expertise is required in the investigation, immediately notify the Department of State Police or the appropriate law enforcement entity. The

Department of State Police shall investigate any report from a State-operated facility indicating a possible murder, rape, or other felony. All investigations conducted by the Inspector General shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

(b-5) The Inspector General shall make a determination to accept or reject a preliminary report of the investigation of alleged abuse or neglect based on established investigative procedures. Notice of the Inspector General's determination must be given to the person who claims to be the victim of the abuse or neglect, to the person or persons alleged to have been responsible for abuse or neglect, and to the facility or agency. The facility or agency or the person or persons alleged to have been responsible for the abuse or neglect and the person who claims to be the victim of the abuse or neglect may request clarification or reconsideration based on additional information. For cases where the allegation of abuse or neglect is substantiated, the Inspector General shall require the facility or agency to submit a written response. The written response from a facility or agency shall address in a concise and reasoned manner the actions that the agency or facility will take or has taken to protect the resident or patient from abuse or neglect, prevent reoccurrences, and eliminate problems identified and shall include implementation and completion dates for all such action.

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

resident or patient from abuse or neglect, prevent reoccurrences, and eliminate problems identified and shall include implementation and completion dates for all such action. The Secretary of Human Services shall accept or reject the response and establish how the Department will determine whether the facility or program followed the approved response. The Secretary may require Department personnel to visit the facility or agency for training, technical assistance, programmatic, licensure, or certification purposes. Administrative action, including sanctions, may be applied should the Secretary reject the response or should the facility or agency fail to follow the approved response. Within 30 days after the Secretary has approved a response, the facility or agency making the response shall provide an implementation report to the Inspector General on the status of the corrective action implemented. Within 60 days after the Secretary has approved the response, the facility or agency shall send notice of the completion of the corrective action or shall send an updated implementation report. The facility or agency shall continue sending updated implementation reports every 60 days until the facility or agency sends a notice of the completion of the corrective action. The Inspector General shall review any implementation plan that takes more than 120 days. The Inspector General shall monitor compliance through a random review of completed corrective actions. This monitoring may include, but need not be limited to, site visits, telephone contacts, or requests for written documentation from the facility or agency to determine whether the facility or agency is in compliance with the approved response. The facility or agency shall inform the resident or patient and the legal guardian whether the reported allegation was substantiated, unsubstantiated, or unfounded. There shall be an appeals process for any person or agency that is subject to any action based on a recommendation or recommendations.

(d) The Inspector General may recommend to the Departments of Public Health and Human Services sanctions to be imposed

against mental health and developmental disabilities facilities under the jurisdiction of the Department of Human Services for the protection of residents, including appointment of on-site monitors or receivers, transfer or relocation of residents, and closure of units. The Inspector General may seek the assistance of the Attorney General or any of the several State's attorneys in imposing such sanctions. Whenever the Inspector General issues any recommendations to the Secretary of Human Services, the Secretary shall provide a written response.

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

(f) The Inspector General shall at all times be granted access to any mental health or developmental disabilities facility operated by the Department of Human Services, shall establish and conduct unannounced site visits to those facilities at least once annually, and shall be granted access, for the purpose of investigating a report of abuse or neglect, to the records of the Department of Human Services and to any facility or program funded by the Department of Human Services that is subject under the provisions of this Section to investigation by the Inspector General for a report of abuse or neglect.

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

(g-5) After notice and an opportunity for a hearing that is separate and distinct from the Office of the Inspector General's appeals process as implemented under subsection (c) of this Section, the Inspector General shall report to the Department of Public Health's nurse aide registry under Section

3-206.01 of the Nursing Home Care Act the identity of individuals against whom there has been a substantiated finding of physical or sexual abuse or egregious neglect of a service recipient.

Nothing in this subsection shall diminish or impair the rights of a person who is a member of a collective bargaining unit pursuant to the Illinois Public Labor Relations Act or pursuant to any federal labor statute. An individual who is a member of a collective bargaining unit as described above shall not be reported to the Department of Public Health's nurse aide registry until the exhaustion of that individual's grievance and arbitration rights, or until 3 months after the initiation of the grievance process, whichever occurs first, provided that the Department of Human Services' hearing under this subsection regarding the reporting of an individual to the Department of Public Health's nurse aide registry ~~subsection (c), that is separate and distinct from the Office of the Inspector General's appeals process,~~ has concluded. Notwithstanding anything hereinafter or previously provided, if an action taken by an employer against an individual as a result of the circumstances that led to a finding of physical or sexual abuse or egregious neglect is later overturned under a grievance or arbitration procedure provided for in Section 8 of the Illinois Public Labor Relations Act or under a collective bargaining agreement, the report must be removed from the registry.

The Department of Human Services shall promulgate or amend rules as necessary or appropriate to establish procedures for reporting to the registry, including the definition of egregious neglect, procedures for notice to the individual and victim, appeal and hearing procedures, and petition for removal of the report from the registry. The portion of the rules pertaining to hearings shall provide that, at the hearing, both parties may present written and oral evidence. The Department shall be required to establish by a preponderance of the evidence that the Office of the Inspector General's finding of physical or sexual abuse or egregious neglect warrants

reporting to the Department of Public Health's nurse aide registry under Section 3-206.01 of the Nursing Home Care Act.

Notice to the individual shall include a clear and concise statement of the grounds on which the report to the registry is based and notice of the opportunity for a hearing to contest the report. The Department of Human Services shall provide the notice by certified mail to the last known address of the individual. The notice shall give the individual an opportunity to contest the report in a hearing before the Department of Human Services or to submit a written response to the findings instead of requesting a hearing. If the individual does not request a hearing or if after notice and a hearing the Department of Human Services finds that the report is valid, the finding shall be included as part of the registry, as well as a brief statement from the reported individual if he or she chooses to make a statement. The Department of Public Health shall make available to the public information reported to the registry. In a case of inquiries concerning an individual listed in the registry, any information disclosed concerning a finding of abuse or neglect shall also include disclosure of the individual's brief statement in the registry relating to the reported finding or include a clear and accurate summary of the statement.

At any time after the report of the registry, an individual may petition the Department of Human Services for removal from the registry of the finding against him or her. Upon receipt of such a petition, the Department of Human Services shall conduct an investigation and hearing on the petition. Upon completion of the investigation and hearing, the Department of Human Services shall report the removal of the finding to the registry unless the Department of Human Services determines that removal is not in the public interest.

(Source: P.A. 93-636, eff. 12-31-03; 94-428, eff. 8-2-05.)

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