

AN ACT concerning aging.

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

Section 5. The Illinois Act on Aging is amended by changing Section 4.04 as follows:

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

Sec. 4.04. Long Term Care Ombudsman Program.

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

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

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

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

(ii) Communicate privately and without restriction with any resident, regardless of age, who consents to the communication;

(iii) Seek consent to communicate privately and without restriction with any resident, regardless of age;

(iv) Inspect the clinical and other records of a resident, regardless of age, with the express written consent of the resident;

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

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

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

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

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

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

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

The Department, in consultation with the Office, shall promulgate administrative rules in accordance with the provisions of the Older Americans Act of 1965, as now or hereafter amended, to establish the responsibilities of the Department and the Office of State Long Term Care Ombudsman and the designated regional Ombudsman programs. The administrative

rules shall include the responsibility of the Office and designated regional programs to investigate and resolve complaints made by or on behalf of residents of long term care facilities, supportive living facilities, and assisted living and shared housing establishments, including the option to serve residents under the age of 60, relating to actions, inaction, or decisions of providers, or their representatives, of long term care facilities, of supported living facilities, of assisted living and shared housing establishments, of public agencies, or of social services agencies, which may adversely affect the health, safety, welfare, or rights of such residents. The Office and designated regional programs may represent all residents, but are not required by this Act to represent persons under 60 years of age, except to the extent required by federal law. When necessary and appropriate, representatives of the Office shall refer complaints to the appropriate regulatory State agency. The Department, in consultation with the Office, shall cooperate with the Department of Human Services and other State agencies in providing information and training to designated regional long term care ombudsman programs about the appropriate assessment and treatment (including information about appropriate supportive services, treatment options, and assessment of rehabilitation potential) of the residents they serve, including children, persons with mental illness (other than Alzheimer's disease and related disorders), and persons with

developmental disabilities.

The State Long Term Care Ombudsman and all other ombudsmen, as defined in paragraph (3.1) of subsection (b) must submit to background checks under the Health Care Worker Background Check Act and receive training, as prescribed by the Illinois Department on Aging, before visiting facilities. The training must include information specific to assisted living establishments, supportive living facilities, and shared housing establishments and to the rights of residents guaranteed under the corresponding Acts and administrative rules.

(c-5) Consumer Choice Information Reports. The Office shall:

(1) In collaboration with the Attorney General, create a Consumer Choice Information Report form to be completed by all licensed long term care facilities to aid Illinoisans and their families in making informed choices about long term care. The Office shall create a Consumer Choice Information Report for each type of licensed long term care facility.

(2) Develop a database of Consumer Choice Information Reports completed by licensed long term care facilities that includes information in the following consumer categories:

(A) Medical Care, Services, and Treatment.

(B) Special Services and Amenities.

- (C) Staffing.
- (D) Facility Statistics and Resident Demographics.
- (E) Ownership and Administration.
- (F) Safety and Security.
- (G) Meals and Nutrition.
- (H) Rooms, Furnishings, and Equipment.
- (I) Family, Volunteer, and Visitation Provisions.

(3) Make this information accessible to the public, including on the Internet by means of a hyperlink labeled "Resident's Right to Know" on the Office's World Wide Web home page.

(4) Have the authority, with the Attorney General, to verify that information provided by a facility is accurate.

(5) Request a new report from any licensed facility whenever it deems necessary.

(6) Include in the Office's Consumer Choice Information Report for each type of licensed long term care facility additional information on each licensed long term care facility in the State of Illinois, including information regarding each facility's compliance with the relevant State and federal statutes, rules, and standards; customer satisfaction surveys; and information generated from quality measures developed by the Centers for Medicare and Medicaid Services.

(d) Access and visitation rights.

(1) In accordance with subparagraphs (A) and (E) of

paragraph (3) of subsection (c) of Section 1819 and subparagraphs (A) and (E) of paragraph (3) of subsection (c) of Section 1919 of the Social Security Act, as now or hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the Older Americans Act of 1965, as now or hereafter amended (42 U.S.C. 3058f), a long term care facility, supportive living facility, assisted living establishment, and shared housing establishment must:

(i) permit immediate access to any resident, regardless of age, by a designated ombudsman; and

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

(2) Each long term care facility, supportive living facility, assisted living establishment, and shared housing establishment shall display, in multiple, conspicuous public places within the facility accessible to both visitors and residents and in an easily readable format, the address and phone number of the Office of the

Long Term Care Ombudsman, in a manner prescribed by the Office.

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

(f) Business offenses.

(1) No person shall:

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

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

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

(3) The Director of Aging, in consultation with the Office, shall notify the State's Attorney of the county in which the long term care facility, supportive living facility, or assisted living or shared housing establishment is located, or the Attorney General, of any

violations of this Section.

(g) Confidentiality of records and identities. The Department shall establish procedures for the disclosure by the State Ombudsman or the regional ombudsmen entities of files maintained by the program. The procedures shall provide that the files and records may be disclosed only at the discretion of the State Long Term Care Ombudsman or the person designated by the State Ombudsman to disclose the files and records, and the procedures shall prohibit the disclosure of the identity of any complainant, resident, witness, or employee of a long term care provider unless:

(1) the complainant, resident, witness, or employee of a long term care provider or his or her legal representative consents to the disclosure and the consent is in writing;

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

(3) the disclosure is required by court order.

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

Indemnification Act.

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

(j) The Long Term Care Ombudsman Fund is created as a special fund in the State treasury to receive moneys for the express purposes of this Section. All interest earned on moneys in the fund shall be credited to the fund. Moneys contained in the fund shall be used to support the purposes of this Section. (Source: P.A. 95-620, eff. 9-17-07; 95-823, eff. 1-1-09; 96-328, eff. 8-11-09; 96-758, eff. 8-25-09.)

Section 10. The Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois is amended by changing Section 2310-130 as follows:

(20 ILCS 2310/2310-130) (was 20 ILCS 2310/55.82)

Sec. 2310-130. Medicare or Medicaid certification fee; Health Care Facility and Program Survey Fund. To establish and charge a fee to any facility or program applying to be certified to participate in the Medicare program under Title

XVIII of the federal Social Security Act or in the Medicaid program under Title XIX of the federal Social Security Act to cover the costs associated with the application, inspection, and survey of the facility or program and processing of the application. The Department shall establish the fee by rule, and the fee shall be based only on those application, inspection, and survey and processing costs not reimbursed to the State by the federal government. The fee shall be paid by the facility or program before the application is processed.

The fees received by the Department under this Section shall be deposited into the Health Care Facility and Program Survey Fund, which is hereby created as a special fund in the State treasury. Moneys in the Fund shall be appropriated to the Department and may be used for any costs incurred by the Department, including personnel costs, in the processing of applications for Medicare or Medicaid certification.

Beginning July 1, 2011, the Department shall employ a minimum of one surveyor for every 500 licensed long term care beds. Beginning July 1, 2012, the Department shall employ a minimum of one surveyor for every 400 licensed long term care beds. Beginning July 1, 2013, the Department shall employ a minimum of one surveyor for every 300 licensed long term care beds.

(Source: P.A. 91-239, eff. 1-1-00.)

Section 15. The Criminal Identification Act is amended by

adding Section 7.5 as follows:

(20 ILCS 2630/7.5 new)

Sec. 7.5. Notification of outstanding warrant. If the existence of an outstanding arrest warrant is identified by the Department of State Police in connection with the criminal history background checks conducted pursuant to subsection (b) of Section 2-201.5 of the Nursing Home Care Act or subsection (d) of Section 6.09 of the Hospital Licensing Act, the Department shall notify the jurisdiction issuing the warrant of the following:

(1) Existence of the warrant.

(2) The name, address, and telephone number of the licensed long term care facility in which the wanted person resides.

Local issuing jurisdictions shall be aware that nursing facilities have residents who may be fragile or vulnerable or who may have a mental illness. When serving a warrant, law enforcement shall make every attempt to mitigate the adverse impact on other facility residents.

Section 20. The Illinois Health Facilities Planning Act is amended by changing Section 14.1 as follows:

(20 ILCS 3960/14.1)

(Text of Section before amendment by P.A. 96-339)

(Section scheduled to be repealed on December 31, 2019)

Sec. 14.1. Denial of permit; other sanctions.

(a) The State Board may deny an application for a permit or may revoke or take other action as permitted by this Act with regard to a permit as the State Board deems appropriate, including the imposition of fines as set forth in this Section, for any one or a combination of the following:

(1) The acquisition of major medical equipment without a permit or in violation of the terms of a permit.

(2) The establishment, construction, or modification of a health care facility without a permit or in violation of the terms of a permit.

(3) The violation of any provision of this Act or any rule adopted under this Act.

(4) The failure, by any person subject to this Act, to provide information requested by the State Board or Agency within 30 days after a formal written request for the information.

(5) The failure to pay any fine imposed under this Section within 30 days of its imposition.

(a-5) For facilities licensed under the Nursing Home Care Act, no permit shall be denied on the basis of prior operator history, other than for: (i) actions specified under item (2), (3), (4), ~~or~~ (5), or (6) of Section 3-117 of the Nursing Home Care Act; (ii) actions specified under item (a)(6) of Section 3-119 of the Nursing Home Care Act; or (iii) actions within the

preceding 5 years constituting a substantial and repeated failure to comply with the Nursing Home Care Act or the rules and regulations adopted by the Department under that Act. The State Board shall not deny a permit on account of any action described in item (i), (ii), or (iii) of this subsection without also considering all such actions in the light of all relevant information available to the State Board, including whether the permit is sought to substantially comply with a mandatory or voluntary plan of correction associated with any action described in item (i), (ii), or (iii) of this subsection.

(b) Persons shall be subject to fines as follows:

(1) A permit holder who fails to comply with the requirements of maintaining a valid permit shall be fined an amount not to exceed 1% of the approved permit amount plus an additional 1% of the approved permit amount for each 30-day period, or fraction thereof, that the violation continues.

(2) A permit holder who alters the scope of an approved project or whose project costs exceed the allowable permit amount without first obtaining approval from the State Board shall be fined an amount not to exceed the sum of (i) the lesser of \$25,000 or 2% of the approved permit amount and (ii) in those cases where the approved permit amount is exceeded by more than \$1,000,000, an additional \$20,000 for each \$1,000,000, or fraction thereof, in excess of the

approved permit amount.

(3) A person who acquires major medical equipment or who establishes a category of service without first obtaining a permit or exemption, as the case may be, shall be fined an amount not to exceed \$10,000 for each such acquisition or category of service established plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues.

(4) A person who constructs, modifies, or establishes a health care facility without first obtaining a permit shall be fined an amount not to exceed \$25,000 plus an additional \$25,000 for each 30-day period, or fraction thereof, that the violation continues.

(5) A person who discontinues a health care facility or a category of service without first obtaining a permit shall be fined an amount not to exceed \$10,000 plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. For purposes of this subparagraph (5), facilities licensed under the Nursing Home Care Act, with the exceptions of facilities operated by a county or Illinois Veterans Homes, are exempt from this permit requirement. However, facilities licensed under the Nursing Home Care Act must comply with Section 3-423 of that Act and must provide the Board with 30-days' written notice of its intent to close.

(6) A person subject to this Act who fails to provide

information requested by the State Board or Agency within 30 days of a formal written request shall be fined an amount not to exceed \$1,000 plus an additional \$1,000 for each 30-day period, or fraction thereof, that the information is not received by the State Board or Agency.

(c) Before imposing any fine authorized under this Section, the State Board shall afford the person or permit holder, as the case may be, an appearance before the State Board and an opportunity for a hearing before a hearing officer appointed by the State Board. The hearing shall be conducted in accordance with Section 10.

(d) All fines collected under this Act shall be transmitted to the State Treasurer, who shall deposit them into the Illinois Health Facilities Planning Fund.

(Source: P.A. 95-543, eff. 8-28-07.)

(Text of Section after amendment by P.A. 96-339)

(Section scheduled to be repealed on December 31, 2019)

Sec. 14.1. Denial of permit; other sanctions.

(a) The State Board may deny an application for a permit or may revoke or take other action as permitted by this Act with regard to a permit as the State Board deems appropriate, including the imposition of fines as set forth in this Section, for any one or a combination of the following:

(1) The acquisition of major medical equipment without a permit or in violation of the terms of a permit.

(2) The establishment, construction, or modification of a health care facility without a permit or in violation of the terms of a permit.

(3) The violation of any provision of this Act or any rule adopted under this Act.

(4) The failure, by any person subject to this Act, to provide information requested by the State Board or Agency within 30 days after a formal written request for the information.

(5) The failure to pay any fine imposed under this Section within 30 days of its imposition.

(a-5) For facilities licensed under ~~the Nursing Home Care Act or~~ the MR/DD Community Care Act, no permit shall be denied on the basis of prior operator history, other than for actions specified ~~under item (2), (4), or (5) of Section 3-117 of the Nursing Home Care Act or~~ under item (2), (4), or (5) of Section 3-117 of the MR/DD Community Care Act. For facilities licensed under the Nursing Home Care Act, no permit shall be denied on the basis of prior operator history, other than for: (i) actions specified under item (2), (3), (4), (5), or (6) of Section 3-117 of the Nursing Home Care Act; (ii) actions specified under item (a)(6) of Section 3-119 of the Nursing Home Care Act; or (iii) actions within the preceding 5 years constituting a substantial and repeated failure to comply with the Nursing Home Care Act or the rules and regulations adopted by the Department under that Act. The State Board shall not

deny a permit on account of any action described in this subsection (a-5) without also considering all such actions in the light of all relevant information available to the State Board, including whether the permit is sought to substantially comply with a mandatory or voluntary plan of correction associated with any action described in this subsection (a-5).

(b) Persons shall be subject to fines as follows:

(1) A permit holder who fails to comply with the requirements of maintaining a valid permit shall be fined an amount not to exceed 1% of the approved permit amount plus an additional 1% of the approved permit amount for each 30-day period, or fraction thereof, that the violation continues.

(2) A permit holder who alters the scope of an approved project or whose project costs exceed the allowable permit amount without first obtaining approval from the State Board shall be fined an amount not to exceed the sum of (i) the lesser of \$25,000 or 2% of the approved permit amount and (ii) in those cases where the approved permit amount is exceeded by more than \$1,000,000, an additional \$20,000 for each \$1,000,000, or fraction thereof, in excess of the approved permit amount.

(3) A person who acquires major medical equipment or who establishes a category of service without first obtaining a permit or exemption, as the case may be, shall be fined an amount not to exceed \$10,000 for each such

acquisition or category of service established plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues.

(4) A person who constructs, modifies, or establishes a health care facility without first obtaining a permit shall be fined an amount not to exceed \$25,000 plus an additional \$25,000 for each 30-day period, or fraction thereof, that the violation continues.

(5) A person who discontinues a health care facility or a category of service without first obtaining a permit shall be fined an amount not to exceed \$10,000 plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. For purposes of this subparagraph (5), facilities licensed under the Nursing Home Care Act or the MR/DD Community Care Act, with the exceptions of facilities operated by a county or Illinois Veterans Homes, are exempt from this permit requirement. However, facilities licensed under the Nursing Home Care Act or the MR/DD Community Care Act must comply with Section 3-423 of the Nursing Home Care Act or Section 3-423 of the MR/DD Community Care Act and must provide the Board with 30-days' written notice of its intent to close.

(6) A person subject to this Act who fails to provide information requested by the State Board or Agency within 30 days of a formal written request shall be fined an amount not to exceed \$1,000 plus an additional \$1,000 for

each 30-day period, or fraction thereof, that the information is not received by the State Board or Agency.

(c) Before imposing any fine authorized under this Section, the State Board shall afford the person or permit holder, as the case may be, an appearance before the State Board and an opportunity for a hearing before a hearing officer appointed by the State Board. The hearing shall be conducted in accordance with Section 10.

(d) All fines collected under this Act shall be transmitted to the State Treasurer, who shall deposit them into the Illinois Health Facilities Planning Fund.

(Source: P.A. 95-543, eff. 8-28-07; 96-339, eff. 7-1-10.)

Section 22. The State Finance Act is amended by changing Section 5.589 as follows:

(30 ILCS 105/5.589)

Sec. 5.589. The Equity ~~Innovations~~ in Long-term Care Quality ~~Demonstration Grants~~ Fund.

(Source: P.A. 95-331, eff. 8-21-07.)

Section 23. The Innovations in Long-term Care Quality Grants Act is amended by changing the title of the Act and Sections 1, 5, 10, 15, and 20 as follows:

(30 ILCS 772/Act title)

An Act to create the Equity ~~Innovations~~ in Long-term Care Quality ~~Grants~~ Act.

(30 ILCS 772/1)

Sec. 1. Short title. This Act may be cited as the Equity ~~Innovations~~ in Long-term Care Quality ~~Grants~~ Act.

(Source: P.A. 92-784, eff. 8-6-02.)

(30 ILCS 772/5)

Sec. 5. Grant program. The Director of Public Health shall establish a long-term care grant program that brings ~~demonstrates~~ the best practices and innovation in ~~for~~ long-term care and services to residents of facilities licensed under the Nursing Home Care Act, and facilities that are in receivership, that are in areas the Director has determined are without access to high-quality nursing home care service, delivery, and housing. ~~The grants must fund programs that demonstrate creativity in service provision through the scope of their program or service.~~

(Source: P.A. 92-784, eff. 8-6-02.)

(30 ILCS 772/10)

Sec. 10. Eligibility for grant. Initial grants may be made only to assist residents of facilities licensed under the Nursing Home Care Act that are in areas the Director has determined are without access to high-quality nursing home care

and either:

(1) (A) are in receivership, are under the control of a temporary manager, or are being assisted by an independent consultant; and (B) have a receiver, temporary manager, or independent consultant who (i) has demonstrated experience in initiating or continuing best practices and innovation in nursing home care and services and (ii) has a commitment of long-term cooperation and assistance from facilities licensed under the Nursing Home Care Act that have a history of providing high-quality nursing home care and services that reflect best practices and innovation; or

(2) within the preceding 2 years, were acquired or opened by an owner who has demonstrated experience in initiating or continuing best practices and innovation in nursing home care and services and has a commitment of long-term cooperation and assistance from facilities licensed under the Nursing Home Care Act that have a history of providing high-quality nursing home care and services that reflect best practices and innovation.

The grant must be used to bring, or assist in bringing, high-quality nursing home care to the residents of the facility within a realistic time frame. Grants may be for more than one year.

A grant application submitted by a receiver and initially given to a receiver may subsequently be given to a new owner of the facility, if the owner:

(1) Agrees to comply with the requirements of the original grant and with the plan submitted by the receiver for continuing and increasing adherence to best practices in providing high-quality nursing home care, or submits another realistic plan that would achieve the same end as the receiver's plan.

(2) Has demonstrated experience in initiating or continuing best practices and innovation in nursing home care and services, and has a commitment of long-term cooperation and assistance (to be provided without compensation) from facilities licensed under the Nursing Home Care Act that have a history of providing high-quality nursing home care and services that reflect best practices and innovation. ~~Grants may only be made to facilities licensed under the Nursing Home Care Act. Grants may only be made for projects that show innovations and measurable improvement in resident care, quality of life, use of technology, or customer satisfaction.~~

(Source: P.A. 92-784, eff. 8-6-02.)

(30 ILCS 772/15)

Sec. 15. Equity ~~Innovations~~ in Long-term Care Quality ~~Demonstration Grants~~ Fund.

(a) There is created in the State treasury a special fund to be known as the Equity ~~Innovations~~ in Long-term Care Quality ~~Demonstration Grants~~ Fund. Grants shall be funded using federal

civil monetary penalties collected and deposited into the Long Term Care Monitor/Receiver Fund established under the Nursing Home Care Act. Subject to appropriation, moneys in the Fund shall be used to improve the quality of nursing home care in areas without access to high-quality long-term care ~~for demonstration grants to nursing homes~~. Interest earned on moneys in the Fund shall be deposited into the Fund.

(b) The Department may use no more than 10% of the moneys deposited into the Fund in any year to administer the program established by the Fund and to implement the requirements of the Nursing Home Care Act with respect to distressed facilities.

(Source: P.A. 92-784, eff. 8-6-02.)

(30 ILCS 772/20)

Sec. 20. Award of grants.

(a) Applications for grants must be made in a manner ~~on forms~~ prescribed by the Director of Public Health by rule. Expenditures made in a manner with any grant, and the results therefrom, shall be included (if applicable) in the reports filed by the receiver with the court and shall be reported to the Department in a manner prescribed by rule and by the contract entered into by the grant recipient with the Department. An applicant for a grant shall submit to the Department, and (if applicable) to the court, a specific plan for continuing and increasing adherence to best practices in

providing high-quality nursing home care once the grant has ended.

(b) The applications must be reviewed,~~ranked,~~ and recommended by a commission composed of 5 representatives chosen from recommendations made by organizations representing long-term care facilities in Illinois, a citizen member from AARP, one representative from an ~~a disabled~~ advocacy organization for persons with disabilities, one representative from the statewide ombudsman organization, one representative from academia, one representative from a nursing home residents' advocacy organization, one representative from an organization with expertise in improving the access of persons in medically underserved areas to high-quality medical care, at least 2 experts in accounting or finance, the Director of Public Health, the Director of Aging, and one representative selected by the leader of each legislative caucus. With the exception of legislative members, members shall be appointed by the Director of Public Health. ~~The commission shall perform its duties under this subsection (b) in consultation with the medical school located at the Champaign-Urbana campus of the University of Illinois.~~

~~(c) The commission shall rank applications according to the following criteria:~~

~~(1) improvement in direct care to residents;~~

~~(2) increased efficiency through the use of technology;~~

~~(3) improved quality of care through the use of technology;~~

~~(4) increased access and delivery of service;~~

~~(5) enhancement of nursing staff training;~~

~~(6) effectiveness of the project as a demonstration;~~

and

~~(7) transferability of the project to other sites.~~

(c) ~~(d)~~ The Director shall award grants based on the recommendations of the commission and after a thorough review of the compliance history of the applicants ~~long term care facility~~.

(Source: P.A. 92-784, eff. 8-6-02.)

Section 25. The Nursing Home Care Act is amended by changing Sections 1-114.01, 1-117, 1-122, 1-129, 1-130, 2-104, 2-106.1, 2-201.5, 2-201.6, 2-205, 3-103, 3-113, 3-117, 3-119, 3-206, 3-206.01, 3-206.02, 3-212, 3-303, 3-303.2, 3-304.1, 3-305, 3-306, 3-309, 3-310, 3-318, 3-402, 3-501, and 3-504 and by adding Sections 1-114.005, 1-120.3, 1-120.7, 1-128.5, 1-132, 2-104.3, 2-114, 2-201.7, 3-120, 3-202.05, 3-202.2a, 3-202.2b, 3-304.2, 3-808, 3-809, and 3-810 as follows:

(210 ILCS 45/1-114.005 new)

Sec. 1-114.005. High risk designation. "High risk designation" means a violation of a provision of the Illinois Administrative Code that has been identified by the Department

through rulemaking to be inherently necessary to protect the health, safety, and welfare of a resident.

(210 ILCS 45/1-114.01)

Sec. 1-114.01. Identified offender. "Identified offender" means a person who meets any of the following criteria:

(1) Has been convicted of, found guilty of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any felony offense listed in Section 25 of the Health Care Worker Background Check Act, except for the following: (i) a felony offense described in Section 10-5 of the Nurse Practice Act; (ii) a felony offense described in Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; (iii) a felony offense described in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; (iv) a felony offense described in Section 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act; and (v) a felony offense described in the Methamphetamine Control and Community Protection Act.

(2) Has been convicted of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any sex offense as defined in subsection (c) of Section 10 of the Sex Offender Management Board Act.

(3) Is any other resident as determined by the

~~Department of State Police. who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act, is a registered sex offender, or is serving a term of parole, mandatory supervised release, or probation for a felony offense.~~

(Source: P.A. 94-163, eff. 7-11-05.)

(210 ILCS 45/1-117) (from Ch. 111 1/2, par. 4151-117)

Sec. 1-117. Neglect. "Neglect" means a facility's failure in a facility 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 resident ~~adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition.~~

(Source: P.A. 81-223.)

(210 ILCS 45/1-120.3 new)

Sec. 1-120.3. Provisional admission period. "Provisional admission period" means the time between the admission of an identified offender as defined in Section 1-114.01 and 3 days following the admitting facility's receipt of an Identified Offender Report and Recommendation in accordance with Section 2-201.6.

(210 ILCS 45/1-120.7 new)

Sec. 1-120.7. Psychiatric services rehabilitation aide.
"Psychiatric services rehabilitation aide" means an individual employed by a long-term care facility to provide, for mentally ill residents, at a minimum, crisis intervention, rehabilitation, and assistance with activities of daily living.

(210 ILCS 45/1-122) (from Ch. 111 1/2, par. 4151-122)

Sec. 1-122. Resident. "Resident" means a person ~~residing in and~~ receiving personal or medical care, including but not limited to mental health treatment, psychiatric rehabilitation, physical rehabilitation, and assistance with activities of daily living, ~~care~~ from a facility.

(Source: P.A. 81-223.)

(210 ILCS 45/1-128.5 new)

Sec. 1-128.5. Type "AA" violation. A "Type 'AA' violation" means a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death.

(210 ILCS 45/1-129) (from Ch. 111 1/2, par. 4151-129)

Sec. 1-129. Type "A" violation. A "Type 'A' violation"

means a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that (i) creates ~~presenting~~ a substantial probability that the risk of death or serious mental or physical harm to a resident will result therefrom or (ii) has resulted in actual physical or mental harm to a resident.

(Source: P.A. 81-223.)

(210 ILCS 45/1-130) (from Ch. 111 1/2, par. 4151-130)

Sec. 1-130. Type "B" violation. A "Type 'B' violation" means a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to ~~directly threatening to the health, safety or welfare of~~ a resident.

(Source: P.A. 81-223.)

(210 ILCS 45/1-132 new)

Sec. 1-132. Type "C" violation. A "Type 'C' violation" means a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom.

(210 ILCS 45/2-104) (from Ch. 111 1/2, par. 4152-104)

Sec. 2-104. (a) A resident shall be permitted to retain the services of his own personal physician at his own expense or under an individual or group plan of health insurance, or under any public or private assistance program providing such coverage. However, the facility is not liable for the negligence of any such personal physician. Every resident shall be permitted to obtain from his own physician or the physician attached to the facility complete and current information concerning his medical diagnosis, treatment and prognosis in terms and language the resident can reasonably be expected to understand. Every resident shall be permitted to participate in the planning of his total care and medical treatment to the extent that his condition permits. No resident shall be subjected to experimental research or treatment without first obtaining his informed, written consent. The conduct of any experimental research or treatment shall be authorized and monitored by an institutional review board ~~committee~~ appointed by the Director ~~administrator of the facility where such research and treatment is conducted~~. The membership, operating procedures and review criteria for the institutional review board ~~committees~~ shall be prescribed under rules and regulations of the Department and shall comply with the requirements for institutional review boards established by the federal Food and Drug Administration. No person who has

received compensation in the prior 3 years from an entity that manufactures, distributes, or sells pharmaceuticals, biologics, or medical devices may serve on the institutional review board.

The institutional review board may approve only research or treatment that meets the standards of the federal Food and Drug Administration with respect to (i) the protection of human subjects and (ii) financial disclosure by clinical investigators. The Office of State Long Term Care Ombudsman and the State Protection and Advocacy organization shall be given an opportunity to comment on any request for approval before the board makes a decision. Those entities shall not be provided information that would allow a potential human subject to be individually identified, unless the board asks the Ombudsman for help in securing information from or about the resident. The board shall require frequent reporting of the progress of the approved research or treatment and its impact on residents, including immediate reporting of any adverse impact to the resident, the resident's representative, the Office of the State Long Term Care Ombudsman, and the State Protection and Advocacy organization. The board may not approve any retrospective study of the records of any resident about the safety or efficacy of any care or treatment if the resident was under the care of the proposed researcher or a business associate when the care or treatment was given, unless the study is under the control of a researcher without any business

relationship to any person or entity who could benefit from the findings of the study.

No facility shall permit experimental research or treatment to be conducted on a resident, or give access to any person or person's records for a retrospective study about the safety or efficacy of any care or treatment, without the prior written approval of the institutional review board. No nursing home administrator, or person licensed by the State to provide medical care or treatment to any person, may assist or participate in any experimental research on or treatment of a resident, including a retrospective study, that does not have the prior written approval of the board. Such conduct shall be grounds for professional discipline by the Department of Financial and Professional Regulation.

The institutional review board may exempt from ongoing review research or treatment initiated on a resident before the individual's admission to a facility and for which the board determines there is adequate ongoing oversight by another institutional review board. Nothing in this Section shall prevent a facility, any facility employee, or any other person from assisting or participating in any experimental research on or treatment of a resident, if the research or treatment began before the person's admission to a facility, until the board has reviewed the research or treatment and decided to grant or deny approval or to exempt the research or treatment from ongoing review.

(b) All medical treatment and procedures shall be administered as ordered by a physician. All new physician orders shall be reviewed by the facility's director of nursing or charge nurse designee within 24 hours after such orders have been issued to assure facility compliance with such orders.

According to rules adopted by the Department, every woman resident of child-bearing age shall receive routine obstetrical and gynecological evaluations as well as necessary prenatal care.

(c) Every resident shall be permitted to refuse medical treatment and to know the consequences of such action, unless such refusal would be harmful to the health and safety of others and such harm is documented by a physician in the resident's clinical record. The resident's refusal shall free the facility from the obligation to provide the treatment.

(d) Every resident, resident's guardian, or parent if the resident is a minor shall be permitted to inspect and copy all his clinical and other records concerning his care and maintenance kept by the facility or by his physician. The facility may charge a reasonable fee for duplication of a record.

(Source: P.A. 86-1013.)

(210 ILCS 45/2-104.3 new)

Sec. 2-104.3. Serious mental illness; rescreening.

(a) All persons admitted to a nursing home facility with a

diagnosis of serious mental illness who remain in the facility for a period of 90 days shall be re-screened by the Department of Human Services or its designee at the end of the 90-day period, at 6 months, and annually thereafter to assess their continuing need for nursing facility care and shall be advised of all other available care options.

(b) The Department of Human Services, by rule, shall provide for a prohibition on conflicts of interest for pre-admission screeners. The rule shall provide for waiver of those conflicts by the Department of Human Services if the Department of Human Services determines that a scarcity of qualified pre-admission screeners exists in a given community and that, absent a waiver of conflict, an insufficient number of pre-admission screeners would be available. If a conflict is waived, the pre-admission screener shall disclose the conflict of interest to the screened individual in the manner provided for by rule of the Department of Human Services. For the purposes of this subsection, a "conflict of interest" includes, but is not limited to, the existence of a professional or financial relationship between (i) a PAS-MH corporate or a PAS-MH agent performing the rescreening and (ii) a community provider or long-term care facility.

(210 ILCS 45/2-106.1)

Sec. 2-106.1. Drug treatment.

(a) A resident shall not be given unnecessary drugs. An

unnecessary drug is any drug used in an excessive dose, including in duplicative therapy; for excessive duration; without adequate monitoring; without adequate indications for its use; or in the presence of adverse consequences that indicate the drugs should be reduced or discontinued. The Department shall adopt, by rule, the standards for unnecessary drugs contained in interpretive guidelines issued by the United States Department of Health and Human Services for the purposes of administering Titles XVIII and XIX of the Social Security Act.

(b) Psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian, or other authorized representative. "Psychotropic medication" means medication that is used for or listed as used for antipsychotic, antidepressant, antimanic, or antianxiety behavior modification or behavior management purposes in the latest editions of the AMA Drug Evaluations or the Physician's Desk Reference. The Department shall adopt, by rule, a protocol specifying how informed consent for psychotropic medication may be obtained or refused. The protocol shall require, at a minimum, a discussion between (i) the resident or the resident's authorized representative and (ii) the resident's physician, a registered pharmacist (who is not a dispensing pharmacist for the facility where the resident lives), or a licensed nurse about the possible risks and benefits of a recommended medication and the use of standardized consent

forms designated by the Department. Each form developed by the Department (i) shall be written in plain language, (ii) shall be able to be downloaded from the Department's official website, (iii) shall include information specific to the psychotropic medication for which consent is being sought, and (iv) shall be used for every resident for whom psychotropic drugs are prescribed. In addition to creating those forms, the Department shall approve the use of any other informed consent forms that meet criteria developed by the Department.

In addition to any other penalty prescribed by law, a facility that is found to have violated this subsection, or the federal certification requirement that informed consent be obtained before administering a psychotropic medication, shall thereafter be required to obtain the signatures of 2 licensed health care professionals on every form purporting to give informed consent for the administration of a psychotropic medication, certifying the personal knowledge of each health care professional that the consent was obtained in compliance with the requirements of this subsection.

(c) The requirements of this Section are intended to control in a conflict with the requirements of Sections 2-102 and 2-107.2 of the Mental Health and Developmental Disabilities Code with respect to the administration of psychotropic medication.

(Source: P.A. 95-331, eff. 8-21-07.)

(210 ILCS 45/2-114 new)

Sec. 2-114. Unlawful discrimination. No resident shall be subjected to unlawful discrimination as defined in Section 1-103 of the Illinois Human Rights Act by any owner, licensee, administrator, employee, or agent of a facility. Unlawful discrimination does not include an action by any owner, licensee, administrator, employee, or agent of a facility that is required by this Act or rules adopted under this Act.

(210 ILCS 45/2-201.5)

Sec. 2-201.5. Screening prior to admission.

(a) All persons age 18 or older seeking admission to a nursing facility must be screened to determine the need for nursing facility services prior to being admitted, regardless of income, assets, or funding source. In addition, any person who seeks to become eligible for medical assistance from the Medical Assistance Program under the Illinois Public Aid Code to pay for long term care services while residing in a facility must be screened prior to receiving those benefits. Screening for nursing facility services shall be administered through procedures established by administrative rule. Screening may be done by agencies other than the Department as established by administrative rule. This Section applies on and after July 1, 1996. No later than October 1, 2010, the Department of Healthcare and Family Services, in collaboration with the Department on Aging, the Department of Human Services, and the

Department of Public Health, shall file administrative rules providing for the gathering, during the screening process, of information relevant to determining each person's potential for placing other residents, employees, and visitors at risk of harm.

(a-1) Any screening performed pursuant to subsection (a) of this Section shall include a determination of whether any person is being considered for admission to a nursing facility due to a need for mental health services. For a person who needs mental health services, the screening shall also include an evaluation of whether there is permanent supportive housing, or an array of community mental health services, including but not limited to supported housing, assertive community treatment, and peer support services, that would enable the person to live in the community. The person shall be told about the existence of any such services that would enable the person to live safely and humanely and about available appropriate nursing home services that would enable the person to live safely and humanely, and the person shall be given the assistance necessary to avail himself or herself of any available services.

(a-2) Pre-screening for persons with a serious mental illness shall be performed by a psychiatrist, a psychologist, a registered nurse certified in psychiatric nursing, a licensed clinical professional counselor, or a licensed clinical social worker, who is competent to (i) perform a clinical assessment

of the individual, (ii) certify a diagnosis, (iii) make a determination about the individual's current need for treatment, including substance abuse treatment, and recommend specific treatment, and (iv) determine whether a facility or a community-based program is able to meet the needs of the individual.

For any person entering a nursing facility, the pre-screening agent shall make specific recommendations about what care and services the individual needs to receive, beginning at admission, to attain or maintain the individual's highest level of independent functioning and to live in the most integrated setting appropriate for his or her physical and personal care and developmental and mental health needs. These recommendations shall be revised as appropriate by the pre-screening or re-screening agent based on the results of resident review and in response to changes in the resident's wishes, needs, and interest in transition.

Upon the person entering the nursing facility, the Department of Human Services or its designee shall assist the person in establishing a relationship with a community mental health agency or other appropriate agencies in order to (i) promote the person's transition to independent living and (ii) support the person's progress in meeting individual goals.

(a-3) The Department of Human Services, by rule, shall provide for a prohibition on conflicts of interest for pre-admission screeners. The rule shall provide for waiver of

those conflicts by the Department of Human Services if the Department of Human Services determines that a scarcity of qualified pre-admission screeners exists in a given community and that, absent a waiver of conflicts, an insufficient number of pre-admission screeners would be available. If a conflict is waived, the pre-admission screener shall disclose the conflict of interest to the screened individual in the manner provided for by rule of the Department of Human Services. For the purposes of this subsection, a "conflict of interest" includes, but is not limited to, the existence of a professional or financial relationship between (i) a PAS-MH corporate or a PAS-MH agent and (ii) a community provider or long-term care facility.

(b) In addition to the screening required by subsection (a), a facility, except for those licensed as long term care for under age 22 facilities, shall, within 24 hours after admission, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons age 18 or older seeking admission to the facility, unless a background check was initiated by a hospital pursuant to subsection (d) of Section 6.09 of the Hospital Licensing Act. Background checks conducted pursuant to this Section shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the

fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk which may be established by Departmental rule. A waiver issued pursuant to this Section shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident.

~~A facility, except for those licensed as long term care for under age 22 facilities, shall, within 60 days after the effective date of this amendatory Act of the 94th General Assembly, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who are residents of the facility on the effective date of this amendatory Act of the 94th General Assembly. The facility shall review the results of the criminal history background checks immediately upon receipt thereof. If the results of the background check are inconclusive, the facility shall initiate a fingerprint based check unless the fingerprint based check is waived by the Director of Public Health based on verification by the facility that the resident is completely~~

~~immobile or that the resident meets other criteria related to the resident's health or lack of potential risk which may be established by Departmental rule. A waiver issued pursuant to this Section shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. The facility shall provide for or arrange for any required fingerprint based checks to be taken on the premises of the facility. If a fingerprint based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident.~~

(c) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01, the facility shall do the following:

(1) Immediately notify the Department of State Police, in the form and manner required by the Department of State Police, in collaboration with the Department of Public Health, that the resident is an identified offender.

(2) Within 72 hours, arrange for a fingerprint-based criminal history record inquiry to be requested on the identified offender resident. The inquiry shall be based on the subject's name, sex, race, date of birth, fingerprint images, and other identifiers required by the Department of State Police. The inquiry shall be processed through the files of the Department of State Police and the Federal

Bureau of Investigation to locate any criminal history record information that may exist regarding the subject.

The Federal Bureau of Investigation shall furnish to the Department of State Police, pursuant to an inquiry under this paragraph (2), any criminal history record information contained in its files.

The facility shall comply with all applicable provisions contained in the Uniform Conviction Information Act.

All name-based and fingerprint-based criminal history record inquiries shall be submitted to the Department of State Police electronically in the form and manner prescribed by the Department of State Police. The Department of State Police may charge the facility a fee for processing name-based and fingerprint-based criminal history record inquiries. The fee shall be deposited into the State Police Services Fund. The fee shall not exceed the actual cost of processing the inquiry. ~~the facility shall immediately fax the resident's name and criminal history information to the Illinois Department of Public Health, which shall conduct a Criminal History Analysis pursuant to Section 2-201.6. The Criminal History Analysis shall be conducted independently of the Illinois Department of Public Health's Office of Healthcare Regulation. The Office of Healthcare Regulation shall have no involvement with the process of reviewing or analyzing the criminal history of identified offenders.~~

(d) (Blank). ~~The Illinois Department of Public Health shall~~

~~keep a continuing record of all residents determined to be identified offenders under Section 1-114.01 and shall report the number of identified offender residents annually to the General Assembly.~~

(e) The Department shall develop and maintain a de-identified database of residents who have injured facility staff, facility visitors, or other residents, and the attendant circumstances, solely for the purposes of evaluating and improving resident pre-screening and assessment procedures (including the Criminal History Report prepared under Section 2-201.6) and the adequacy of Department requirements concerning the provision of care and services to residents. A resident shall not be listed in the database until a Department survey confirms the accuracy of the listing. The names of persons listed in the database and information that would allow them to be individually identified shall not be made public. Neither the Department nor any other agency of State government may use information in the database to take any action against any individual, licensee, or other entity, unless the Department or agency receives the information independent of this subsection (e). All information collected, maintained, or developed under the authority of this subsection (e) for the purposes of the database maintained under this subsection (e) shall be treated in the same manner as information that is subject to Part 21 of Article VIII of the Code of Civil Procedure.

(Source: P.A. 94-163, eff. 7-11-05; 94-752, eff. 5-10-06.)

(210 ILCS 45/2-201.6)

Sec. 2-201.6. Criminal History Report Analysis.

(a) The Department of State Police shall prepare ~~immediately commence~~ a Criminal History Report Analysis when it receives information, through the criminal history background check required pursuant to subsection (d) of Section 6.09 of the Hospital Licensing Act or subsection (c) ~~(b)~~ of Section 2-201.5, or through any other means, that a resident of a facility is an identified offender.

(b) The Department of State Police shall complete the Criminal History Report within 10 business ~~The Department shall complete the Criminal History Analysis as soon as practicable, but not later than 14~~ days after receiving information under subsection (a) that a resident is an identified offender ~~receiving notice from the facility under subsection (a)~~.

(c) The Criminal History Report Analysis shall include, but not be limited to, ~~all of~~ the following:

(1) (Blank). ~~Consultation with the identified offender's assigned parole agent or probation officer, if applicable.~~

(2) (Blank). ~~Consultation with the convicting prosecutor's office.~~

(3) (Blank). ~~A review of the statement of facts, police reports, and victim impact statements, if available.~~

(3.5) Copies of the identified offender's parole, mandatory supervised release, or probation orders.

(4) An interview with the identified offender.

(5) (Blank). ~~Consultation with the facility administrator or facility medical director, or both, regarding the physical condition of the identified offender.~~

(6) A detailed summary ~~Consideration~~ of the entire criminal history of the offender, including arrests, convictions, and the date of the identified offender's last conviction relative to the date of admission to a long-term care facility.

(7) If the identified offender is a convicted or registered sex offender, a review of any and all sex offender evaluations conducted on that offender. If there is no sex offender evaluation available, the Department of State Police shall arrange, through the Department of Public Health, ~~provide~~ for a sex offender evaluation to be conducted on the identified offender. If the convicted or registered sex offender is under supervision by the Illinois Department of Corrections or a county probation department, the sex offender evaluation shall be arranged by and at the expense of the supervising agency. All evaluations conducted on convicted or registered sex offenders under this Act shall be conducted by sex offender evaluators approved by the Sex Offender Management Board.

(d) The Department of State Police shall provide the ~~prepare a~~ Criminal History ~~Analysis~~ Report to a licensed forensic psychologist. After (i) consideration of the Criminal History Report, (ii) consultation with the facility administrator or the facility medical director, or both, regarding the mental and physical condition of the identified offender, and (iii) reviewing the facility's file on the identified offender, including all incident reports, all information regarding medication and medication compliance, and all information regarding previous discharges or transfers from other facilities, the licensed forensic psychologist shall prepare an Identified Offender Report and Recommendation. ~~The Identified Offender Report and Recommendation based on the analysis conducted pursuant to subsection (c).~~ The Report shall include a summary of the Risk ~~Analysis and~~ shall detail whether and to what extent the identified offender's criminal history necessitates the implementation of security measures within the long-term care facility. If the identified offender is a convicted or registered sex offender or if the Identified Offender Report and Recommendation ~~Department's Criminal History Analysis~~ reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility.

(e) The licensed forensic psychologist shall complete the Identified Offender Report and Recommendation within 14

business days after receiving the Criminal History Analysis Report and shall promptly provide the Identified Offender Report and Recommendation to the Department of State Police, which shall provide the Identified Offender Report and Recommendation ~~be provided~~ to the following:

(1) The long-term care facility within which the identified offender resides.

(2) The Chief of Police of the municipality in which the facility is located.

(3) The State of Illinois Long Term Care Ombudsman.

(4) The Department of Public Health.

(e-5) The Department of Public Health shall keep a continuing record of all residents determined to be identified offenders as defined in Section 1-114.01 and shall report the number of identified offender residents annually to the General Assembly.

(f) The facility shall incorporate the Identified Offender Report and Recommendation ~~Criminal History Analysis Report~~ into the identified offender's care plan created pursuant to 42 CFR 483.20.

(g) If, based on the Identified Offender Report and Recommendation ~~Criminal History Analysis Report~~, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402.

(h) Except for willful and wanton misconduct, any person authorized to participate in the development of a Criminal History ~~Analysis or Criminal History Analysis~~ Report or Identified Offender Report and Recommendation is immune from criminal or civil liability for any acts or omissions as the result of his or her good faith effort to comply with this Section.

(Source: P.A. 94-752, eff. 5-10-06.)

(210 ILCS 45/2-201.7 new)

Sec. 2-201.7. Expanded criminal history background check pilot program.

(a) The purpose of this Section is to establish a pilot program based in Cook and Will counties in which an expanded criminal history background check screening process will be utilized to better identify residents of licensed long term care facilities who, because of their criminal histories, may pose a risk to other vulnerable residents.

(b) In this Section, "mixed population facility" means a facility that has more than 25 residents with a diagnosis of serious mental illness and residents 65 years of age or older.

(c) Every mixed population facility located in Cook County or Will County shall participate in the pilot program and shall employ expanded criminal history background check screening procedures for all residents admitted to the facility who are at least 18 years of age but less than 65 years of age. Under

the pilot program, criminal history background checks required under this Act shall employ fingerprint-based criminal history record inquiries or comparably comprehensive name-based criminal history background checks. Fingerprint-based criminal history record inquiries shall be conducted pursuant to subsection (c-2) of Section 2-201.5. A Criminal History Report and an Identified Offender Report and Recommendation shall be completed pursuant to Section 2-201.6 if the results of the expanded criminal history background check reveal that a resident is an identified offender as defined in Section 1-114.01.

(d) If an expanded criminal history background check reveals that a resident is an identified offender as defined in Section 1-114.01, the facility shall be notified within 72 hours.

(e) The cost of the expanded criminal history background checks conducted pursuant to the pilot program shall not exceed \$50 per resident and shall be paid by the facility. The Department of State Police shall implement all potential measures to minimize the cost of the expanded criminal history background checks to the participating long term care facilities.

(f) The pilot program shall run for a period of one year after the effective date of this amendatory Act of the 96th General Assembly. Promptly after the end of that one-year period, the Department shall report the results of the pilot

program to the General Assembly.

(210 ILCS 45/2-205) (from Ch. 111 1/2, par. 4152-205)

Sec. 2-205. The following information is subject to disclosure to the public from the Department or the Department of Healthcare and Family Services:

(1) Information submitted under Sections 3-103 and 3-207 except information concerning the remuneration of personnel licensed, registered, or certified by the Department of Professional Regulation and monthly charges for an individual private resident;

(2) Records of license and certification inspections, surveys, and evaluations of facilities, other reports of inspections, surveys, and evaluations of resident care, whether a facility has been designated a distressed facility, and the basis for the designation, and reports concerning a facility prepared pursuant to Titles XVIII and XIX of the Social Security Act, subject to the provisions of the Social Security Act;

(3) Cost and reimbursement reports submitted by a facility under Section 3-208, reports of audits of facilities, and other public records concerning costs incurred by, revenues received by, and reimbursement of facilities; and

(4) Complaints filed against a facility and complaint investigation reports, except that a complaint or

complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a facility under Section 3-702, and, further, except that a complainant or resident's name shall not be disclosed except under Section 3-702.

The Department shall disclose information under this Section in accordance with provisions for inspection and copying of public records required by the Freedom of Information Act.

However, the disclosure of information described in subsection (1) shall not be restricted by any provision of the Freedom of Information Act.

(Source: P.A. 95-331, eff. 8-21-07.)

(210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)

Sec. 3-103. The procedure for obtaining a valid license shall be as follows:

(1) Application to operate a facility shall be made to the Department on forms furnished by the Department.

(2) All license applications shall be accompanied with an application fee. The fee for an annual license shall be \$1,990 ~~\$995~~. Facilities that pay a fee or assessment pursuant to Article V-C of the Illinois Public Aid Code shall be exempt from the license fee imposed under this item (2). The fee for a 2-year license shall be double the

fee for the annual license set forth in the preceding sentence. The fees collected shall be deposited with the State Treasurer into the Long Term Care Monitor/Receiver Fund, which has been created as a special fund in the State treasury. This special fund is to be used by the Department for expenses related to the appointment of monitors and receivers as contained in Sections 3-501 through 3-517 of this Act, for the enforcement of this Act, and for implementation of the Abuse Prevention Review Team Act. The Department may reduce or waive a penalty pursuant to Section 3-308 only if that action will not threaten the ability of the Department to meet the expenses required to be met by the Long Term Care Monitor/Receiver Fund. At the end of each fiscal year, any funds in excess of \$1,000,000 held in the Long Term Care Monitor/Receiver Fund shall be deposited in the State's General Revenue Fund. The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:

- (a) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;

(b) The name and location of the facility for which a license is sought;

(c) The name of the person or persons under whose management or supervision the facility will be conducted;

(d) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and

(e) Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary.

(3) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the "Illinois Health Facilities Planning Act". After the application is approved, the applicant shall advise the Department every 6 months of any changes in the information originally provided in the application.

(4) Other information necessary to determine the

identity and qualifications of an applicant to operate a facility in accordance with this Act shall be included in the application as required by the Department in regulations.

(Source: P.A. 96-758, eff. 8-25-09.)

(210 ILCS 45/3-113) (from Ch. 111 1/2, par. 4153-113)

Sec. 3-113. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a conditional license and plan of correction as provided in Sections 3-311 through 3-317. The license granted to a transferee for a facility that is in receivership shall be subject to any contractual obligations assumed by a grantee under the Equity in Long-term Care Quality Act and to the plan submitted by the receiver for continuing and increasing adherence to best practices in providing high-quality nursing home care, unless the grant is repaid, under conditions to be determined by rule by the Department in its administration of the Equity in Long-term Care Quality Act.

(Source: P.A. 91-357, eff. 7-29-99.)

(210 ILCS 45/3-117) (from Ch. 111 1/2, par. 4153-117)

Sec. 3-117. An application for a license may be denied for any of the following reasons:

(1) Failure to meet any of the minimum standards set forth by this Act or by rules and regulations promulgated by the Department under this Act.

(2) Conviction of the applicant, or if the applicant is a firm, partnership or association, of any of its members, or if a corporation, the conviction of the corporation or any of its officers or stockholders, or of the person designated to manage or supervise the facility, of a felony, or of 2 or more misdemeanors involving moral turpitude, during the previous 5 years as shown by a certified copy of the record of the court of conviction.

(3) Personnel insufficient in number or unqualified by training or experience to properly care for the proposed number and type of residents.

(4) Insufficient financial or other resources to operate and conduct the facility in accordance with standards promulgated by the Department under this Act and with contractual obligations assumed by a recipient of a grant under the Equity in Long-term Care Quality Act and the plan (if applicable) submitted by a grantee for continuing and increasing adherence to best practices in providing high-quality nursing home care.

(5) Revocation of a facility license during the previous 5 years, if such prior license was issued to the

individual applicant, a controlling owner or controlling combination of owners of the applicant; or any affiliate of the individual applicant or controlling owner of the applicant and such individual applicant, controlling owner of the applicant or affiliate of the applicant was a controlling owner of the prior license; provided, however, that the denial of an application for a license pursuant to this subsection must be supported by evidence that such prior revocation renders the applicant unqualified or incapable of meeting or maintaining a facility in accordance with the standards and rules promulgated by the Department under this Act.

(6) That the facility is not under the direct supervision of a full-time administrator, as defined by regulation, who is licensed, if required, under the Nursing Home Administrators Licensing and Disciplinary Act.

(7) That the facility is in receivership and the proposed licensee has not submitted a specific detailed plan to bring the facility into compliance with the requirements of this Act and with federal certification requirements, if the facility is certified, and to keep the facility in such compliance.

(Source: P.A. 95-331, eff. 8-21-07.)

(210 ILCS 45/3-119) (from Ch. 111 1/2, par. 4153-119)

Sec. 3-119. (a) The Department, after notice to the

applicant or licensee, may suspend, revoke or refuse to renew a license in any case in which the Department finds any of the following:

(1) There has been a substantial failure to comply with this Act or the rules and regulations promulgated by the Department under this Act. A substantial failure by a facility shall include, but not be limited to, any of the following:

(A) termination of Medicare or Medicaid certification by the Centers for Medicare and Medicaid Services; or

(B) a failure by the facility to pay any fine assessed under this Act after the Department has sent to the facility at least 2 notices of assessment that include a schedule of payments as determined by the Department, taking into account extenuating circumstances and financial hardships of the facility.

(2) Conviction of the licensee, or of the person designated to manage or supervise the facility, of a felony, or of 2 or more misdemeanors involving moral turpitude, during the previous 5 years as shown by a certified copy of the record of the court of conviction.

(3) Personnel is insufficient in number or unqualified by training or experience to properly care for the number and type of residents served by the facility.

(4) Financial or other resources are insufficient to

conduct and operate the facility in accordance with standards promulgated by the Department under this Act.

(5) The facility is not under the direct supervision of a full-time administrator, as defined by regulation, who is licensed, if required, under the Nursing Home Administrators Licensing and Disciplinary Act.

(6) The facility has committed 2 Type "AA" violations within a 2-year period.

(b) Notice under this Section shall include a clear and concise statement of the violations on which the nonrenewal or revocation is based, the statute or rule violated and notice of the opportunity for a hearing under Section 3-703.

(c) If a facility desires to contest the nonrenewal or revocation of a license, the facility shall, within 10 days after receipt of notice under subsection (b) of this Section, notify the Department in writing of its request for a hearing under Section 3-703. Upon receipt of the request the Department shall send notice to the facility and hold a hearing as provided under Section 3-703.

(d) The effective date of nonrenewal or revocation of a license by the Department shall be any of the following:

(1) Until otherwise ordered by the circuit court, revocation is effective on the date set by the Department in the notice of revocation, or upon final action after hearing under Section 3-703, whichever is later.

(2) Until otherwise ordered by the circuit court,

nonrenewal is effective on the date of expiration of any existing license, or upon final action after hearing under Section 3-703, whichever is later; however, a license shall not be deemed to have expired if the Department fails to timely respond to a timely request for renewal under this Act or for a hearing to contest nonrenewal under paragraph (c).

(3) The Department may extend the effective date of license revocation or expiration in any case in order to permit orderly removal and relocation of residents.

The Department may refuse to issue or may suspend the license of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

(Source: P.A. 95-331, eff. 8-21-07.)

(210 ILCS 45/3-120 new)

Sec. 3-120. Certification of behavioral management units.

(a) No later than January 1, 2011, the Department shall file with the Joint Committee on Administrative Rules, pursuant to the Illinois Administrative Procedure Act, proposed rules or proposed amendments to existing rules to certify distinct self-contained units within existing nursing homes for the

behavioral management of persons with a high risk of aggression. The purpose of the certification program is to ensure that the safety of residents, employees, and the public is preserved.

(b) The Department's rules shall, at a minimum, provide for the following:

(1) A security and safety assessment, completed before admission to a certified unit if an Identified Offender Report and Recommendation or other criminal risk analysis has not been completed, to identify existing or potential residents at risk of committing violent acts and determine appropriate preventive action to be taken. The assessment shall include, but need not be limited to, (i) a measure of the frequency of, (ii) an identification of the precipitating factors for, and (iii) the consequences of, violent acts. The security and safety assessment shall be in addition to any risk-of-harm assessment performed by a PAS screener, but may use the results of this or any other assessment. The security and safety assessment shall be completed by the same licensed forensic psychologist who prepares Identified Offender Reports and Recommendations for identified offenders.

(2) Development of an individualized treatment and behavior management plan for each resident to reduce overall and specific risks.

(3) Room selection and appropriateness of roommate

assignment.

(4) Protection of residents, employees, and members of the public from aggression by residents.

(5) Supervision and monitoring.

(6) Staffing levels.

(7) Quality assurance and improvement.

(8) Staff training, conducted during orientation and periodically thereafter, specific to each job description covering the following topics as appropriate:

(A) The violence escalation cycle.

(B) Violence predicting factors.

(C) Obtaining a history from a resident with a history of violent behavior.

(D) Verbal and physical techniques to de-escalate and minimize violent behavior.

(E) Strategies to avoid physical harm.

(F) Containment techniques, as permitted and governed by law.

(G) Appropriate treatment to reduce violent behavior.

(H) Documenting and reporting incidents of violence.

(I) The process whereby employees affected by a violent act may be debriefed or calmed down and the tension of the situation may be reduced.

(J) Any resources available to employees for

coping with violence.

(K) Any other topic deemed appropriate based on job description and the needs of this population.

(9) Elimination or reduction of environmental factors that affect resident safety.

(10) Periodic independent reassessment of the individual resident for appropriateness of continued placement on the certified unit. For the purposes of this paragraph (10), "independent" means that no professional or financial relationship exists between any person making the assessment and any community provider or long term care facility.

(11) A definition of a "person with high risk of aggression".

The Department shall develop the administrative rules under this subsection (b) in collaboration with other relevant State agencies and in consultation with (i) advocates for residents, (ii) providers of nursing home services, and (iii) labor and employee-representation organizations.

(c) A long term care facility found to be out of compliance with the certification requirements under Section 3-120 may be subject to denial, revocation, or suspension of the behavioral management unit certification or the imposition of sanctions and penalties, including the immediate suspension of new admissions. Hearings shall be conducted pursuant to Part 7 of Article III of this Act.

(d) The Department shall establish a certification fee schedule by rule, in consultation with advocates, nursing homes, and representatives of associations representing long term care facilities.

(210 ILCS 45/3-202.05 new)

Sec. 3-202.05. Staffing ratios effective July 1, 2010 and thereafter.

(a) For the purpose of computing staff to resident ratios, direct care staff shall include:

- (1) registered nurses;
- (2) licensed practical nurses;
- (3) certified nurse assistants;
- (4) psychiatric services rehabilitation aides;
- (5) rehabilitation and therapy aides;
- (6) psychiatric services rehabilitation coordinators;
- (7) assistant directors of nursing;
- (8) 50% of the Director of Nurses' time; and
- (9) 30% of the Social Services Directors' time.

The Department shall, by rule, allow certain facilities subject to 77 Ill. Admin. Code 300.4000 and following (Subpart S) and 300.6000 and following (Subpart T) to utilize specialized clinical staff, as defined in rules, to count towards the staffing ratios.

(b) Beginning July 1, 2011, and thereafter, light intermediate care shall be staffed at the same staffing ratio

as intermediate care.

(c) Facilities shall notify the Department within 60 days after the effective date of this amendatory Act of the 96th General Assembly, in a form and manner prescribed by the Department, of the staffing ratios in effect on the effective date of this amendatory Act of the 96th General Assembly for both intermediate and skilled care and the number of residents receiving each level of care.

(d) (1) Effective July 1, 2010, for each resident needing skilled care, a minimum staffing ratio of 2.5 hours of nursing and personal care each day must be provided; for each resident needing intermediate care, 1.7 hours of nursing and personal care each day must be provided.

(2) Effective January 1, 2011, the minimum staffing ratios shall be increased to 2.7 hours of nursing and personal care each day for a resident needing skilled care and 1.9 hours of nursing and personal care each day for a resident needing intermediate care.

(3) Effective January 1, 2012, the minimum staffing ratios shall be increased to 3.0 hours of nursing and personal care each day for a resident needing skilled care and 2.1 hours of nursing and personal care each day for a resident needing intermediate care.

(4) Effective January 1, 2013, the minimum staffing ratios shall be increased to 3.4 hours of nursing and personal care each day for a resident needing skilled care

and 2.3 hours of nursing and personal care each day for a resident needing intermediate care.

(5) Effective January 1, 2014, the minimum staffing ratios shall be increased to 3.8 hours of nursing and personal care each day for a resident needing skilled care and 2.5 hours of nursing and personal care each day for a resident needing intermediate care.

(210 ILCS 45/3-202.2a new)

Sec. 3-202.2a. Comprehensive resident care plan. A facility, with the participation of the resident and the resident's guardian or representative, as applicable, must develop and implement a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs that are identified in the resident's comprehensive assessment, which allow the resident to attain or maintain the highest practicable level of independent functioning, and provide for discharge planning to the least restrictive setting based on the resident's care needs. The assessment shall be developed with the active participation of the resident and the resident's guardian or representative, as applicable.

(210 ILCS 45/3-202.2b new)

Sec. 3-202.2b. Certification of psychiatric rehabilitation

program.

(a) No later than January 1, 2011, the Department shall file with the Joint Committee on Administrative Rules, pursuant to the Illinois Administrative Procedure Act, proposed rules or proposed amendments to existing rules to establish a special certification program for compliance with 77 Ill. Admin. Code 300.4000 and following (Subpart S), which provides for psychiatric rehabilitation services that are required to be offered by a long term care facility licensed under this Act that serves residents with serious mental illness. Compliance with standards promulgated pursuant to this Section must be demonstrated before a long term care facility licensed under this Act is eligible to become certified under this Section and annually thereafter.

(b) No long term care facility shall establish, operate, maintain, or offer psychiatric rehabilitation services, or admit, retain, or seek referrals of a resident with a serious mental illness diagnosis, unless and until a valid certification, which remains unsuspended, unrevoked, and unexpired, has been issued.

(c) A facility that currently serves a resident with serious mental illness may continue to admit such residents until the Department performs a certification review and determines that the facility does not meet the requirements for certification. The Department, at its discretion, may provide an additional 90-day period for the facility to meet the

requirements for certification if it finds that the facility has made a good faith effort to comply with all certification requirements and will achieve total compliance with the requirements before the end of the 90-day period. The facility shall be prohibited from admitting residents with serious mental illness until the Department certifies the facility to be in compliance with the requirements of this Section.

(d) A facility currently serving residents with serious mental illness that elects to terminate provision of services to this population must immediately notify the Department of its intent, cease to admit new residents with serious mental illness, and give notice to all existing residents with serious mental illness of their impending discharge. These residents shall be accorded all rights and assistance provided to a resident being involuntarily discharged and those provided under Section 2-201.5. The facility shall continue to adhere to all requirements of 77 Ill. Admin. Code 300.4000 until all residents with serious mental illness have been discharged.

(e) A long term care facility found to be out of compliance with the certification requirements under this Section may be subject to denial, revocation, or suspension of the psychiatric rehabilitation services certification or the imposition of sanctions and penalties, including the immediate suspension of new admissions. Hearings shall be conducted pursuant to Article III, Part 7 of this Act.

(f) The Department shall indicate, on its list of licensed

long term care facilities, which facilities are certified under this Section and shall distribute this list to the appropriate State agencies charged with administering and implementing the State's program of pre-admission screening and resident review, hospital discharge planners, Area Agencies on Aging, Case Coordination Units, and others upon request.

(g) No public official, agent, or employee of the State, or any subcontractor of the State, may refer or arrange for the placement of a person with serious mental illness in a long term care facility that is not certified under this Section. No public official, agent, or employee of the State, or any subcontractor of the State, may place the name of a long term care facility on a list of facilities serving the seriously mentally ill for distribution to the general public or to professionals arranging for placements or making referrals unless the facility is certified under this Section.

(h) Certification requirements. The Department shall establish requirements for certification that augment current quality of care standards for long term care facilities serving residents with serious mental illness, which shall include admission, discharge planning, psychiatric rehabilitation services, development of age-group appropriate treatment plan goals and services, behavior management services, coordination with community mental health services, staff qualifications and training, clinical consultation, resident access to the outside community, and appropriate environment and space for

resident programs, recreation, privacy, and any other issue deemed appropriate by the Department. The augmented standards shall at a minimum include, but need not be limited to, the following:

(1) Staff sufficient in number and qualifications necessary to meet the scheduled and unscheduled needs of the residents on a 24-hour basis. The Department shall establish by rule the minimum number of psychiatric services rehabilitation coordinators in relation to the number of residents with serious mental illness residing in the facility.

(2) The number and qualifications of consultants required to be contracted with to provide continuing education and training, and to assist with program development.

(3) Training for all new employees specific to the care needs of residents with a serious mental illness diagnosis during their orientation period and annually thereafter. Training shall be independent of the Department and overseen by an agency designated by the Governor to determine the content of all facility employee training and to provide training for all trainers of facility employees. Training of employees shall at minimum include, but need not be limited to, (i) the impact of a serious mental illness diagnosis, (ii) the recovery paradigm and the role of psychiatric rehabilitation, (iii) preventive strategies

for managing aggression and crisis prevention, (iv) basic psychiatric rehabilitation techniques and service delivery, (v) resident rights, (vi) abuse prevention, (vii) appropriate interaction between staff and residents, and (viii) any other topic deemed by the Department to be important to ensuring quality of care.

(4) Quality assessment and improvement requirements, in addition to those contained in this Act on the effective date of this amendatory Act of the 96th General Assembly, specific to a facility's residential psychiatric rehabilitation services, which shall be made available to the Department upon request. A facility shall be required at a minimum to develop and maintain policies and procedures that include, but need not be limited to, evaluation of the appropriateness of resident admissions based on the facility's capacity to meet specific needs, resident assessments, development and implementation of care plans, and discharge planning.

(5) Room selection and appropriateness of roommate assignment.

(6) Comprehensive quarterly review of all treatment plans for residents with serious mental illness by the resident's interdisciplinary team, which takes into account, at a minimum, the resident's progress, prior assessments, and treatment plan.

(7) Substance abuse screening and management and

documented referral relationships with certified substance abuse treatment providers.

(8) Administration of psychotropic medications to a resident with serious mental illness who is incapable of giving informed consent, in compliance with the applicable provisions of the Mental Health and Developmental Disabilities Code.

(i) The Department shall establish a certification fee schedule by rule, in consultation with advocates, nursing homes, and representatives of associations representing long term care facilities.

(j) The Director or her or his designee shall seek input from the Long Term Care Facility Advisory Board before filing rules to implement this Section.

Rules proposed no later than January 1, 2011 under this Section shall take effect 180 days after being approved by the Joint Committee on Administrative Rules.

(210 ILCS 45/3-206) (from Ch. 111 1/2, par. 4153-206)

Sec. 3-206. The Department shall prescribe a curriculum for training nursing assistants, habilitation aides, and child care aides.

(a) No person, except a volunteer who receives no compensation from a facility and is not included for the purpose of meeting any staffing requirements set forth by the Department, shall act as a nursing assistant, habilitation

aide, or child care aide in a facility, nor shall any person, under any other title, not licensed, certified, or registered to render medical care by the Department of Professional Regulation, assist with the personal, medical, or nursing care of residents in a facility, unless such person meets the following requirements:

(1) Be at least 16 years of age, of temperate habits and good moral character, honest, reliable and trustworthy.†

(2) Be able to speak and understand the English language or a language understood by a substantial percentage of the facility's residents.†

(3) Provide evidence of employment or occupation, if any, and residence for 2 years prior to his present employment.†

(4) Have completed at least 8 years of grade school or provide proof of equivalent knowledge.†

(5) Begin a current course of training for nursing assistants, habilitation aides, or child care aides, approved by the Department, within 45 days of initial employment in the capacity of a nursing assistant, habilitation aide, or child care aide at any facility. Such courses of training shall be successfully completed within 120 days of initial employment in the capacity of nursing assistant, habilitation aide, or child care aide at a facility. Nursing assistants, habilitation aides, and

child care aides who are enrolled in approved courses in community colleges or other educational institutions on a term, semester or trimester basis, shall be exempt from the 120 day completion time limit. The Department shall adopt rules for such courses of training. These rules shall include procedures for facilities to carry on an approved course of training within the facility.

The Department may accept comparable training in lieu of the 120 hour course for student nurses, foreign nurses, military personnel, or employes of the Department of Human Services.

The facility shall develop and implement procedures, which shall be approved by the Department, for an ongoing review process, which shall take place within the facility, for nursing assistants, habilitation aides, and child care aides.

At the time of each regularly scheduled licensure survey, or at the time of a complaint investigation, the Department may require any nursing assistant, habilitation aide, or child care aide to demonstrate, either through written examination or action, or both, sufficient knowledge in all areas of required training. If such knowledge is inadequate the Department shall require the nursing assistant, habilitation aide, or child care aide to complete inservice training and review in the facility until the nursing assistant, habilitation aide, or child

care aide demonstrates to the Department, either through written examination or action, or both, sufficient knowledge in all areas of required training. ~~;~~ and

(6) Be familiar with and have general skills related to resident care.

(a-0.5) An educational entity, other than a secondary school, conducting a nursing assistant, habilitation aide, or child care aide training program shall initiate a ~~UCIA~~ criminal history record check in accordance with the Health Care Worker Background Check Act prior to entry of an individual into the training program. A secondary school may initiate a ~~UCIA~~ criminal history record check in accordance with the Health Care Worker Background Check Act at any time during or after ~~prior to the entry of an individual into~~ a training program.

(a-1) Nursing assistants, habilitation aides, or child care aides seeking to be included on the registry maintained under Section 3-206.01 on or after January 1, 1996 must authorize the Department of Public Health or its designee ~~that tests nursing assistants~~ to request a ~~UCIA~~ criminal history record check in accordance with the Health Care Worker Background Check Act and submit all necessary information. An individual may not newly be included on the registry unless a criminal history record check has been conducted with respect to the individual.

(b) Persons subject to this Section shall perform their duties under the supervision of a licensed nurse.

(c) It is unlawful for any facility to employ any person in the capacity of nursing assistant, habilitation aide, or child care aide, or under any other title, not licensed by the State of Illinois to assist in the personal, medical, or nursing care of residents in such facility unless such person has complied with this Section.

(d) Proof of compliance by each employee with the requirements set out in this Section shall be maintained for each such employee by each facility in the individual personnel folder of the employee. Proof of training shall be obtained only from the health care worker registry.

(e) Each facility shall obtain access to the health care worker registry's web application, maintain the employment and demographic information relating to ~~certify to the Department on a form provided by the Department the name and residence address of~~ each employee, and verify by the category and type of employment that each employee subject to this Section meets all the requirements of this Section.

(f) Any facility that is operated under Section 3-803 shall be exempt from the requirements of this Section.

(g) Each skilled nursing and intermediate care facility that admits persons who are diagnosed as having Alzheimer's disease or related dementias shall require all nursing assistants, habilitation aides, or child care aides, who did not receive 12 hours of training in the care and treatment of such residents during the training required under paragraph (5)

of subsection (a), to obtain 12 hours of in-house training in the care and treatment of such residents. If the facility does not provide the training in-house, the training shall be obtained from other facilities, community colleges or other educational institutions that have a recognized course for such training. The Department shall, by rule, establish a recognized course for such training. The Department's rules shall provide that such training may be conducted in-house at each facility subject to the requirements of this subsection, in which case such training shall be monitored by the Department.

The Department's rules shall also provide for circumstances and procedures whereby any person who has received training that meets the requirements of this subsection shall not be required to undergo additional training if he or she is transferred to or obtains employment at a different facility or a facility other than a long-term care facility but remains continuously employed for pay as a nursing assistant, habilitation aide, or child care aide. Individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months shall be listed as "inactive" and as such do not meet the requirements of this Section. Licensed sheltered care facilities shall be exempt from the requirements of this Section.

(Source: P.A. 91-598, eff. 1-1-00.)

(210 ILCS 45/3-206.01) (from Ch. 111 1/2, par. 4153-206.01)

Sec. 3-206.01. Health care worker registry.

(a) The Department shall establish and maintain a registry of all individuals who (i) have satisfactorily completed the training required by Section 3-206, (ii) have begun a current course of training as set forth in Section 3-206, or (iii) are otherwise acting as a nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide. The registry shall include the individual's name of the nursing assistant, habilitation aide, or child care aide, his or her current address, Social Security number, and the date and location of the training course completed by the individual, and whether the individual has any of the disqualifying convictions listed in Section 25 of the Health Care Worker Background Check Act from the date of the individual's last criminal records check. Any individual placed on the registry is required to inform the Department of any change of address within 30 days. A facility shall not employ an individual as a nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide, or newly hired as an individual who may have access to a resident, a resident's living quarters, or a resident's personal, financial, or medical records, unless the facility has inquired of the Department's health care worker registry ~~Department~~ as to information in the registry concerning the individual. The facility and shall not employ an individual as a nursing assistant, habilitation aide, or child

care aide if that individual is anyone not on the registry unless the individual is enrolled in a training program under paragraph (5) of subsection (a) of Section 3-206 of this Act.

If the Department finds that a nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide, or an unlicensed individual, has abused or neglected a resident or an individual under his or her care, ~~neglected a resident,~~ or misappropriated ~~resident~~ property of a resident or an individual under his or her care ~~in a facility,~~ the Department shall notify the individual of this finding by certified mail sent to the address contained in the registry. The notice shall give the 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. If, after a hearing or if the individual does not request a hearing, the Department finds that the individual abused a resident, neglected a resident, or misappropriated resident property in a facility, the finding shall be included as part of the registry as well as a clear and accurate summary ~~brief statement~~ from the individual, if he or she chooses to make such a statement. The Department shall make the following information in the registry available to the public: an individual's full name; the date an individual successfully completed a nurse aide training or competency evaluation; and whether the Department has made a finding that an individual has been guilty of abuse or neglect

of a resident or misappropriation of resident property. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of the individual's ~~any~~ statement in the registry relating to the finding or a clear and accurate summary of the statement.

(b) The Department shall add to the health care worker registry records of findings as reported by the Inspector General or remove from the health care worker registry records of findings as reported by the Department of Human Services, under subsection (g-5) of Section 1-17 of the Department of Human Services Act.

(Source: P.A. 95-545, eff. 8-28-07.)

(210 ILCS 45/3-206.02) (from Ch. 111 1/2, par. 4153-206.02)

Sec. 3-206.02. (a) The Department, after notice to the nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide, may denote that the Department has found any of the following:

(1) The nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide has abused a resident.

(2) The nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide has neglected a resident.

(3) The nursing assistant, habilitation aide, home

health aide, psychiatric services rehabilitation aide, or child care aide has misappropriated resident property.

(4) The nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide has been convicted of (i) a felony, (ii) a misdemeanor, an essential element of which is dishonesty, or (iii) any crime that is directly related to the duties of a nursing assistant, habilitation aide, or child care aide.

(b) Notice under this Section shall include a clear and concise statement of the grounds denoting abuse, neglect, or theft and notice of the opportunity for a hearing to contest the designation.

(c) The Department may denote any nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide on the registry who fails (i) to file a return, (ii) to pay the tax, penalty or interest shown in a filed return, or (iii) to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until the time the requirements of the tax Act are satisfied.

(c-1) The Department shall document criminal background check results pursuant to the requirements of the Health Care Worker Background Check Act.

(d) At any time after the designation on the registry pursuant to subsection (a), (b), or (c) of this Section, a

nursing assistant, habilitation aide, home health aide,
psychiatric services rehabilitation aide, or child care aide
may petition the Department for removal of a designation of
neglect on the registry. The Department may remove the
designation of neglect of the nursing assistant, habilitation
aide, home health aide, psychiatric services rehabilitation
aide, or child care aide on the registry unless, after an
investigation and a hearing, the Department determines that
removal of designation is not in the public interest.

(Source: P.A. 91-598, eff. 1-1-00.)

(210 ILCS 45/3-212) (from Ch. 111 1/2, par. 4153-212)

Sec. 3-212. Inspection.

(a) The Department, whenever it deems necessary in
accordance with subsection (b), shall inspect, survey and
evaluate every facility to determine compliance with
applicable licensure requirements and standards. Submission of
a facility's current Consumer Choice Information Report
required by Section 2-214 shall be verified at time of
inspection. An inspection should occur within 120 days prior to
license renewal. The Department may periodically visit a
facility for the purpose of consultation. An inspection,
survey, or evaluation, other than an inspection of financial
records, shall be conducted without prior notice to the
facility. A visit for the sole purpose of consultation may be
announced. The Department shall provide training to surveyors

about the appropriate assessment, care planning, and care of persons with mental illness (other than Alzheimer's disease or related disorders) to enable its surveyors to determine whether a facility is complying with State and federal requirements about the assessment, care planning, and care of those persons.

(a-1) An employee of a State or unit of local government agency charged with inspecting, surveying, and evaluating facilities who directly or indirectly gives prior notice of an inspection, survey, or evaluation, other than an inspection of financial records, to a facility or to an employee of a facility is guilty of a Class A misdemeanor.

An inspector or an employee of the Department who intentionally prenotifies a facility, orally or in writing, of a pending complaint investigation or inspection shall be guilty of a Class A misdemeanor. Superiors of persons who have prenotified a facility shall be subject to the same penalties, if they have knowingly allowed the prenotification. A person found guilty of prenotifying a facility shall be subject to disciplinary action by his or her employer.

If the Department has a good faith belief, based upon information that comes to its attention, that a violation of this subsection has occurred, it must file a complaint with the Attorney General or the State's Attorney in the county where the violation took place within 30 days after discovery of the information.

(a-2) An employee of a State or unit of local government

agency charged with inspecting, surveying, or evaluating facilities who willfully profits from violating the confidentiality of the inspection, survey, or evaluation process shall be guilty of a Class 4 felony and that conduct shall be deemed unprofessional conduct that may subject a person to loss of his or her professional license. An action to prosecute a person for violating this subsection (a-2) may be brought by either the Attorney General or the State's Attorney in the county where the violation took place.

(b) In determining whether to make more than the required number of unannounced inspections, surveys and evaluations of a facility the Department shall consider one or more of the following: previous inspection reports; the facility's history of compliance with standards, rules and regulations promulgated under this Act and correction of violations, penalties or other enforcement actions; the number and severity of complaints received about the facility; any allegations of resident abuse or neglect; weather conditions; health emergencies; other reasonable belief that deficiencies exist.

(b-1) The Department shall not be required to determine whether a facility certified to participate in the Medicare program under Title XVIII of the Social Security Act, or the Medicaid program under Title XIX of the Social Security Act, and which the Department determines by inspection under this Section or under Section 3-702 of this Act to be in compliance with the certification requirements of Title XVIII or XIX, is

in compliance with any requirement of this Act that is less stringent than or duplicates a federal certification requirement. In accordance with subsection (a) of this Section or subsection (d) of Section 3-702, the Department shall determine whether a certified facility is in compliance with requirements of this Act that exceed federal certification requirements. If a certified facility is found to be out of compliance with federal certification requirements, the results of an inspection conducted pursuant to Title XVIII or XIX of the Social Security Act may be used as the basis for enforcement remedies authorized and commenced, with the Department's discretion to evaluate whether penalties are warranted, under this Act. Enforcement of this Act against a certified facility shall be commenced pursuant to the requirements of this Act, unless enforcement remedies sought pursuant to Title XVIII or XIX of the Social Security Act exceed those authorized by this Act. As used in this subsection, "enforcement remedy" means a sanction for violating a federal certification requirement or this Act.

(c) Upon completion of each inspection, survey and evaluation, the appropriate Department personnel who conducted the inspection, survey or evaluation shall submit a copy of their report to the licensee upon exiting the facility, and shall submit the actual report to the appropriate regional office of the Department. Such report and any recommendations for action by the Department under this Act shall be

transmitted to the appropriate offices of the associate director of the Department, together with related comments or documentation provided by the licensee which may refute findings in the report, which explain extenuating circumstances that the facility could not reasonably have prevented, or which indicate methods and timetables for correction of deficiencies described in the report. Without affecting the application of subsection (a) of Section 3-303, any documentation or comments of the licensee shall be provided within 10 days of receipt of the copy of the report. Such report shall recommend to the Director appropriate action under this Act with respect to findings against a facility. The Director shall then determine whether the report's findings constitute a violation or violations of which the facility must be given notice. Such determination shall be based upon the severity of the finding, the danger posed to resident health and safety, the comments and documentation provided by the facility, the diligence and efforts to correct deficiencies, correction of the reported deficiencies, the frequency and duration of similar findings in previous reports and the facility's general inspection history. Violations shall be determined under this subsection no later than 90 ~~60~~ days after completion of each inspection, survey and evaluation.

(d) The Department shall maintain all inspection, survey and evaluation reports for at least 5 years in a manner accessible to and understandable by the public.

(e) Revisit surveys. The Department shall conduct a revisit to its licensure and certification surveys, consistent with federal regulations and guidelines.

(Source: P.A. 95-823, eff. 1-1-09.)

(210 ILCS 45/3-303) (from Ch. 111 1/2, par. 4153-303)

Sec. 3-303. (a) The situation, condition or practice constituting a Type "AA" violation or a Type "A" violation shall be abated or eliminated immediately unless a fixed period of time, not exceeding 15 days, as determined by the Department and specified in the notice of violation, is required for correction.

(b) At the time of issuance of a notice of a Type "B" violation, the Department shall request a plan of correction which is subject to the Department's approval. The facility shall have 10 days after receipt of notice of violation in which to prepare and submit a plan of correction. The Department may extend this period up to 30 days where correction involves substantial capital improvement. The plan shall include a fixed time period not in excess of 90 days within which violations are to be corrected. If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for the rejection to the facility. The facility shall have 10 days after receipt of the notice of rejection in which to submit a modified plan. If the modified plan is not timely submitted, or if the modified plan is

rejected, the facility shall follow an approved plan of correction imposed by the Department.

(c) If the violation has been corrected prior to submission and approval of a plan of correction, the facility may submit a report of correction in place of a plan of correction. Such report shall be signed by the administrator under oath.

(d) Upon a licensee's petition, the Department shall determine whether to grant a licensee's request for an extended correction time. Such petition shall be served on the Department prior to expiration of the correction time originally approved. The burden of proof is on the petitioning facility to show good cause for not being able to comply with the original correction time approved.

(e) If a facility desires to contest any Department action under this Section it shall send a written request for a hearing under Section 3-703 to the Department within 10 days of receipt of notice of the contested action. The Department shall commence the hearing as provided under Section 3-703. Whenever possible, all action of the Department under this Section arising out of a violation shall be contested and determined at a single hearing. Issues decided after a hearing may not be reheard at subsequent hearings under this Section.

(Source: P.A. 85-1378.)

(210 ILCS 45/3-303.2) (from Ch. 111 1/2, par. 4153-303.2)

Sec. 3-303.2. (a) If the Department finds a situation,

condition or practice which violates this Act or any rule promulgated thereunder which does not constitute a Type "AA", Type "A", Type "B", or Type "C" violation ~~directly threaten the health, safety or welfare of a resident,~~ the Department shall issue an administrative warning. Any administrative warning shall be served upon the facility in the same manner as the notice of violation under Section 3-301. The facility shall be responsible for correcting the situation, condition or practice; however, no written plan of correction need be submitted for an administrative warning, except for violations of Sections 3-401 through 3-413 or the rules promulgated thereunder. A written plan of correction is required to be filed for an administrative warning issued for violations of Sections 3-401 through 3-413 or the rules promulgated thereunder.

(b) If, however, the situation, condition or practice which resulted in the issuance of an administrative warning, with the exception of administrative warnings issued pursuant to Sections 3-401 through 3-413 or the rules promulgated thereunder, is not corrected by the next on-site inspection by the Department which occurs no earlier than 90 days from the issuance of the administrative warning, a written plan of correction must be submitted in the same manner as provided in subsection (b) of Section 3-303.

(Source: P.A. 87-549.)

(210 ILCS 45/3-304.1)

Sec. 3-304.1. Public computer access to information.

(a) The Department must make information regarding nursing homes in the State available to the public in electronic form on the World Wide Web, including all of the following information:

- (1) who regulates nursing homes;
- (2) information in the possession of the Department that is listed in Sections 3-210 and 3-304;
- (3) deficiencies and plans of correction;
- (4) enforcement remedies;
- (5) penalty letters;
- (6) designation of penalty monies;
- (7) the U.S. Department of Health and Human Services' Health Care Financing Administration special projects or federally required inspections;
- (8) advisory standards;
- (9) deficiency-free surveys; ~~and~~
- (10) enforcement actions and enforcement summaries; and-
- (11) distressed facilities.

(b) No fee or other charge may be imposed by the Department as a condition of accessing the information.

(c) The electronic public access provided through the World Wide Web shall be in addition to any other electronic or print distribution of the information.

(d) The information shall be made available as provided in this Section in the shortest practicable time after it is publicly available in any other form.

(Source: P.A. 91-290, eff. 1-1-00.)

(210 ILCS 45/3-304.2 new)

Sec. 3-304.2. Designation of distressed facilities.

(a) By May 1, 2011, and quarterly thereafter, the Department shall generate and publish quarterly a list of distressed facilities. Criteria for inclusion of certified facilities on the list shall be those used by the U.S. General Accounting Office in report 9-689, until such time as the Department by rule modifies the criteria.

(b) In deciding whether and how to modify the criteria used by the General Accounting Office, the Department shall complete a test run of any substitute criteria to determine their reliability by comparing the number of facilities identified as distressed against the number of distressed facilities generated using the criteria contained in the General Accounting Office report. The Department may not adopt substitute criteria that generate fewer facilities with a distressed designation than are produced by the General Accounting Office criteria during the test run.

(c) The Department shall, by rule, adopt criteria to identify non-Medicaid-certified facilities that are distressed and shall publish this list quarterly beginning October 1,

2011.

(d) The Department shall notify each facility of its distressed designation, and of the calculation on which it is based.

(e) A distressed facility may contract with an independent consultant meeting criteria established by the Department. If the distressed facility does not seek the assistance of an independent consultant, the Department shall place a monitor or a temporary manager in the facility, depending on the Department's assessment of the condition of the facility.

(f) Independent consultant. A facility that has been designated a distressed facility may contract with an independent consultant to develop and assist in the implementation of a plan of improvement to bring and keep the facility in compliance with this Act and, if applicable, with federal certification requirements. A facility that contracts with an independent consultant shall have 90 days to develop a plan of improvement and demonstrate a good faith effort at implementation, and another 90 days to achieve compliance and take whatever additional actions are called for in the improvement plan to maintain compliance. A facility that the Department determines has a plan of improvement likely to bring and keep the facility in compliance and that has demonstrated good faith efforts at implementation within the first 90 days may be eligible to receive a grant under the Equity in Long-term Care Quality Act to assist it in achieving and

maintaining compliance. In this subsection, "independent" consultant means an individual who has no professional or financial relationship with the facility, any person with a reportable ownership interest in the facility, or any related parties. In this subsection, "related parties" has the meaning attributed to it in the instructions for completing Medicaid cost reports.

(f) Monitor and temporary managers. A distressed facility that does not contract with a consultant shall be assigned a monitor or a temporary manager at the Department's discretion. The cost of the temporary manager shall be paid by the facility. The temporary manager shall have the authority determined by the Department, which may grant the temporary manager any or all of the authority a court may grant a receiver. The temporary manager may apply to the Equity in Long-term Care Quality Fund for grant funds to implement the plan of improvement.

(g) The Department shall by rule establish a mentor program for owners of distressed facilities.

(h) The Department shall by rule establish sanctions (in addition to those authorized elsewhere in this Article) against distressed facilities that are not in compliance with this Act and (if applicable) with federal certification requirements. Criteria for imposing sanctions shall take into account a facility's actions to address the violations and deficiencies that caused its designation as a distressed facility, and its

compliance with this Act and with federal certification requirements (if applicable), subsequent to its designation as a distressed facility, including mandatory revocations if criteria can be agreed upon by the Department, resident advocates, and representatives of the nursing home profession. By February 1, 2011, the Department shall report to the General Assembly on the results of negotiations about creating criteria for mandatory license revocations of distressed facilities and make recommendations about any statutory changes it believes are appropriate to protect the health, safety, and welfare of nursing home residents.

(i) The Department may establish by rule criteria for restricting the owner of a facility on the distressed list from acquiring additional skilled nursing facilities.

(210 ILCS 45/3-305) (from Ch. 111 1/2, par. 4153-305)

Sec. 3-305. The license of a facility which is in violation of this Act or any rule adopted thereunder may be subject to the penalties or fines levied by the Department as specified in this Section.

(1) ~~A Unless a greater penalty or fine is allowed under subsection (3),~~ a licensee who commits a Type "AA" ~~"A"~~ violation as defined in Section 1-128.5 ~~1-129~~ is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine up to \$25,000 per violation ~~computed at a rate of \$5.00~~

~~per resident in the facility plus 20 cents per resident for each day of the violation, commencing on the date a notice of the violation is served under Section 3-301 and ending on the date the violation is corrected, or a fine of not less than \$5,000, or when death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than \$10,000, whichever is greater.~~

(1.5) A licensee who commits a Type "A" violation as defined in Section 1-129 is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to \$12,500 per violation.

(2) A licensee who commits a Type "B" violation as defined in Section 1-130 shall be assessed a fine of up to \$1,100 per violation ~~or who is issued an administrative warning for a violation of Sections 3-401 through 3-413 or the rules promulgated thereunder is subject to a penalty computed at a rate of \$3 per resident in the facility, plus 15 cents per resident for each day of the violation, commencing on the date a notice of the violation is served under Section 3-301 and ending on the date the violation is corrected, or a fine not less than \$500, whichever is greater. Such fine shall be assessed on the date of notice of the violation and shall be suspended for violations that continue after such date upon completion of a plan of correction in accordance with Section 3-308 in relation to the assessment of fines and correction.~~

~~Failure to correct such violation within the time period approved under a plan of correction shall result in a fine and conditional license as provided under subsection (5).~~

(2.5) A licensee who commits 10 or more Type "C" violations, as defined in Section 1-132, in a single survey shall be assessed a fine of up to \$250 per violation. A licensee who commits one or more Type "C" violations with a high risk designation, as defined by rule, shall be assessed a fine of up to \$500 per violation.

(3) A licensee who commits a Type "AA" or Type "A" violation as defined in Section 1-128.5 or 1-129 which continues beyond the time specified in paragraph (a) of Section 3-303 which is cited as a repeat violation shall have its license revoked and shall be assessed a fine of 3 times the fine computed per resident per day under subsection (1).

(4) A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 or the rules promulgated thereunder shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (2) when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time.

(5) For the purpose of computing a penalty under subsections (2) through (4), the number of residents per day shall be based on the average number of residents in the facility during the 30 days preceding the discovery of the violation.

(6) When the Department finds that a provision of Article II has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or \$100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question.

(7) For purposes of assessing fines under this Section, a repeat violation shall be a violation which has been cited during one inspection of the facility for which an accepted plan of correction was not complied with or. ~~A repeat violation shall not be~~ a new citation of the same rule if, ~~unless~~ the licensee is not substantially addressing the issue routinely throughout the facility.

(7.5) If an occurrence results in more than one type of violation as defined in this Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), the maximum fine that may be assessed for that occurrence is the maximum fine that

may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order.

(8) The minimum and maximum fines that may be assessed pursuant to this Section shall be twice those otherwise specified for any facility that willfully makes a misstatement of fact to the Department, or willfully fails to make a required notification to the Department, if that misstatement or failure delays the start of a surveyor or impedes a survey.

(9) High risk designation. If the Department finds that a facility has violated a provision of the Illinois Administrative Code that has a high risk designation, or that a facility has violated the same provision of the Illinois Administrative Code 3 or more times in the previous 12 months, the Department may assess a fine of up to 2 times the maximum fine otherwise allowed.

(10) If a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under this Section, the Department shall offset the fine by the amount of the civil monetary penalty. The offset may not reduce the fine by more than 75% of the original fine, however.

(Source: P.A. 86-407; 87-549; 87-1056.)

(210 ILCS 45/3-306) (from Ch. 111 1/2, par. 4153-306)

Sec. 3-306. In determining whether a penalty is to be imposed and in determining ~~fixing~~ the amount of the penalty to be imposed, if any, for a violation, the Director shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations.

(3) Any previous violations committed by the licensee; and

(4) The financial benefit to the facility of committing or continuing the violation.

(Source: P.A. 81-223.)

(210 ILCS 45/3-309) (from Ch. 111 1/2, par. 4153-309)

Sec. 3-309. A facility may contest an assessment of a penalty by sending a written request to the Department for hearing under Section 3-703. Upon receipt of the request the Department shall hold a hearing as provided under Section 3-703. Instead of requesting a hearing pursuant to Section 3-703, a facility may, within 10 business days after receipt of the notice of violation and fine assessment, transmit to the Department (i) 65% of the amount assessed for each violation

specified in the penalty assessment or (ii) in the case of a fine subject to offset under paragraph (10) of Section 3-305, up to 75% of the amount assessed.

(Source: P.A. 81-223.)

(210 ILCS 45/3-310) (from Ch. 111 1/2, par. 4153-310)

Sec. 3-310. All penalties shall be paid to the Department within 10 days of receipt of notice of assessment or, if the penalty is contested under Section 3-309, within 10 days of receipt of the final decision, unless the decision is appealed and the order is stayed by court order under Section 3-713. A facility choosing to waive the right to a hearing under Section 3-309 shall submit a payment totaling 65% of the original fine amount along with the written waiver. A penalty assessed under this Act shall be collected by the Department and shall be deposited with the State Treasurer into the Long Term Care Monitor/Receiver Fund. If the person or facility against whom a penalty has been assessed does not comply with a written demand for payment within 30 days, the Director shall issue an order to do any of the following:

(1) Direct the State Treasurer or Comptroller to deduct the amount of the fine from amounts otherwise due from the State for the penalty, including any payments to be made from the Medicaid Long Term Care Provider Participation Fee Trust Fund established under Section 5-4.31 of the Illinois Public Aid Code, and remit that amount to the Department;

(2) Add the amount of the penalty to the facility's licensing fee; if the licensee refuses to make the payment at the time of application for renewal of its license, the license shall not be renewed; or

(3) Bring an action in circuit court to recover the amount of the penalty.

With the approval of the federal centers for Medicaid and Medicare services, the Director of Public Health shall set aside 50% of the federal civil monetary penalties collected each year to be used to award grants under the Equity Innovations in Long-term Care Quality ~~Grants~~ Act.

(Source: P.A. 92-784, eff. 8-6-02.)

(210 ILCS 45/3-318) (from Ch. 111 1/2, par. 4153-318)

Sec. 3-318. (a) No person shall:

(1) Intentionally fail to correct or interfere with the correction of a Type "AA", Type "A", or Type "B" violation within the time specified on the notice or approved plan of correction under this Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

(2) Intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of this Act;

(3) Intentionally prevent or attempt to prevent any examination of any relevant books or records pertinent to

investigations and enforcement of this Act;

(4) Intentionally prevent or interfere with the preservation of evidence pertaining to any violation of this Act or the rules promulgated under this Act;

(5) Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this Act;

(6) Wilfully file any false, incomplete or intentionally misleading information required to be filed under this Act, or wilfully fail or refuse to file any required information; or

(7) Open or operate a facility without a license.

(b) A violation of this Section is a business offense, punishable by a fine not to exceed \$10,000, except as otherwise provided in subsection (2) of Section 3-103 as to submission of false or misleading information in a license application.

(c) The State's Attorney of the county in which the facility is located, or the Attorney General, shall be notified by the Director of any violations of this Section.

(Source: P.A. 83-1530.)

(210 ILCS 45/3-402) (from Ch. 111 1/2, par. 4153-402)

Sec. 3-402. Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under Section 3-408 and by a minimum written notice of 21 days,

except in one of the following instances:

(a) When ~~when~~ an emergency transfer or discharge is ordered by the resident's attending physician because of the resident's health care needs. ~~or~~

(b) When ~~when~~ the transfer or discharge is mandated by the physical safety of other residents, the facility staff, or facility visitors, as documented in the clinical record. The Department shall be notified prior to any such involuntary transfer or discharge. The Department shall immediately offer transfer, or discharge and relocation assistance to residents transferred or discharged under this subparagraph (b), and the Department may place relocation teams as provided in Section 3-419 of this Act.

(c) When an identified offender is within the provisional admission period defined in Section 1-120.3. If the Identified Offender Report and Recommendation prepared under Section 2-201.6 shows that the identified offender poses a serious threat or danger to the physical safety of other residents, the facility staff, or facility visitors in the admitting facility and the facility determines that it is unable to provide a safe environment for the other residents, the facility staff, or facility visitors, the facility shall transfer or discharge the identified offender within 3 days after its receipt of the Identified Offender Report and Recommendation.

(Source: P.A. 84-1322.)

(210 ILCS 45/3-501) (from Ch. 111 1/2, par. 4153-501)

Sec. 3-501. The Department may place an employee or agent to serve as a monitor in a facility or may petition the circuit court for appointment of a receiver for a facility, or both, when any of the following conditions exist:

(a) The facility is operating without a license;

(b) The Department has suspended, revoked or refused to renew the existing license of the facility;

(c) The facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure;

(d) The Department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency the Department believes a monitor or receiver is necessary; ~~or~~

(e) The Department is notified that the facility is terminated or will not be renewed for participation in the federal reimbursement program under either Title XVIII or Title XIX of the Social Security Act; or ~~or~~

(f) The facility has been designated a distressed facility by the Department and does not have a consultant employed pursuant to subsection (f) of Section 3-304.2 and an acceptable plan of improvement, or the Department has reason to believe the facility is not complying with the

plan of improvement. Nothing in this paragraph (f) shall preclude the Department from placing a monitor in a facility if otherwise justified by law.

As used in subsection (d) and Section 3-503, "emergency" means a threat to the health, safety or welfare of a resident that the facility is unwilling or unable to correct.

(Source: P.A. 87-549.)

(210 ILCS 45/3-504) (from Ch. 111 1/2, par. 4153-504)

Sec. 3-504. The court shall hold a hearing within 5 days of the filing of the petition. The petition and notice of the hearing shall be served on the owner, administrator or designated agent of the facility as provided under the Civil Practice Law, or the petition and notice of hearing shall be posted in a conspicuous place in the facility not later than 3 days before the time specified for the hearing, unless a different period is fixed by order of the court. The court shall appoint a receiver ~~for a limited time period, not to exceed 180 days,~~ if it finds that:

(a) The facility is operating without a license;

(b) The Department has suspended, revoked or refused to renew the existing license of a facility;

(c) The facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure; or

(d) An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency the appointment of a receiver is necessary.

(Source: P.A. 82-783.)

(210 ILCS 45/3-808 new)

Sec. 3-808. Protocol for sexual assault victims; nursing home. The Department shall develop a protocol for the care and treatment of residents who have been sexually assaulted in a long term care facility or elsewhere.

(210 ILCS 45/3-809 new)

Sec. 3-809. Rules to implement changes. In developing rules and regulations to implement changes made by this amendatory Act of the 96th General Assembly, the Department shall seek the input of advocates for long term care facility residents, representatives of associations representing long term care facilities, and representatives of associations representing employees of long term care facilities.

(210 ILCS 45/3-810 new)

Sec. 3-810. Whistleblower protection.

(a) In this Section, "retaliatory action" means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms and conditions of

employment of any employee of a facility that is taken in retaliation for the employee's involvement in a protected activity as set forth in paragraphs (1) through (3) of subsection (b).

(b) A facility shall not take any retaliatory action against an employee of the facility, including a nursing home administrator, because the employee does any of the following:

(1) Discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a facility that the employee reasonably believes is in violation of a law, rule, or regulation.

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by a nursing home administrator.

(3) Assists or participates in a proceeding to enforce the provisions of this Act.

(c) A violation of this Section may be established only upon a finding that (i) the employee of the facility engaged in conduct described in subsection (b) of this Section and (ii) this conduct was a contributing factor in the retaliatory action alleged by the employee. There is no violation of this Section, however, if the facility demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct.

(d) The employee of the facility may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following:

(1) Reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position.

(2) Two times the amount of back pay.

(3) Interest on the back pay.

(4) Reinstatement of full fringe benefits and seniority rights.

(5) Payment of reasonable costs and attorney's fees.

(e) Nothing in this Section shall be deemed to diminish the rights, privileges, or remedies of an employee of a facility under any other federal or State law, rule, or regulation or under any employment contract.

Section 30. The Hospital Licensing Act is amended by changing Sections 6.09 and 7 as follows:

(210 ILCS 85/6.09) (from Ch. 111 1/2, par. 147.09)

(Text of Section before amendment by P.A. 96-339)

Sec. 6.09. (a) In order to facilitate the orderly transition of aged and disabled patients from hospitals to post-hospital care, whenever a patient who qualifies for the

federal Medicare program is hospitalized, the patient shall be notified of discharge at least 24 hours prior to discharge from the hospital. With regard to pending discharges to a skilled nursing facility, the hospital must notify the case coordination unit, as defined in 89 Ill. Adm. Code 240.260, at least 24 hours prior to discharge or, if home health services are ordered, the hospital must inform its designated case coordination unit, as defined in 89 Ill. Adm. Code 240.260, of the pending discharge and must provide the patient with the case coordination unit's telephone number and other contact information.

(b) Every hospital shall develop procedures for a physician with medical staff privileges at the hospital or any appropriate medical staff member to provide the discharge notice prescribed in subsection (a) of this Section. The procedures must include prohibitions against discharging or referring a patient to any of the following if unlicensed, uncertified, or unregistered: (i) a board and care facility, as defined in the Board and Care Home Act; (ii) an assisted living and shared housing establishment, as defined in the Assisted Living and Shared Housing Act; (iii) a facility licensed under the Nursing Home Care Act; (iv) a supportive living facility, as defined in Section 5-5.01a of the Illinois Public Aid Code; or (v) a free-standing hospice facility licensed under the Hospice Program Licensing Act if licensure, certification, or registration is required. The Department of Public Health shall

annually provide hospitals with a list of licensed, certified, or registered board and care facilities, assisted living and shared housing establishments, nursing homes, supportive living facilities, and hospice facilities. Reliance upon this list by a hospital shall satisfy compliance with this requirement. The procedure may also include a waiver for any case in which a discharge notice is not feasible due to a short length of stay in the hospital by the patient, or for any case in which the patient voluntarily desires to leave the hospital before the expiration of the 24 hour period.

(c) At least 24 hours prior to discharge from the hospital, the patient shall receive written information on the patient's right to appeal the discharge pursuant to the federal Medicare program, including the steps to follow to appeal the discharge and the appropriate telephone number to call in case the patient intends to appeal the discharge.

(d) Before transfer of a patient to a long term care facility licensed under the Nursing Home Care Act where elderly persons reside, a hospital shall as soon as practicable initiate a name-based criminal history background check by electronic submission to the Department of State Police for all persons between the ages of 18 and 70 years; provided, however, that a hospital shall be required to initiate such a background check only with respect to patients who:

(1) are transferring to a long term care facility for the first time;

(2) have been in the hospital more than 5 days;

(3) are reasonably expected to remain at the long term care facility for more than 30 days;

(4) have a known history of serious mental illness or substance abuse; and

(5) are independently ambulatory or mobile for more than a temporary period of time.

A hospital may also request a criminal history background check for a patient who does not meet any of the criteria set forth in items (1) through (5).

A hospital shall notify a long term care facility if the hospital has initiated a criminal history background check on a patient being discharged to that facility. In all circumstances in which the hospital is required by this subsection to initiate the criminal history background check, the transfer to the long term care facility may proceed regardless of the availability of criminal history results. Upon receipt of the results, the hospital shall promptly forward the results to the appropriate long term care facility. If the results of the background check are inconclusive, the hospital shall have no additional duty or obligation to seek additional information from, or about, the patient.

(Source: P.A. 94-335, eff. 7-26-05; 95-80, eff. 8-13-07; 95-651, eff. 10-11-07; 95-876, eff. 8-21-08.)

(Text of Section after amendment by P.A. 96-339)

Sec. 6.09. (a) In order to facilitate the orderly transition of aged and disabled patients from hospitals to post-hospital care, whenever a patient who qualifies for the federal Medicare program is hospitalized, the patient shall be notified of discharge at least 24 hours prior to discharge from the hospital. With regard to pending discharges to a skilled nursing facility, the hospital must notify the case coordination unit, as defined in 89 Ill. Adm. Code 240.260, at least 24 hours prior to discharge or, if home health services are ordered, the hospital must inform its designated case coordination unit, as defined in 89 Ill. Adm. Code 240.260, of the pending discharge and must provide the patient with the case coordination unit's telephone number and other contact information.

(b) Every hospital shall develop procedures for a physician with medical staff privileges at the hospital or any appropriate medical staff member to provide the discharge notice prescribed in subsection (a) of this Section. The procedures must include prohibitions against discharging or referring a patient to any of the following if unlicensed, uncertified, or unregistered: (i) a board and care facility, as defined in the Board and Care Home Act; (ii) an assisted living and shared housing establishment, as defined in the Assisted Living and Shared Housing Act; (iii) a facility licensed under the Nursing Home Care Act or the MR/DD Community Care Act; (iv) a supportive living facility, as defined in Section 5-5.01a of

the Illinois Public Aid Code; or (v) a free-standing hospice facility licensed under the Hospice Program Licensing Act if licensure, certification, or registration is required. The Department of Public Health shall annually provide hospitals with a list of licensed, certified, or registered board and care facilities, assisted living and shared housing establishments, nursing homes, supportive living facilities, facilities licensed under the MR/DD Community Care Act, and hospice facilities. Reliance upon this list by a hospital shall satisfy compliance with this requirement. The procedure may also include a waiver for any case in which a discharge notice is not feasible due to a short length of stay in the hospital by the patient, or for any case in which the patient voluntarily desires to leave the hospital before the expiration of the 24 hour period.

(c) At least 24 hours prior to discharge from the hospital, the patient shall receive written information on the patient's right to appeal the discharge pursuant to the federal Medicare program, including the steps to follow to appeal the discharge and the appropriate telephone number to call in case the patient intends to appeal the discharge.

(d) Before transfer of a patient to a long term care facility licensed under the Nursing Home Care Act where elderly persons reside, a hospital shall as soon as practicable initiate a name-based criminal history background check by electronic submission to the Department of State Police for all

persons between the ages of 18 and 70 years; provided, however, that a hospital shall be required to initiate such a background check only with respect to patients who:

(1) are transferring to a long term care facility for the first time;

(2) have been in the hospital more than 5 days;

(3) are reasonably expected to remain at the long term care facility for more than 30 days;

(4) have a known history of serious mental illness or substance abuse; and

(5) are independently ambulatory or mobile for more than a temporary period of time.

A hospital may also request a criminal history background check for a patient who does not meet any of the criteria set forth in items (1) through (5).

A hospital shall notify a long term care facility if the hospital has initiated a criminal history background check on a patient being discharged to that facility. In all circumstances in which the hospital is required by this subsection to initiate the criminal history background check, the transfer to the long term care facility may proceed regardless of the availability of criminal history results. Upon receipt of the results, the hospital shall promptly forward the results to the appropriate long term care facility. If the results of the background check are inconclusive, the hospital shall have no additional duty or obligation to seek additional information

from, or about, the patient.

(Source: P.A. 95-80, eff. 8-13-07; 95-651, eff. 10-11-07; 95-876, eff. 8-21-08; 96-339, eff. 7-1-10.)

(210 ILCS 85/7) (from Ch. 111 1/2, par. 148)

Sec. 7. (a) The Director after notice and opportunity for hearing to the applicant or licensee may deny, suspend, or revoke a permit to establish a hospital or deny, suspend, or revoke a license to open, conduct, operate, and maintain a hospital in any case in which he finds that there has been a substantial failure to comply with the provisions of this Act, the Hospital Report Card Act, or the Illinois Adverse Health Care Events Reporting Law of 2005 or the standards, rules, and regulations established by virtue of any of those Acts. The Department may impose fines on hospitals, not to exceed \$500 per occurrence, for failing to initiate a criminal background check on a patient that meets the criteria for hospital-initiated background checks. In assessing whether to impose such a fine, the Department shall consider various factors including, but not limited to, whether the hospital has engaged in a pattern or practice of failing to initiate criminal background checks. Money from fines shall be deposited into the Long Term Care Provider Fund.

(b) Such notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date, not less than 15 days from

the date of such mailing or service, at which time the applicant or licensee shall be given an opportunity for a hearing. Such hearing shall be conducted by the Director or by an employee of the Department designated in writing by the Director as Hearing Officer to conduct the hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the Director shall make a determination specifying his findings and conclusions. In case of a denial to an applicant of a permit to establish a hospital, such determination shall specify the subsection of Section 6 under which the permit was denied and shall contain findings of fact forming the basis of such denial. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision denying, suspending, or revoking a permit or a license shall become final 35 days after it is so mailed or served, unless the applicant or licensee, within such 35 day period, petitions for review pursuant to Section 13.

(c) The procedure governing hearings authorized by this Section shall be in accordance with rules promulgated by the Department and approved by the Hospital Licensing Board. A full and complete record shall be kept of all proceedings, including the notice of hearing, complaint, and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director and Hearing Officer. All testimony shall be reported but need not

be transcribed unless the decision is appealed pursuant to Section 13. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies.

(d) The Director or Hearing Officer shall upon his own motion, or on the written request of any party to the proceeding, 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. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the Circuit Court of this State, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Director, or Hearing Officer, such fees shall be paid in the same manner as other expenses of the Department, and 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. In such case, the Department in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum issued as aforesaid shall be served in the same manner as a subpoena issued out of a court.

(e) Any Circuit Court of this State upon the application of the Director, or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the Director or Hearing Officer conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

(f) The Director or Hearing Officer, or any party in an investigation or hearing before the Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records, or memoranda.

(Source: P.A. 93-563, eff. 1-1-04; 94-242, eff. 7-18-05.)

Section 33. The Medical Practice Act of 1987 is amended by changing Sections 23 and 36 as follows:

(225 ILCS 60/23) (from Ch. 111, par. 4400-23)

(Section scheduled to be repealed on December 31, 2010)

Sec. 23. Reports relating to professional conduct and capacity.

(A) Entities required to report.

(1) Health care institutions. The chief administrator or executive officer of any health care institution licensed by the Illinois Department of Public Health shall report to the Disciplinary Board when any person's clinical privileges are terminated or are restricted based on a final determination, in accordance with that institution's by-laws or rules and regulations, that a person has either committed an act or acts which may directly threaten patient care, and not of an administrative nature, or that a person may be mentally or physically disabled in such a manner as to endanger patients under that person's care. Such officer also shall report if a person accepts voluntary termination or restriction of clinical privileges in lieu of formal action based upon conduct related directly to patient care and not of an administrative nature, or in lieu of formal action seeking to determine whether a person may be mentally or physically disabled in such a manner as to endanger patients under that person's care. The Medical Disciplinary Board shall, by rule, provide for the reporting to it of all instances in which a person, licensed under this Act, who is impaired by reason of age, drug or alcohol abuse or physical or mental impairment, is under supervision and, where appropriate, is in a program of rehabilitation. Such reports shall be strictly confidential and may be reviewed and considered only by the members of the Disciplinary

Board, or by authorized staff as provided by rules of the Disciplinary Board. Provisions shall be made for the periodic report of the status of any such person not less than twice annually in order that the Disciplinary Board shall have current information upon which to determine the status of any such person. Such initial and periodic reports of impaired physicians shall not be considered records within the meaning of The State Records Act and shall be disposed of, following a determination by the Disciplinary Board that such reports are no longer required, in a manner and at such time as the Disciplinary Board shall determine by rule. The filing of such reports shall be construed as the filing of a report for purposes of subsection (C) of this Section.

(2) Professional associations. The President or chief executive officer of any association or society, of persons licensed under this Act, operating within this State shall report to the Disciplinary Board when the association or society renders a final determination that a person has committed unprofessional conduct related directly to patient care or that a person may be mentally or physically disabled in such a manner as to endanger patients under that person's care.

(3) Professional liability insurers. Every insurance company which offers policies of professional liability insurance to persons licensed under this Act, or any other

entity which seeks to indemnify the professional liability of a person licensed under this Act, shall report to the Disciplinary Board the settlement of any claim or cause of action, or final judgment rendered in any cause of action, which alleged negligence in the furnishing of medical care by such licensed person when such settlement or final judgment is in favor of the plaintiff.

(4) State's Attorneys. The State's Attorney of each county shall report to the Disciplinary Board all instances in which a person licensed under this Act is convicted or otherwise found guilty of the commission of any felony. The State's Attorney of each county may report to the Disciplinary Board through a verified complaint any instance in which the State's Attorney believes that a physician has willfully violated the notice requirements of the Parental Notice of Abortion Act of 1995.

(5) State agencies. All agencies, boards, commissions, departments, or other instrumentalities of the government of the State of Illinois shall report to the Disciplinary Board any instance arising in connection with the operations of such agency, including the administration of any law by such agency, in which a person licensed under this Act has either committed an act or acts which may be a violation of this Act or which may constitute unprofessional conduct related directly to patient care or which indicates that a person licensed under this Act may

be mentally or physically disabled in such a manner as to endanger patients under that person's care.

(B) Mandatory reporting. All reports required by items (34), (35), and (36) of subsection (A) of Section 22 and by Section 23 shall be submitted to the Disciplinary Board in a timely fashion. The reports shall be filed in writing within 60 days after a determination that a report is required under this Act. All reports shall contain the following information:

(1) The name, address and telephone number of the person making the report.

(2) The name, address and telephone number of the person who is the subject of the report.

(3) The name and date of birth of any patient or patients whose treatment is a subject of the report, if available, or other means of identification if such information is not available, identification of the hospital or other healthcare facility where the care at issue in the report was rendered, provided, however, no medical records may be revealed.

(4) A brief description of the facts which gave rise to the issuance of the report, including the dates of any occurrences deemed to necessitate the filing of the report.

(5) If court action is involved, the identity of the court in which the action is filed, along with the docket number and date of filing of the action.

(6) Any further pertinent information which the

reporting party deems to be an aid in the evaluation of the report.

The Disciplinary Board or Department may also exercise the power under Section 38 of this Act to subpoena copies of hospital or medical records in mandatory report cases alleging death or permanent bodily injury. Appropriate rules shall be adopted by the Department with the approval of the Disciplinary Board.

When the Department has received written reports concerning incidents required to be reported in items (34), (35), and (36) of subsection (A) of Section 22, the licensee's failure to report the incident to the Department under those items shall not be the sole grounds for disciplinary action.

Nothing contained in this Section shall act to in any way, waive or modify the confidentiality of medical reports and committee reports to the extent provided by law. Any information reported or disclosed shall be kept for the confidential use of the Disciplinary Board, the Medical Coordinators, the Disciplinary Board's attorneys, the medical investigative staff, and authorized clerical staff, as provided in this Act, and shall be afforded the same status as is provided information concerning medical studies in Part 21 of Article VIII of the Code of Civil Procedure, except that the Department may disclose information and documents to a federal, State, or local law enforcement agency pursuant to a subpoena in an ongoing criminal investigation or to a health care

licensing body of this State or another state or jurisdiction pursuant to an official request made by that licensing body. Furthermore, information and documents disclosed to a federal, State, or local law enforcement agency may be used by that agency only for the investigation and prosecution of a criminal offense, or, in the case of disclosure to a health care licensing body, only for investigations and disciplinary action proceedings with regard to a license. Information and documents disclosed to the Department of Public Health may be used by that Department only for investigation and disciplinary action regarding the license of a health care institution licensed by the Department of Public Health.

(C) Immunity from prosecution. Any individual or organization acting in good faith, and not in a wilful and wanton manner, in complying with this Act by providing any report or other information to the Disciplinary Board or a peer review committee, or assisting in the investigation or preparation of such information, or by voluntarily reporting to the Disciplinary Board or a peer review committee information regarding alleged errors or negligence by a person licensed under this Act, or by participating in proceedings of the Disciplinary Board or a peer review committee, or by serving as a member of the Disciplinary Board or a peer review committee, shall not, as a result of such actions, be subject to criminal prosecution or civil damages.

(D) Indemnification. Members of the Disciplinary Board,

the Medical Coordinators, the Disciplinary Board's attorneys, the medical investigative staff, physicians retained under contract to assist and advise the medical coordinators in the investigation, and authorized clerical staff shall be indemnified by the State for any actions occurring within the scope of services on the Disciplinary Board, done in good faith and not wilful and wanton in nature. The Attorney General shall defend all such actions unless he or she determines either that there would be a conflict of interest in such representation or that the actions complained of were not in good faith or were wilful and wanton.

Should the Attorney General decline representation, the member shall have the right to employ counsel of his or her choice, whose fees shall be provided by the State, after approval by the Attorney General, unless there is a determination by a court that the member's actions were not in good faith or were wilful and wanton.

The member must notify the Attorney General within 7 days of receipt of notice of the initiation of any action involving services of the Disciplinary Board. Failure to so notify the Attorney General shall constitute an absolute waiver of the right to a defense and indemnification.

The Attorney General shall determine within 7 days after receiving such notice, whether he or she will undertake to represent the member.

(E) Deliberations of Disciplinary Board. Upon the receipt

of any report called for by this Act, other than those reports of impaired persons licensed under this Act required pursuant to the rules of the Disciplinary Board, the Disciplinary Board shall notify in writing, by certified mail, the person who is the subject of the report. Such notification shall be made within 30 days of receipt by the Disciplinary Board of the report.

The notification shall include a written notice setting forth the person's right to examine the report. Included in such notification shall be the address at which the file is maintained, the name of the custodian of the reports, and the telephone number at which the custodian may be reached. The person who is the subject of the report shall submit a written statement responding, clarifying, adding to, or proposing the amending of the report previously filed. The person who is the subject of the report shall also submit with the written statement any medical records related to the report. The statement and accompanying medical records shall become a permanent part of the file and must be received by the Disciplinary Board no more than 30 days after the date on which the person was notified by the Disciplinary Board of the existence of the original report.

The Disciplinary Board shall review all reports received by it, together with any supporting information and responding statements submitted by persons who are the subject of reports. The review by the Disciplinary Board shall be in a timely

manner but in no event, shall the Disciplinary Board's initial review of the material contained in each disciplinary file be less than 61 days nor more than 180 days after the receipt of the initial report by the Disciplinary Board.

When the Disciplinary Board makes its initial review of the materials contained within its disciplinary files, the Disciplinary Board shall, in writing, make a determination as to whether there are sufficient facts to warrant further investigation or action. Failure to make such determination within the time provided shall be deemed to be a determination that there are not sufficient facts to warrant further investigation or action.

Should the Disciplinary Board find that there are not sufficient facts to warrant further investigation, or action, the report shall be accepted for filing and the matter shall be deemed closed and so reported to the Secretary. The Secretary shall then have 30 days to accept the Medical Disciplinary Board's decision or request further investigation. The Secretary shall inform the Board in writing of the decision to request further investigation, including the specific reasons for the decision. The individual or entity filing the original report or complaint and the person who is the subject of the report or complaint shall be notified in writing by the Secretary of any final action on their report or complaint.

(F) Summary reports. The Disciplinary Board shall prepare, on a timely basis, but in no event less than once every other

month, a summary report of final actions taken upon disciplinary files maintained by the Disciplinary Board. The summary reports shall be made available to the public upon request and payment of the fees set by the Department. This publication may be made available to the public on the Department's Internet website.

(G) Any violation of this Section shall be a Class A misdemeanor.

(H) If any such person violates the provisions of this Section an action may be brought in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois, for an order enjoining such violation or for an order enforcing compliance with this Section. Upon filing of a verified petition in such court, the court may issue a temporary restraining order without notice or bond and may preliminarily or permanently enjoin such violation, and if it is established that such person has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this paragraph shall be in addition to, and not in lieu of, all other remedies and penalties provided for by this Section.

(Source: P.A. 94-677, eff. 8-25-05; 95-639, eff. 10-5-07.)

(225 ILCS 60/36) (from Ch. 111, par. 4400-36)

(Section scheduled to be repealed on December 31, 2010)

Sec. 36. Upon the motion of either the Department or the

Disciplinary Board or upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute grounds for suspension or revocation under Section 22 of this Act, the Department shall investigate the actions of any person, so accused, who holds or represents that they hold a license. Such person is hereinafter called the accused.

The Department shall, before suspending, revoking, placing on probationary status, or taking any other disciplinary action as the Department may deem proper with regard to any license at least 30 days prior to the date set for the hearing, notify the accused in writing of any charges made and the time and place for a hearing of the charges before the Disciplinary Board, direct them to file their written answer thereto to the Disciplinary Board under oath within 20 days after the service on them of such notice and inform them that if they fail to file such answer default will be taken against them and their license may be suspended, revoked, placed on probationary status, or have other disciplinary action, including limiting the scope, nature or extent of their practice, as the Department may deem proper taken with regard thereto.

Where a physician has been found, upon complaint and investigation of the Department, and after hearing, to have performed an abortion procedure in a wilful and wanton manner upon a woman who was not pregnant at the time such abortion procedure was performed, the Department shall automatically revoke the license of such physician to practice medicine in

Illinois.

Such written notice and any notice in such proceedings thereafter may be served by delivery of the same, personally, to the accused person, or by mailing the same by registered or certified mail to the address last theretofore specified by the accused in their last notification to the Department.

All information gathered by the Department during its investigation including information subpoenaed under Section 23 or 38 of this Act and the investigative file shall be kept for the confidential use of the Secretary, Disciplinary Board, the Medical Coordinators, persons employed by contract to advise the Medical Coordinator or the Department, the Disciplinary Board's attorneys, the medical investigative staff, and authorized clerical staff, as provided in this Act and shall be afforded the same status as is provided information concerning medical studies in Part 21 of Article VIII of the Code of Civil Procedure, except that the Department may disclose information and documents to a federal, State, or local law enforcement agency pursuant to a subpoena in an ongoing criminal investigation to a health care licensing body of this State or another state or jurisdiction pursuant to an official request made by that licensing body. Furthermore, information and documents disclosed to a federal, State, or local law enforcement agency may be used by that agency only for the investigation and prosecution of a criminal offense or, in the case of disclosure to a health care licensing body, only

for investigations and disciplinary action proceedings with regard to a license issued by that licensing body.

(Source: P.A. 94-677, eff. 8-25-05.)

Section 35. The Nursing Home Administrators Licensing and Disciplinary Act is amended by changing Section 17 and adding Sections 17.1 and 38 as follows:

(225 ILCS 70/17) (from Ch. 111, par. 3667)

(Text of Section before amendment by P.A. 96-339)

(Section scheduled to be repealed on January 1, 2018)

Sec. 17. Grounds for disciplinary action.

(a) The Department may impose fines not to exceed \$10,000 or may refuse to issue or to renew, or may revoke, suspend, place on probation, censure, reprimand or take other disciplinary or non-disciplinary action with regard to the license of any person, for any one or combination of the following causes:

(1) Intentional material misstatement in furnishing information to the Department.

(2) Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony under the laws of the United States or any state or territory thereof or a misdemeanor of which an essential element is dishonesty or that is directly related to the practice of the profession of nursing home administration.

(3) Making any misrepresentation for the purpose of obtaining a license, or violating any provision of this Act.

(4) Immoral conduct in the commission of any act, such as sexual abuse or sexual misconduct, related to the licensee's practice.

(5) Failing to respond within 30 days, to a written request made by the Department for information.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.

(7) Habitual use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill or safety.

(8) Discipline by another U.S. jurisdiction if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth herein.

(9) A finding by the Department that the licensee, after having his or her license placed on probationary status has violated the terms of probation.

(10) Willfully making or filing false records or reports in his or her practice, including but not limited to false records filed with State agencies or departments.

(11) Physical illness, mental illness, or other impairment or disability, including, but not limited to,

deterioration through the aging process, or loss of motor skill that results in the inability to practice the profession with reasonable judgment, skill or safety.

(12) Disregard or violation of this Act or of any rule issued pursuant to this Act.

(13) Aiding or abetting another in the violation of this Act or any rule or regulation issued pursuant to this Act.

(14) Allowing one's license to be used by an unlicensed person.

(15) (Blank).

(16) Professional incompetence in the practice of nursing home administration.

(17) Conviction of a violation of Section 12-19 of the Criminal Code of 1961 for the abuse and gross neglect of a long term care facility resident.

(18) Violation of the Nursing Home Care Act or of any rule issued under the Nursing Home Care Act. A final adjudication of a Type "AA" violation of the Nursing Home Care Act made by the Illinois Department of Public Health, as identified by rule, relating to the hiring, training, planning, organizing, directing, or supervising the operation of a nursing home and a licensee's failure to comply with this Act or the rules adopted under this Act, shall create a rebuttable presumption of a violation of this subsection.

(19) Failure to report to the Department any adverse final action taken against the licensee by a licensing authority of another state, territory of the United States, or foreign country; or by any governmental or law enforcement agency; or by any court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this Section.

(20) Failure to report to the Department the surrender of a license or authorization to practice as a nursing home administrator in another state or jurisdiction for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this Section.

(21) Failure to report to the Department any adverse judgment, settlement, or award arising from a liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this Section.

All proceedings to suspend, revoke, place on probationary status, or take any other disciplinary action as the Department may deem proper, with regard to a license on any of the foregoing grounds, must be commenced within 5 years next after receipt by the Department of (i) a complaint alleging the commission of or notice of the conviction order for any of the acts described herein or (ii) a referral for investigation under Section 3-108 of the Nursing Home Care Act.

The entry of an order or judgment by any circuit court

establishing that any person holding a license under this Act is a person in need of mental treatment operates as a suspension of that license. That person may resume their practice only upon the entry of a Department order based upon a finding by the Board that they have been determined to be recovered from mental illness by the court and upon the Board's recommendation that they be permitted to resume their practice.

The Department, upon the recommendation of the Board, may adopt rules which set forth standards to be used in determining what constitutes:

(i) when a person will be deemed sufficiently rehabilitated to warrant the public trust;

(ii) dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(iii) immoral conduct in the commission of any act related to the licensee's practice; and

(iv) professional incompetence in the practice of nursing home administration.

However, no such rule shall be admissible into evidence in any civil action except for review of a licensing or other disciplinary action under this Act.

In enforcing this Section, the Department or Board, upon a showing of a possible violation, may compel any individual licensed to practice under this Act, or who has applied for licensure pursuant to this Act, to submit to a mental or

physical examination, or both, as required by and at the expense of the Department. The examining physician or physicians shall be those specifically designated by the Department or Board. The Department or Board may order the examining physician to present testimony concerning this mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of the examination. Failure of any individual to submit to mental or physical examination, when directed, shall be grounds for suspension of his or her license until such time as the individual submits to the examination if the Department finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause.

If the Department or Board finds an individual unable to practice because of the reasons set forth in this Section, the Department or Board shall require such individual to submit to care, counseling, or treatment by physicians approved or designated by the Department or Board, as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice; or in lieu of care, counseling, or treatment, the Department may file, or the Board may recommend to the Department to file, a complaint to immediately suspend, revoke,

or otherwise discipline the license of the individual. Any individual whose license was granted pursuant to this Act or continued, reinstated, renewed, disciplined or supervised, subject to such terms, conditions or restrictions who shall fail to comply with such terms, conditions or restrictions shall be referred to the Secretary for a determination as to whether the licensee shall have his or her license suspended immediately, pending a hearing by the Department. In instances in which the Secretary immediately suspends a license under this Section, a hearing upon such person's license must be convened by the Board within 30 days after such suspension and completed without appreciable delay. The Department and Board shall have the authority to review the subject administrator's record of treatment and counseling regarding the impairment, to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

An individual licensed under this Act, affected under this Section, shall be afforded an opportunity to demonstrate to the Department or Board that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

(b) Any individual or organization acting in good faith, and not in a wilful and wanton manner, in complying with this Act by providing any report or other information to the Department, or assisting in the investigation or preparation of

such information, or by participating in proceedings of the Department, or by serving as a member of the Board, shall not, as a result of such actions, be subject to criminal prosecution or civil damages.

(c) Members of the Board, and persons retained under contract to assist and advise in an investigation, shall be indemnified by the State for any actions occurring within the scope of services on or for the Board, done in good faith and not wilful and wanton in nature. The Attorney General shall defend all such actions unless he or she determines either that there would be a conflict of interest in such representation or that the actions complained of were not in good faith or were wilful and wanton.

Should the Attorney General decline representation, a person entitled to indemnification under this Section shall have the right to employ counsel of his or her choice, whose fees shall be provided by the State, after approval by the Attorney General, unless there is a determination by a court that the member's actions were not in good faith or were wilful and wanton.

A person entitled to indemnification under this Section must notify the Attorney General within 7 days of receipt of notice of the initiation of any action involving services of the Board. Failure to so notify the Attorney General shall constitute an absolute waiver of the right to a defense and indemnification.

The Attorney General shall determine within 7 days after receiving such notice, whether he or she will undertake to represent a person entitled to indemnification under this Section.

(d) The determination by a circuit court that a licensee is subject to involuntary admission or judicial admission as provided in the Mental Health and Developmental Disabilities Code, as amended, operates as an automatic suspension. Such suspension will end only upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and issues an order so finding and discharging the patient; and upon the recommendation of the Board to the Secretary that the licensee be allowed to resume his or her practice.

(e) The Department may refuse to issue or may suspend the license of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

(f) The Department of Public Health shall transmit to the Department a list of those facilities which receive an "A" violation as defined in Section 1-129 of the Nursing Home Care Act.

(Source: P.A. 95-703, eff. 12-31-07.)

(Text of Section after amendment by P.A. 96-339)

(Section scheduled to be repealed on January 1, 2018)

Sec. 17. Grounds for disciplinary action.

(a) The Department may impose fines not to exceed \$10,000 or may refuse to issue or to renew, or may revoke, suspend, place on probation, censure, reprimand or take other disciplinary or non-disciplinary action with regard to the license of any person, for any one or combination of the following causes:

(1) Intentional material misstatement in furnishing information to the Department.

(2) Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony under the laws of the United States or any state or territory thereof or a misdemeanor of which an essential element is dishonesty or that is directly related to the practice of the profession of nursing home administration.

(3) Making any misrepresentation for the purpose of obtaining a license, or violating any provision of this Act.

(4) Immoral conduct in the commission of any act, such as sexual abuse or sexual misconduct, related to the licensee's practice.

(5) Failing to respond within 30 days, to a written request made by the Department for information.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.

(7) Habitual use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill or safety.

(8) Discipline by another U.S. jurisdiction if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth herein.

(9) A finding by the Department that the licensee, after having his or her license placed on probationary status has violated the terms of probation.

(10) Willfully making or filing false records or reports in his or her practice, including but not limited to false records filed with State agencies or departments.

(11) Physical illness, mental illness, or other impairment or disability, including, but not limited to, deterioration through the aging process, or loss of motor skill that results in the inability to practice the profession with reasonable judgment, skill or safety.

(12) Disregard or violation of this Act or of any rule issued pursuant to this Act.

(13) Aiding or abetting another in the violation of this Act or any rule or regulation issued pursuant to this Act.

(14) Allowing one's license to be used by an unlicensed person.

(15) (Blank).

(16) Professional incompetence in the practice of nursing home administration.

(17) Conviction of a violation of Section 12-19 of the Criminal Code of 1961 for the abuse and gross neglect of a long term care facility resident.

(18) Violation of the Nursing Home Care Act or the MR/DD Community Care Act or of any rule issued under the Nursing Home Care Act or the MR/DD Community Care Act. A final adjudication of a Type "AA" violation of the Nursing Home Care Act made by the Illinois Department of Public Health, as identified by rule, relating to the hiring, training, planning, organizing, directing, or supervising the operation of a nursing home and a licensee's failure to comply with this Act or the rules adopted under this Act, shall create a rebuttable presumption of a violation of this subsection.

(19) Failure to report to the Department any adverse final action taken against the licensee by a licensing authority of another state, territory of the United States, or foreign country; or by any governmental or law enforcement agency; or by any court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this Section.

(20) Failure to report to the Department the surrender of a license or authorization to practice as a nursing home administrator in another state or jurisdiction for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this Section.

(21) Failure to report to the Department any adverse judgment, settlement, or award arising from a liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this Section.

All proceedings to suspend, revoke, place on probationary status, or take any other disciplinary action as the Department may deem proper, with regard to a license on any of the foregoing grounds, must be commenced within 5 years next after receipt by the Department of (i) a complaint alleging the commission of or notice of the conviction order for any of the acts described herein or (ii) a referral for investigation under Section 3-108 of the Nursing Home Care Act.

The entry of an order or judgment by any circuit court establishing that any person holding a license under this Act is a person in need of mental treatment operates as a suspension of that license. That person may resume their practice only upon the entry of a Department order based upon a finding by the Board that they have been determined to be recovered from mental illness by the court and upon the Board's recommendation that they be permitted to resume their practice.

The Department, upon the recommendation of the Board, may adopt rules which set forth standards to be used in determining what constitutes:

(i) when a person will be deemed sufficiently rehabilitated to warrant the public trust;

(ii) dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(iii) immoral conduct in the commission of any act related to the licensee's practice; and

(iv) professional incompetence in the practice of nursing home administration.

However, no such rule shall be admissible into evidence in any civil action except for review of a licensing or other disciplinary action under this Act.

In enforcing this Section, the Department or Board, upon a showing of a possible violation, may compel any individual licensed to practice under this Act, or who has applied for licensure pursuant to this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department. The examining physician or physicians shall be those specifically designated by the Department or Board. The Department or Board may order the examining physician to present testimony concerning this mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or

statutory privilege relating to communications between the licensee or applicant and the examining physician. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of the examination. Failure of any individual to submit to mental or physical examination, when directed, shall be grounds for suspension of his or her license until such time as the individual submits to the examination if the Department finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause.

If the Department or Board finds an individual unable to practice because of the reasons set forth in this Section, the Department or Board shall require such individual to submit to care, counseling, or treatment by physicians approved or designated by the Department or Board, as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice; or in lieu of care, counseling, or treatment, the Department may file, or the Board may recommend to the Department to file, a complaint to immediately suspend, revoke, or otherwise discipline the license of the individual. Any individual whose license was granted pursuant to this Act or continued, reinstated, renewed, disciplined or supervised, subject to such terms, conditions or restrictions who shall fail to comply with such terms, conditions or restrictions shall be referred to the Secretary for a determination as to whether the licensee shall have his or her license suspended

immediately, pending a hearing by the Department. In instances in which the Secretary immediately suspends a license under this Section, a hearing upon such person's license must be convened by the Board within 30 days after such suspension and completed without appreciable delay. The Department and Board shall have the authority to review the subject administrator's record of treatment and counseling regarding the impairment, to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

An individual licensed under this Act, affected under this Section, shall be afforded an opportunity to demonstrate to the Department or Board that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

(b) Any individual or organization acting in good faith, and not in a wilful and wanton manner, in complying with this Act by providing any report or other information to the Department, or assisting in the investigation or preparation of such information, or by participating in proceedings of the Department, or by serving as a member of the Board, shall not, as a result of such actions, be subject to criminal prosecution or civil damages.

(c) Members of the Board, and persons retained under contract to assist and advise in an investigation, shall be indemnified by the State for any actions occurring within the

scope of services on or for the Board, done in good faith and not wilful and wanton in nature. The Attorney General shall defend all such actions unless he or she determines either that there would be a conflict of interest in such representation or that the actions complained of were not in good faith or were wilful and wanton.

Should the Attorney General decline representation, a person entitled to indemnification under this Section shall have the right to employ counsel of his or her choice, whose fees shall be provided by the State, after approval by the Attorney General, unless there is a determination by a court that the member's actions were not in good faith or were wilful and wanton.

A person entitled to indemnification under this Section must notify the Attorney General within 7 days of receipt of notice of the initiation of any action involving services of the Board. Failure to so notify the Attorney General shall constitute an absolute waiver of the right to a defense and indemnification.

The Attorney General shall determine within 7 days after receiving such notice, whether he or she will undertake to represent a person entitled to indemnification under this Section.

(d) The determination by a circuit court that a licensee is subject to involuntary admission or judicial admission as provided in the Mental Health and Developmental Disabilities

Code, as amended, operates as an automatic suspension. Such suspension will end only upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and issues an order so finding and discharging the patient; and upon the recommendation of the Board to the Secretary that the licensee be allowed to resume his or her practice.

(e) The Department may refuse to issue or may suspend the license of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

(f) The Department of Public Health shall transmit to the Department a list of those facilities which receive an "A" violation as defined in Section 1-129 of the Nursing Home Care Act.

(Source: P.A. 95-703, eff. 12-31-07; 96-339, eff. 7-1-10.)

(225 ILCS 70/17.1 new)

Sec. 17.1. Reports of violations of Act or other conduct.

(a) The owner or licensee of a long term care facility licensed under the Nursing Home Care Act who employs or contracts with a licensee under this Act shall report to the Department any instance of which he or she has knowledge

arising in connection with operations of the health care institution, including the administration of any law by the institution, in which a licensee under this Act has either committed an act or acts which may constitute a violation of this Act or unprofessional conduct related directly to patient care, or which may indicate that the licensee may be mentally or physically disabled in such a manner as to endanger patients under that licensee's care. Additionally, every nursing home shall report to the Department any instance when a licensee is terminated for cause which would constitute a violation of this Act. The Department may take disciplinary or non-disciplinary action if the termination is based upon unprofessional conduct related to planning, organizing, directing, or supervising the operation of a nursing home as defined by this Act or other conduct by the licensee that would be a violation of this Act or rules.

For the purposes of this subsection, "owner" does not mean the owner of the real estate or physical plant who does not hold management or operational control of the licensed long term care facility.

(b) Any insurance company that offers policies of professional liability insurance to licensees, or any other entity that seeks to indemnify the professional liability of a licensee, shall report the settlement of any claim or adverse final judgment rendered in any action that alleged negligence in planning, organizing, directing, or supervising the

operation of a nursing home by the licensee.

(c) The State's Attorney of each county shall report to the Department each instance in which a licensee is convicted of or enters a plea of guilty or nolo contendere to any crime that is a felony, or of which an essential element is dishonesty, or that is directly related to the practice of the profession of nursing home administration.

(d) Any agency, board, commission, department, or other instrumentality of the government of the State of Illinois shall report to the Department any instance arising in connection with the operations of the agency, including the administration of any law by the agency, in which a licensee under this Act has either committed an act or acts which may constitute a violation of this Act or unprofessional conduct related directly to planning, organizing, directing or supervising the operation of a nursing home, or which may indicate that a licensee may be mentally or physically disabled in such a manner as to endanger others.

(e) All reports required by items (19), (20), and (21) of subsection (a) of Section 17 and by this Section 17.1 shall be submitted to the Department in a timely fashion. The reports shall be filed in writing within 60 days after a determination that a report is required under this Section. All reports shall contain the following information:

(1) The name, address, and telephone number of the person making the report.

(2) The name, address, and telephone number of the person who is the subject of the report.

(3) The name and date of birth of any person or persons whose treatment is a subject of the report, or other means of identification if that information is not available, and identification of the nursing home facility where the care at issue in the report was rendered.

(4) A brief description of the facts which gave rise to the issuance of the report, including the dates of any occurrences deemed to necessitate the filing of the report.

(5) If court action is involved, the identity of the court in which the action is filed, along with the docket number and the date the action was filed.

(6) Any further pertinent information that the reporting party deems to be an aid in evaluating the report.

If the Department receives a written report concerning an incident required to be reported under item (19), (20), or (21) of subsection (a) of Section 17, then the licensee's failure to report the incident to the Department within 60 days may not be the sole ground for any disciplinary action against the licensee.

(f) Any individual or organization acting in good faith, and not in a wilful and wanton manner, in complying with this Section by providing any report or other information to the Department, by assisting in the investigation or preparation of

such information, by voluntarily reporting to the Department information regarding alleged errors or negligence by a licensee, or by participating in proceedings of the Department, shall not, as a result of such actions, be subject to criminal prosecution or civil damages.

(g) Upon the receipt of any report required by this Section, the Department shall notify in writing, by certified mail, the person who is the subject of the report. The notification shall be made within 30 days after the Department's receipt of the report.

The notification shall include a written notice setting forth the person's right to examine the report. The notification shall also include the address at which the file is maintained, the name of the custodian of the file, and the telephone number at which the custodian may be reached. The person who is the subject of the report shall submit a written statement responding, clarifying, adding to, or proposing the amending of the report previously filed. The statement shall become a permanent part of the file and must be received by the Department no more than 30 days after the date on which the person was notified by the Department of the existence of the original report.

The Department shall review a report received by it, together with any supporting information and responding statements submitted by the person who is the subject of the report. The review by the Department shall be in a timely

manner, but in no event shall the Department's initial review of the material contained in each disciplinary file last less than 61 days nor more than 180 days after the receipt of the initial report by the Department.

When the Department makes its initial review of the materials contained within its disciplinary files, the Department shall, in writing, make a determination as to whether there are sufficient facts to warrant further investigation or action. Failure to make such a determination within the time provided shall be deemed to be a determination that there are not sufficient facts to warrant further investigation or action. The Department shall notify the person who is the subject of the report of any final action on the report.

(h) A violation of this Section is a Class A misdemeanor.

(i) If any person or entity violates this Section, then an action may be brought in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois, for an order enjoining the violation or for an order enforcing compliance with this Section. Upon filing of a verified petition in the court, the court may issue a temporary restraining order without notice or bond and may preliminarily or permanently enjoin the violation. If it is established that the person or entity has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this subsection (i) shall be in

addition to, and not in lieu of, all other remedies and penalties provided for by this Section.

(225 ILCS 70/38 new)

Sec. 38. Whistleblower protection. Any individual or organization acting in good faith, and not in a willful and wanton manner, in complying with this Act by providing any report or other information to the Department, or assisting in the investigation or preparation of such information, or by voluntarily reporting to the Department information regarding alleged errors or negligence by a licensee, or by participating in proceedings of the Department, shall not, as a result of such actions, be subject to criminal prosecution or civil damages.

Section 40. The Illinois Public Aid Code is amended by changing Section 5-5.12 and adding Sections 5-27 and 5-28 as follows:

(305 ILCS 5/5-5.12) (from Ch. 23, par. 5-5.12)

Sec. 5-5.12. Pharmacy payments.

(a) Every request submitted by a pharmacy for reimbursement under this Article for prescription drugs provided to a recipient of aid under this Article shall include the name of the prescriber or an acceptable identification number as established by the Department.

(b) Pharmacies providing prescription drugs under this Article shall be reimbursed at a rate which shall include a professional dispensing fee as determined by the Illinois Department, plus the current acquisition cost of the prescription drug dispensed. The Illinois Department shall update its information on the acquisition costs of all prescription drugs no less frequently than every 30 days. However, the Illinois Department may set the rate of reimbursement for the acquisition cost, by rule, at a percentage of the current average wholesale acquisition cost.

(c) (Blank).

(d) The Department shall not impose requirements for prior approval based on a preferred drug list for anti-retroviral, anti-hemophilic factor concentrates, or any atypical antipsychotics, conventional antipsychotics, or anticonvulsants used for the treatment of serious mental illnesses until 30 days after it has conducted a study of the impact of such requirements on patient care and submitted a report to the Speaker of the House of Representatives and the President of the Senate.

(e) The Department shall cooperate with the Department of Public Health and the Department of Human Services Division of Mental Health in identifying psychotropic medications that, when given in a particular form, manner, duration, or frequency (including "as needed") in a dosage, or in conjunction with other psychotropic medications to a nursing home resident, may

constitute a chemical restraint or an "unnecessary drug" as defined by the Nursing Home Care Act or Titles XVIII and XIX of the Social Security Act and the implementing rules and regulations. The Department shall require prior approval for any such medication prescribed for a nursing home resident that appears to be a chemical restraint or an unnecessary drug. The Department shall consult with the Department of Human Services Division of Mental Health in developing a protocol and criteria for deciding whether to grant such prior approval.

(Source: P.A. 93-106, eff. 7-8-03; 94-48, eff. 7-1-05.)

(305 ILCS 5/5-27 new)

Sec. 5-27. Nursing home workgroup.

(a) The Director of the Department of Healthcare and Family Services shall convene a workgroup composed of representatives of nursing home resident advocates, representatives of long term care providers, representatives of labor and employee-representation organizations, and all relevant State agencies, for the purpose of developing a proposal to be presented to the General Assembly no later than November 1, 2010. The proposal shall address the following issues:

(1) Staffing standards necessary to the provision of care and services and the preservation of resident safety.

(2) A comprehensive rate review giving consideration to adopting an evidence-based rate methodology.

(3) The development of a provider assessment.

(b) This Section is repealed, and the workgroup shall be dissolved, on January 1, 2011.

(305 ILCS 5/5-28 new)

Sec. 5-28. Community transition resources. The Department of Healthcare and Family Services, in collaboration with all relevant agencies, shall develop a Community Transition Plan to allow nursing facility residents who are determined to be appropriate for transition to the community to access or acquire resources to support the transition. These strategies may include, but need not be limited to, enhancement of the Community Home Maintenance Allowance, retention of income from work, and incorporation of community transition services into existing home and community-based waiver programs.

Section 93. Intent. Nothing in this Act is intended to apply to any facility that is subject to licensure under the MR/DD Community Care Act on or after July 1, 2010.

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

Public Act 096-1372

SB0326 Enrolled

LRB096 03655 DRJ 13683 b

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