

**SB3237**



**100TH GENERAL ASSEMBLY**

**State of Illinois**

**2017 and 2018**

**SB3237**

Introduced 2/15/2018, by Sen. Don Harmon

**SYNOPSIS AS INTRODUCED:**

20 ILCS 1305/1-17

Amends the Department of Human Services Act. In provisions concerning investigative reports and findings issued by the Department of Human Services' Office of the Inspector General concerning abuse allegations involving Department employees and clients, provides that any request for reconsideration or clarification of the Inspector General's findings shall be conducted by an investigator or supervisor who did not participate in the investigation for which reconsideration or clarification is sought. Provides that after a reconsideration has been completed, the agency, victim or guardian, or the subject employee has 30 calendar days from the date the reconsideration or clarification is received to request an appeal of the Office of Inspector General's finding. Provides that within 30 calendar days after submitting the appeal request, the agency, victim or guardian, or the subject employee shall have the right to request an administrative hearing before an administrative law judge. Provides that the determination of the administrative law judge shall be considered a final administrative decision subject to judicial review. Requires the Department to adopt rules governing the practice and procedure in the administrative hearings.

LRB100 17924 KTG 33108 b

FISCAL NOTE ACT  
MAY APPLY

**A BILL FOR**

1 AN ACT concerning State government.

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

4 Section 5. The Department of Human Services Act is amended  
5 by changing Section 1-17 as follows:

6 (20 ILCS 1305/1-17)

7 Sec. 1-17. Inspector General.

8 (a) Nature and purpose. It is the express intent of the  
9 General Assembly to ensure the health, safety, and financial  
10 condition of individuals receiving services in this State due  
11 to mental illness, developmental disability, or both by  
12 protecting those persons from acts of abuse, neglect, or both  
13 by service providers. To that end, the Office of the Inspector  
14 General for the Department of Human Services is created to  
15 investigate and report upon allegations of the abuse, neglect,  
16 or financial exploitation of individuals receiving services  
17 within mental health facilities, developmental disabilities  
18 facilities, and community agencies operated, licensed, funded  
19 or certified by the Department of Human Services, but not  
20 licensed or certified by any other State agency.

21 (b) Definitions. The following definitions apply to this  
22 Section:

23 "Adult student with a disability" means an adult student,

1 age 18 through 21, inclusive, with an Individual Education  
2 Program, other than a resident of a facility licensed by the  
3 Department of Children and Family Services in accordance with  
4 the Child Care Act of 1969. For purposes of this definition,  
5 "through age 21, inclusive", means through the day before the  
6 student's 22nd birthday.

7 "Agency" or "community agency" means (i) a community agency  
8 licensed, funded, or certified by the Department, but not  
9 licensed or certified by any other human services agency of the  
10 State, to provide mental health service or developmental  
11 disabilities service, or (ii) a program licensed, funded, or  
12 certified by the Department, but not licensed or certified by  
13 any other human services agency of the State, to provide mental  
14 health service or developmental disabilities service.

15 "Aggravating circumstance" means a factor that is  
16 attendant to a finding and that tends to compound or increase  
17 the culpability of the accused.

18 "Allegation" means an assertion, complaint, suspicion, or  
19 incident involving any of the following conduct by an employee,  
20 facility, or agency against an individual or individuals:  
21 mental abuse, physical abuse, sexual abuse, neglect, or  
22 financial exploitation.

23 "Day" means working day, unless otherwise specified.

24 "Deflection" means a situation in which an individual is  
25 presented for admission to a facility or agency, and the  
26 facility staff or agency staff do not admit the individual.

1 "Deflection" includes triage, redirection, and denial of  
2 admission.

3 "Department" means the Department of Human Services.

4 "Developmental disability" means "developmental  
5 disability" as defined in the Mental Health and Developmental  
6 Disabilities Code.

7 "Egregious neglect" means a finding of neglect as  
8 determined by the Inspector General that (i) represents a gross  
9 failure to adequately provide for, or a callused indifference  
10 to, the health, safety, or medical needs of an individual and  
11 (ii) results in an individual's death or other serious  
12 deterioration of an individual's physical condition or mental  
13 condition.

14 "Employee" means any person who provides services at the  
15 facility or agency on-site or off-site. The service  
16 relationship can be with the individual or with the facility or  
17 agency. Also, "employee" includes any employee or contractual  
18 agent of the Department of Human Services or the community  
19 agency involved in providing or monitoring or administering  
20 mental health or developmental disability services. This  
21 includes but is not limited to: owners, operators, payroll  
22 personnel, contractors, subcontractors, and volunteers.

23 "Facility" or "State-operated facility" means a mental  
24 health facility or developmental disabilities facility  
25 operated by the Department.

26 "Financial exploitation" means taking unjust advantage of

1 an individual's assets, property, or financial resources  
2 through deception, intimidation, or conversion for the  
3 employee's, facility's, or agency's own advantage or benefit.

4 "Finding" means the Office of Inspector General's  
5 determination regarding whether an allegation is  
6 substantiated, unsubstantiated, or unfounded.

7 "Health Care Worker Registry" or "Registry" means the  
8 Health Care Worker Registry under the Health Care Worker  
9 Background Check Act.

10 "Individual" means any person receiving mental health  
11 service, developmental disabilities service, or both from a  
12 facility or agency, while either on-site or off-site.

13 "Mental abuse" means the use of demeaning, intimidating, or  
14 threatening words, signs, gestures, or other actions by an  
15 employee about an individual and in the presence of an  
16 individual or individuals that results in emotional distress or  
17 maladaptive behavior, or could have resulted in emotional  
18 distress or maladaptive behavior, for any individual present.

19 "Mental illness" means "mental illness" as defined in the  
20 Mental Health and Developmental Disabilities Code.

21 "Mentally ill" means having a mental illness.

22 "Mitigating circumstance" means a condition that (i) is  
23 attendant to a finding, (ii) does not excuse or justify the  
24 conduct in question, but (iii) may be considered in evaluating  
25 the severity of the conduct, the culpability of the accused, or  
26 both the severity of the conduct and the culpability of the

1 accused.

2 "Neglect" means an employee's, agency's, or facility's  
3 failure to provide adequate medical care, personal care, or  
4 maintenance and that, as a consequence, (i) causes an  
5 individual pain, injury, or emotional distress, (ii) results in  
6 either an individual's maladaptive behavior or the  
7 deterioration of an individual's physical condition or mental  
8 condition, or (iii) places the individual's health or safety at  
9 substantial risk.

10 "Person with a developmental disability" means a person  
11 having a developmental disability.

12 "Physical abuse" means an employee's non-accidental and  
13 inappropriate contact with an individual that causes bodily  
14 harm. "Physical abuse" includes actions that cause bodily harm  
15 as a result of an employee directing an individual or person to  
16 physically abuse another individual.

17 "Recommendation" means an admonition, separate from a  
18 finding, that requires action by the facility, agency, or  
19 Department to correct a systemic issue, problem, or deficiency  
20 identified during an investigation.

21 "Required reporter" means any employee who suspects,  
22 witnesses, or is informed of an allegation of any one or more  
23 of the following: mental abuse, physical abuse, sexual abuse,  
24 neglect, or financial exploitation.

25 "Secretary" means the Chief Administrative Officer of the  
26 Department.

1 "Sexual abuse" means any sexual contact or intimate  
2 physical contact between an employee and an individual,  
3 including an employee's coercion or encouragement of an  
4 individual to engage in sexual behavior that results in sexual  
5 contact, intimate physical contact, sexual behavior, or  
6 intimate physical behavior. Sexual abuse also includes (i) an  
7 employee's actions that result in the sending or showing of  
8 sexually explicit images to an individual via computer,  
9 cellular phone, electronic mail, portable electronic device,  
10 or other media with or without contact with the individual or  
11 (ii) an employee's posting of sexually explicit images of an  
12 individual online or elsewhere whether or not there is contact  
13 with the individual.

14 "Sexually explicit images" includes, but is not limited to,  
15 any material which depicts nudity, sexual conduct, or  
16 sado-masochistic abuse, or which contains explicit and  
17 detailed verbal descriptions or narrative accounts of sexual  
18 excitement, sexual conduct, or sado-masochistic abuse.

19 "Substantiated" means there is a preponderance of the  
20 evidence to support the allegation.

21 "Unfounded" means there is no credible evidence to support  
22 the allegation.

23 "Unsubstantiated" means there is credible evidence, but  
24 less than a preponderance of evidence to support the  
25 allegation.

26 (c) Appointment. The Governor shall appoint, and the Senate

1 shall confirm, an Inspector General. The Inspector General  
2 shall be appointed for a term of 4 years and shall function  
3 within the Department of Human Services and report to the  
4 Secretary and the Governor.

5 (d) Operation and appropriation. The Inspector General  
6 shall function independently within the Department with  
7 respect to the operations of the Office, including the  
8 performance of investigations and issuance of findings and  
9 recommendations. The appropriation for the Office of Inspector  
10 General shall be separate from the overall appropriation for  
11 the Department.

12 (e) Powers and duties. The Inspector General shall  
13 investigate reports of suspected mental abuse, physical abuse,  
14 sexual abuse, neglect, or financial exploitation of  
15 individuals in any mental health or developmental disabilities  
16 facility or agency and shall have authority to take immediate  
17 action to prevent any one or more of the following from  
18 happening to individuals under its jurisdiction: mental abuse,  
19 physical abuse, sexual abuse, neglect, or financial  
20 exploitation. Upon written request of an agency of this State,  
21 the Inspector General may assist another agency of the State in  
22 investigating reports of the abuse, neglect, or abuse and  
23 neglect of persons with mental illness, persons with  
24 developmental disabilities, or persons with both. To comply  
25 with the requirements of subsection (k) of this Section, the  
26 Inspector General shall also review all reportable deaths for



1 which there is no allegation of abuse or neglect. Nothing in  
2 this Section shall preempt any duties of the Medical Review  
3 Board set forth in the Mental Health and Developmental  
4 Disabilities Code. The Inspector General shall have no  
5 authority to investigate alleged violations of the State  
6 Officials and Employees Ethics Act. Allegations of misconduct  
7 under the State Officials and Employees Ethics Act shall be  
8 referred to the Office of the Governor's Executive Inspector  
9 General for investigation.

10 (f) Limitations. The Inspector General shall not conduct an  
11 investigation within an agency or facility if that  
12 investigation would be redundant to or interfere with an  
13 investigation conducted by another State agency. The Inspector  
14 General shall have no supervision over, or involvement in, the  
15 routine programmatic, licensing, funding, or certification  
16 operations of the Department. Nothing in this subsection limits  
17 investigations by the Department that may otherwise be required  
18 by law or that may be necessary in the Department's capacity as  
19 central administrative authority responsible for the operation  
20 of the State's mental health and developmental disabilities  
21 facilities.

22 (g) Rulemaking authority. The Inspector General shall  
23 promulgate rules establishing minimum requirements for  
24 reporting allegations as well as for initiating, conducting,  
25 and completing investigations based upon the nature of the  
26 allegation or allegations. The rules shall clearly establish

1 that if 2 or more State agencies could investigate an  
2 allegation, the Inspector General shall not conduct an  
3 investigation that would be redundant to, or interfere with, an  
4 investigation conducted by another State agency. The rules  
5 shall further clarify the method and circumstances under which  
6 the Office of Inspector General may interact with the  
7 licensing, funding, or certification units of the Department in  
8 preventing further occurrences of mental abuse, physical  
9 abuse, sexual abuse, neglect, egregious neglect, and financial  
10 exploitation.

11 (h) Training programs. The Inspector General shall (i)  
12 establish a comprehensive program to ensure that every person  
13 authorized to conduct investigations receives ongoing training  
14 relative to investigation techniques, communication skills,  
15 and the appropriate means of interacting with persons receiving  
16 treatment for mental illness, developmental disability, or  
17 both mental illness and developmental disability, and (ii)  
18 establish and conduct periodic training programs for facility  
19 and agency employees concerning the prevention and reporting of  
20 any one or more of the following: mental abuse, physical abuse,  
21 sexual abuse, neglect, egregious neglect, or financial  
22 exploitation. Nothing in this Section shall be deemed to  
23 prevent the Office of Inspector General from conducting any  
24 other training as determined by the Inspector General to be  
25 necessary or helpful.

26 (i) Duty to cooperate.

1           (1) The Inspector General shall at all times be granted  
2 access to any facility or agency for the purpose of  
3 investigating any allegation, conducting unannounced site  
4 visits, monitoring compliance with a written response, or  
5 completing any other statutorily assigned duty. The  
6 Inspector General shall conduct unannounced site visits to  
7 each facility at least annually for the purpose of  
8 reviewing and making recommendations on systemic issues  
9 relative to preventing, reporting, investigating, and  
10 responding to all of the following: mental abuse, physical  
11 abuse, sexual abuse, neglect, egregious neglect, or  
12 financial exploitation.

13           (2) Any employee who fails to cooperate with an Office  
14 of the Inspector General investigation is in violation of  
15 this Act. Failure to cooperate with an investigation  
16 includes, but is not limited to, any one or more of the  
17 following: (i) creating and transmitting a false report to  
18 the Office of the Inspector General hotline, (ii) providing  
19 false information to an Office of the Inspector General  
20 Investigator during an investigation, (iii) colluding with  
21 other employees to cover up evidence, (iv) colluding with  
22 other employees to provide false information to an Office  
23 of the Inspector General investigator, (v) destroying  
24 evidence, (vi) withholding evidence, or (vii) otherwise  
25 obstructing an Office of the Inspector General  
26 investigation. Additionally, any employee who, during an

1 unannounced site visit or written response compliance  
2 check, fails to cooperate with requests from the Office of  
3 the Inspector General is in violation of this Act.

4 (j) Subpoena powers. The Inspector General shall have the  
5 power to subpoena witnesses and compel the production of all  
6 documents and physical evidence relating to his or her  
7 investigations and any hearings authorized by this Act. This  
8 subpoena power shall not extend to persons or documents of a  
9 labor organization or its representatives insofar as the  
10 persons are acting in a representative capacity to an employee  
11 whose conduct is the subject of an investigation or the  
12 documents relate to that representation. Any person who  
13 otherwise fails to respond to a subpoena or who knowingly  
14 provides false information to the Office of the Inspector  
15 General by subpoena during an investigation is guilty of a  
16 Class A misdemeanor.

17 (k) Reporting allegations and deaths.

18 (1) Allegations. If an employee witnesses, is told of,  
19 or has reason to believe an incident of mental abuse,  
20 physical abuse, sexual abuse, neglect, or financial  
21 exploitation has occurred, the employee, agency, or  
22 facility shall report the allegation by phone to the Office  
23 of the Inspector General hotline according to the agency's  
24 or facility's procedures, but in no event later than 4  
25 hours after the initial discovery of the incident,  
26 allegation, or suspicion of any one or more of the

1 following: mental abuse, physical abuse, sexual abuse,  
2 neglect, or financial exploitation. A required reporter as  
3 defined in subsection (b) of this Section who knowingly or  
4 intentionally fails to comply with these reporting  
5 requirements is guilty of a Class A misdemeanor.

6 (2) Deaths. Absent an allegation, a required reporter  
7 shall, within 24 hours after initial discovery, report by  
8 phone to the Office of the Inspector General hotline each  
9 of the following:

10 (i) Any death of an individual occurring within 14  
11 calendar days after discharge or transfer of the  
12 individual from a residential program or facility.

13 (ii) Any death of an individual occurring within 24  
14 hours after deflection from a residential program or  
15 facility.

16 (iii) Any other death of an individual occurring at  
17 an agency or facility or at any Department-funded site.

18 (3) Retaliation. It is a violation of this Act for any  
19 employee or administrator of an agency or facility to take  
20 retaliatory action against an employee who acts in good  
21 faith in conformance with his or her duties as a required  
22 reporter.

23 (1) Reporting to law enforcement.

24 (1) Reporting criminal acts. Within 24 hours after  
25 determining that there is credible evidence indicating  
26 that a criminal act may have been committed or that special

1 expertise may be required in an investigation, the  
2 Inspector General shall notify the Department of State  
3 Police or other appropriate law enforcement authority, or  
4 ensure that such notification is made. The Department of  
5 State Police shall investigate any report from a  
6 State-operated facility indicating a possible murder,  
7 sexual assault, or other felony by an employee. All  
8 investigations conducted by the Inspector General shall be  
9 conducted in a manner designed to ensure the preservation  
10 of evidence for possible use in a criminal prosecution.

11 (2) Reporting allegations of adult students with  
12 disabilities. Upon receipt of a reportable allegation  
13 regarding an adult student with a disability, the  
14 Department's Office of the Inspector General shall  
15 determine whether the allegation meets the criteria for the  
16 Domestic Abuse Program under the Abuse of Adults with  
17 Disabilities Intervention Act. If the allegation is  
18 reportable to that program, the Office of the Inspector  
19 General shall initiate an investigation. If the allegation  
20 is not reportable to the Domestic Abuse Program, the Office  
21 of the Inspector General shall make an expeditious referral  
22 to the respective law enforcement entity. If the alleged  
23 victim is already receiving services from the Department,  
24 the Office of the Inspector General shall also make a  
25 referral to the respective Department of Human Services'  
26 Division or Bureau.

1 (m) Investigative reports. Upon completion of an  
2 investigation, the Office of Inspector General shall issue an  
3 investigative report identifying whether the allegations are  
4 substantiated, unsubstantiated, or unfounded. Within 10  
5 business days after the transmittal of a completed  
6 investigative report substantiating an allegation, finding an  
7 allegation is unsubstantiated, or if a recommendation is made,  
8 the Inspector General shall provide the investigative report on  
9 the case to the Secretary and to the director of the facility  
10 or agency where any one or more of the following occurred:  
11 mental abuse, physical abuse, sexual abuse, neglect, egregious  
12 neglect, or financial exploitation. The director of the  
13 facility or agency shall be responsible for maintaining the  
14 confidentiality of the investigative report consistent with  
15 State and federal law. In a substantiated case, the  
16 investigative report shall include any mitigating or  
17 aggravating circumstances that were identified during the  
18 investigation. If the case involves substantiated neglect, the  
19 investigative report shall also state whether egregious  
20 neglect was found. An investigative report may also set forth  
21 recommendations. All investigative reports prepared by the  
22 Office of the Inspector General shall be considered  
23 confidential and shall not be released except as provided by  
24 the law of this State or as required under applicable federal  
25 law. Unsubstantiated and unfounded reports shall not be  
26 disclosed except as allowed under Section 6 of the Abused and

1 Neglected Long Term Care Facility Residents Reporting Act. Raw  
2 data used to compile the investigative report shall not be  
3 subject to release unless required by law or a court order.  
4 "Raw data used to compile the investigative report" includes,  
5 but is not limited to, any one or more of the following: the  
6 initial complaint, witness statements, photographs,  
7 investigator's notes, police reports, or incident reports. If  
8 the allegations are substantiated, the accused shall be  
9 provided with a redacted copy of the investigative report.  
10 Death reports where there was no allegation of abuse or neglect  
11 shall only be released pursuant to applicable State or federal  
12 law or a valid court order.

13 (n) Written responses, ~~and~~ reconsideration requests, and  
14 appeals.

15 (1) Written responses. Within 30 calendar days from  
16 receipt of a substantiated investigative report or an  
17 investigative report which contains recommendations,  
18 absent a reconsideration request, the facility or agency  
19 shall file a written response that addresses, in a concise  
20 and reasoned manner, the actions taken to: (i) protect the  
21 individual; (ii) prevent recurrences; and (iii) eliminate  
22 the problems identified. The response shall include the  
23 implementation and completion dates of such actions. If the  
24 written response is not filed within the allotted 30  
25 calendar day period, the Secretary shall determine the  
26 appropriate corrective action to be taken.



1           (2) Reconsideration requests. The facility, agency,  
2 victim or guardian, or the subject employee may request  
3 that the Office of Inspector General reconsider or clarify  
4 its finding ~~based upon additional information.~~ The  
5 reconsideration or clarification shall be conducted by an  
6 investigator or supervisor who did not participate in the  
7 investigation for which reconsideration or clarification  
8 is sought.

9           (3) Appeals. After a reconsideration has been  
10 completed, the agency, victim or guardian, or the subject  
11 employee has 30 calendar days from the date the  
12 reconsideration or clarification is received to request an  
13 appeal of the Office of Inspector General's finding. The  
14 appeal request must include a signed statement explaining  
15 the basis for the appeal. The party requesting the appeal  
16 may also include any additional documentation the party  
17 wishes to be reviewed with the appeal request. Within 30  
18 calendar days after submitting the appeal request, the  
19 agency, victim or guardian, or the subject employee shall  
20 have the right to request an administrative hearing before  
21 an administrative law judge who, after considering the  
22 evidence, shall make findings of fact and issue a  
23 determination based upon the findings of fact and  
24 applicable law as to whether each substantiated finding is  
25 affirmed, modified, or reversed. The determination of the  
26 administrative law judge shall be considered a final

1       administrative decision subject to judicial review under  
2       the Administrative Review Law and the rules adopted under  
3       that Law. The Department of Human Services shall adopt  
4       rules governing the practice and procedure in the  
5       administrative hearings.

6       (o) Disclosure of the finding by the Inspector General. The  
7       Inspector General shall disclose the finding of an  
8       investigation to the following persons: (i) the Governor, (ii)  
9       the Secretary, (iii) the director of the facility or agency,  
10      (iv) the alleged victims and their guardians, (v) the  
11      complainant, and (vi) the accused. This information shall  
12      include whether the allegations were deemed substantiated,  
13      unsubstantiated, or unfounded.

14      (p) Secretary review. Upon review of the Inspector  
15      General's investigative report and any agency's or facility's  
16      written response, the Secretary shall accept or reject the  
17      written response and notify the Inspector General of that  
18      determination. The Secretary may further direct that other  
19      administrative action be taken, including, but not limited to,  
20      any one or more of the following: (i) additional site visits,  
21      (ii) training, (iii) provision of technical assistance  
22      relative to administrative needs, licensure or certification,  
23      or (iv) the imposition of appropriate sanctions.

24      (q) Action by facility or agency. Within 30 days of the  
25      date the Secretary approves the written response or directs  
26      that further administrative action be taken, the facility or

1 agency shall provide an implementation report to the Inspector  
2 General that provides the status of the action taken. The  
3 facility or agency shall be allowed an additional 30 days to  
4 send notice of completion of the action or to send an updated  
5 implementation report. If the action has not been completed  
6 within the additional 30-day ~~30-day~~ period, the facility or  
7 agency shall send updated implementation reports every 60 days  
8 until completion. The Inspector General shall conduct a review  
9 of any implementation plan that takes more than 120 days after  
10 approval to complete, and shall monitor compliance through a  
11 random review of approved written responses, which may include,  
12 but are not limited to: (i) site visits, (ii) telephone  
13 contact, and (iii) requests for additional documentation  
14 evidencing compliance.

15 (r) Sanctions. Sanctions, if imposed by the Secretary under  
16 Subdivision (p)(iv) of this Section, shall be designed to  
17 prevent further acts of mental abuse, physical abuse, sexual  
18 abuse, neglect, egregious neglect, or financial exploitation  
19 or some combination of one or more of those acts at a facility  
20 or agency, and may include any one or more of the following:

21 (1) Appointment of on-site monitors.

22 (2) Transfer or relocation of an individual or  
23 individuals.

24 (3) Closure of units.

25 (4) Termination of any one or more of the following:

26 (i) Department licensing, (ii) funding, or (iii)

1 certification.

2 The Inspector General may seek the assistance of the  
3 Illinois Attorney General or the office of any State's Attorney  
4 in implementing sanctions.

5 (s) Health Care Worker Registry.

6 (1) Reporting to the Registry. The Inspector General  
7 shall report to the Department of Public Health's Health  
8 Care Worker Registry, a public registry, the identity and  
9 finding of each employee of a facility or agency against  
10 whom there is a final investigative report containing a  
11 substantiated allegation of physical or sexual abuse,  
12 financial exploitation, or egregious neglect of an  
13 individual.

14 (2) Notice to employee. Prior to reporting the name of  
15 an employee, the employee shall be notified of the  
16 Department's obligation to report and shall be granted an  
17 opportunity to request an administrative hearing, the sole  
18 purpose of which is to determine if the substantiated  
19 finding warrants reporting to the Registry. Notice to the  
20 employee shall contain a clear and concise statement of the  
21 grounds on which the report to the Registry is based, offer  
22 the employee an opportunity for a hearing, and identify the  
23 process for requesting such a hearing. Notice is sufficient  
24 if provided by certified mail to the employee's last known  
25 address. If the employee fails to request a hearing within  
26 30 days from the date of the notice, the Inspector General

1 shall report the name of the employee to the Registry.  
2 Nothing in this subdivision (s) (2) shall diminish or impair  
3 the rights of a person who is a member of a collective  
4 bargaining unit under the Illinois Public Labor Relations  
5 Act or under any other federal labor statute.

6 (3) Registry hearings. If the employee requests an  
7 administrative hearing, the employee shall be granted an  
8 opportunity to appear before an administrative law judge to  
9 present reasons why the employee's name should not be  
10 reported to the Registry. The Department shall bear the  
11 burden of presenting evidence that establishes, by a  
12 preponderance of the evidence, that the substantiated  
13 finding warrants reporting to the Registry. After  
14 considering all the evidence presented, the administrative  
15 law judge shall make a recommendation to the Secretary as  
16 to whether the substantiated finding warrants reporting  
17 the name of the employee to the Registry. The Secretary  
18 shall render the final decision. The Department and the  
19 employee shall have the right to request that the  
20 administrative law judge consider a stipulated disposition  
21 of these proceedings.

22 (4) Testimony at Registry hearings. A person who makes  
23 a report or who investigates a report under this Act shall  
24 testify fully in any judicial proceeding resulting from  
25 such a report, as to any evidence of abuse or neglect, or  
26 the cause thereof. No evidence shall be excluded by reason

1 of any common law or statutory privilege relating to  
2 communications between the alleged perpetrator of abuse or  
3 neglect, or the individual alleged as the victim in the  
4 report, and the person making or investigating the report.  
5 Testimony at hearings is exempt from the confidentiality  
6 requirements of subsection (f) of Section 10 of the Mental  
7 Health and Developmental Disabilities Confidentiality Act.

8 (5) Employee's rights to collateral action. No  
9 reporting to the Registry shall occur and no hearing shall  
10 be set or proceed if an employee notifies the Inspector  
11 General in writing, including any supporting  
12 documentation, that he or she is formally contesting an  
13 adverse employment action resulting from a substantiated  
14 finding by complaint filed with the Illinois Civil Service  
15 Commission, or which otherwise seeks to enforce the  
16 employee's rights pursuant to any applicable collective  
17 bargaining agreement. If an action taken by an employer  
18 against an employee as a result of a finding of physical  
19 abuse, sexual abuse, or egregious neglect is overturned  
20 through an action filed with the Illinois Civil Service  
21 Commission or under any applicable collective bargaining  
22 agreement and if that employee's name has already been sent  
23 to the Registry, the employee's name shall be removed from  
24 the Registry.

25 (6) Removal from Registry. At any time after the report  
26 to the Registry, but no more than once in any 12-month

1 period, an employee may petition the Department in writing  
2 to remove his or her name from the Registry. Upon receiving  
3 notice of such request, the Inspector General shall conduct  
4 an investigation into the petition. Upon receipt of such  
5 request, an administrative hearing will be set by the  
6 Department. At the hearing, the employee shall bear the  
7 burden of presenting evidence that establishes, by a  
8 preponderance of the evidence, that removal of the name  
9 from the Registry is in the public interest. The parties  
10 may jointly request that the administrative law judge  
11 consider a stipulated disposition of these proceedings.

12 (t) Review of Administrative Decisions. The Department  
13 shall preserve a record of all proceedings at any formal  
14 hearing conducted by the Department involving Health Care  
15 Worker Registry hearings. Final administrative decisions of  
16 the Department are subject to judicial review pursuant to  
17 provisions of the Administrative Review Law.

18 (u) Quality Care Board. There is created, within the Office  
19 of the Inspector General, a Quality Care Board to be composed  
20 of 7 members appointed by the Governor with the advice and  
21 consent of the Senate. One of the members shall be designated  
22 as chairman by the Governor. Of the initial appointments made  
23 by the Governor, 4 Board members shall each be appointed for a  
24 term of 4 years and 3 members shall each be appointed for a  
25 term of 2 years. Upon the expiration of each member's term, a  
26 successor shall be appointed for a term of 4 years. In the case

1 of a vacancy in the office of any member, the Governor shall  
2 appoint a successor for the remainder of the unexpired term.

3 Members appointed by the Governor shall be qualified by  
4 professional knowledge or experience in the area of law,  
5 investigatory techniques, or in the area of care of the  
6 mentally ill or care of persons with developmental  
7 disabilities. Two members appointed by the Governor shall be  
8 persons with a disability or a parent of a person with a  
9 disability. Members shall serve without compensation, but  
10 shall be reimbursed for expenses incurred in connection with  
11 the performance of their duties as members.

12 The Board shall meet quarterly, and may hold other meetings  
13 on the call of the chairman. Four members shall constitute a  
14 quorum allowing the Board to conduct its business. The Board  
15 may adopt rules and regulations it deems necessary to govern  
16 its own procedures.

17 The Board shall monitor and oversee the operations,  
18 policies, and procedures of the Inspector General to ensure the  
19 prompt and thorough investigation of allegations of neglect and  
20 abuse. In fulfilling these responsibilities, the Board may do  
21 the following:

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

26 (2) Review existing regulations relating to the



1 operation of facilities.

2 (3) Advise the Inspector General as to the content of  
3 training activities authorized under this Section.

4 (4) Recommend policies concerning methods for  
5 improving the intergovernmental relationships between the  
6 Office of the Inspector General and other State or federal  
7 offices.

8 (v) Annual report. The Inspector General shall provide to  
9 the General Assembly and the Governor, no later than January 1  
10 of each year, a summary of reports and investigations made  
11 under this Act for the prior fiscal year with respect to  
12 individuals receiving mental health or developmental  
13 disabilities services. The report shall detail the imposition  
14 of sanctions, if any, and the final disposition of any  
15 corrective or administrative action directed by the Secretary.  
16 The summaries shall not contain any confidential or identifying  
17 information of any individual, but shall include objective data  
18 identifying any trends in the number of reported allegations,  
19 the timeliness of the Office of the Inspector General's  
20 investigations, and their disposition, for each facility and  
21 Department-wide, for the most recent 3-year time period. The  
22 report shall also identify, by facility, the staff-to-patient  
23 ratios taking account of direct care staff only. The report  
24 shall also include detailed recommended administrative actions  
25 and matters for consideration by the General Assembly.

26 (w) Program audit. The Auditor General shall conduct a

1 program audit of the Office of the Inspector General on an  
2 as-needed basis, as determined by the Auditor General. The  
3 audit shall specifically include the Inspector General's  
4 compliance with the Act and effectiveness in investigating  
5 reports of allegations occurring in any facility or agency. The  
6 Auditor General shall conduct the program audit according to  
7 the provisions of the Illinois State Auditing Act and shall  
8 report its findings to the General Assembly no later than  
9 January 1 following the audit period.

10 (x) Nothing in this Section shall be construed to mean that  
11 an individual is a victim of abuse or neglect because of health  
12 care services appropriately provided or not provided by health  
13 care professionals.

14 (y) Nothing in this Section shall require a facility,  
15 including its employees, agents, medical staff members, and  
16 health care professionals, to provide a service to an  
17 individual in contravention of that individual's stated or  
18 implied objection to the provision of that service on the  
19 ground that that service conflicts with the individual's  
20 religious beliefs or practices, nor shall the failure to  
21 provide a service to an individual be considered abuse under  
22 this Section if the individual has objected to the provision of  
23 that service based on his or her religious beliefs or  
24 practices.

25 (Source: P.A. 99-143, eff. 7-27-15; 99-323, eff. 8-7-15;  
26 99-642, eff. 7-28-16; 100-313, eff. 8-24-17; 100-432, eff.

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1 8-25-17; revised 9-27-17.)