

AN ACT concerning health.

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

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

(20 ILCS 1305/1-17)

Sec. 1-17. Inspector General.

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

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

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

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

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

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

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

"Day" means working day, unless otherwise specified.

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

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

"Department" means the Department of Human Services.

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

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

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

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

"Financial exploitation" means taking unjust advantage of

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

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

"Health Care Worker Registry" ~~"Health care worker registry"~~ or "Registry" ~~"registry"~~ means the Health Care Worker Registry ~~health care worker registry~~ under ~~created by~~ the Health Care Worker Background Check Act ~~Nursing Home Care Act~~.

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

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

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

"Mentally ill" means having a mental illness.

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

both the severity of the conduct and the culpability of the accused.

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

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

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

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

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

"Secretary" means the Chief Administrative Officer of the

Department.

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

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

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

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

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

(c) Appointment. The Governor shall appoint, and the Senate shall confirm, an Inspector General. The Inspector General shall be appointed for a term of 4 years and shall function within the Department of Human Services and report to the Secretary and the Governor.

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

(e) Powers and duties. The Inspector General shall investigate reports of suspected mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation of individuals in any mental health or developmental disabilities facility or agency and shall have authority to take immediate action to prevent any one or more of the following from happening to individuals under its jurisdiction: mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation. Upon written request of an agency of this State, the Inspector General may assist another agency of the State in investigating reports of the abuse, neglect, or abuse and neglect of persons with mental illness, persons with developmental disabilities, or persons with both. To comply with the requirements of subsection (k) of this Section, the

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

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

(g) Rulemaking authority. The Inspector General shall promulgate rules establishing minimum requirements for reporting allegations as well as for initiating, conducting, and completing investigations based upon the nature of the



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

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

(i) Duty to cooperate.

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

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

investigation. Additionally, any employee who, during an unannounced site visit or written response compliance check, fails to cooperate with requests from the Office of the Inspector General is in violation of this Act.

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

(k) Reporting allegations and deaths.

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

allegation, or suspicion of any one or more of the following: mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation. A required reporter as defined in subsection (b) of this Section who knowingly or intentionally fails to comply with these reporting requirements is guilty of a Class A misdemeanor.

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

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

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

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

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

(1) Reporting to law enforcement.

(1) Reporting criminal acts. Within 24 hours after determining that there is credible evidence indicating

that a criminal act may have been committed or that special expertise may be required in an investigation, the Inspector General shall notify the Department of State Police or other appropriate law enforcement authority, or ensure that such notification is made. The Department of State Police shall investigate any report from a State-operated facility indicating a possible murder, sexual assault, or other felony by an employee. All investigations conducted by the Inspector General shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

(2) Reporting allegations of adult students with disabilities. Upon receipt of a reportable allegation regarding an adult student with a disability, the Department's Office of the Inspector General shall determine whether the allegation meets the criteria for the Domestic Abuse Program under the Abuse of Adults with Disabilities Intervention Act. If the allegation is reportable to that program, the Office of the Inspector General shall initiate an investigation. If the allegation is not reportable to the Domestic Abuse Program, the Office of the Inspector General shall make an expeditious referral to the respective law enforcement entity. If the alleged victim is already receiving services from the Department, the Office of the Inspector General shall also make a referral to the respective Department of Human Services'

Division or Bureau.

(m) Investigative reports. Upon completion of an investigation, the Office of Inspector General shall issue an investigative report identifying whether the allegations are substantiated, unsubstantiated, or unfounded. Within 10 business days after the transmittal of a completed investigative report substantiating an allegation, or if a recommendation is made, the Inspector General shall provide the investigative report on the case to the Secretary and to the director of the facility or agency where any one or more of the following occurred: mental abuse, physical abuse, sexual abuse, neglect, egregious neglect, or financial exploitation. In a substantiated case, the investigative report shall include any mitigating or aggravating circumstances that were identified during the investigation. If the case involves substantiated neglect, the investigative report shall also state whether egregious neglect was found. An investigative report may also set forth recommendations. All investigative reports prepared by the Office of the Inspector General shall be considered confidential and shall not be released except as provided by the law of this State or as required under applicable federal law. Unsubstantiated and unfounded reports shall not be disclosed except as allowed under Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act. Raw data used to compile the investigative report shall not be subject to release unless required by law

or a court order. "Raw data used to compile the investigative report" includes, but is not limited to, any one or more of the following: the initial complaint, witness statements, photographs, investigator's notes, police reports, or incident reports. If the allegations are substantiated, the accused shall be provided with a redacted copy of the investigative report. Death reports where there was no allegation of abuse or neglect shall only be released pursuant to applicable State or federal law or a valid court order.

(n) Written responses and reconsideration requests.

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

(2) Reconsideration requests. The facility, agency, victim or guardian, or the subject employee may request that the Office of Inspector General reconsider or clarify its finding based upon additional information.

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

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

(q) Action by facility or agency. Within 30 days of the date the Secretary approves the written response or directs that further administrative action be taken, the facility or agency shall provide an implementation report to the Inspector General that provides the status of the action taken. The facility or agency shall be allowed an additional 30 days to send notice of completion of the action or to send an updated implementation report. If the action has not been completed



within the additional 30 day period, the facility or agency shall send updated implementation reports every 60 days until completion. The Inspector General shall conduct a review of any implementation plan that takes more than 120 days after approval to complete, and shall monitor compliance through a random review of approved written responses, which may include, but are not limited to: (i) site visits, (ii) telephone contact, and (iii) requests for additional documentation evidencing compliance.

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

- (1) Appointment of on-site monitors.
- (2) Transfer or relocation of an individual or individuals.
- (3) Closure of units.
- (4) Termination of any one or more of the following:
  - (i) Department licensing, (ii) funding, or (iii) certification.

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

(s) Health Care Worker Registry ~~care worker registry~~.

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

(2) Notice to employee. Prior to reporting the name of an employee, the employee shall be notified of the Department's obligation to report and shall be granted an opportunity to request an administrative hearing, the sole purpose of which is to determine if the substantiated finding warrants reporting to the Registry ~~registry~~. Notice to the employee shall contain a clear and concise statement of the grounds on which the report to the Registry ~~registry~~ is based, offer the employee an opportunity for a hearing, and identify the process for requesting such a hearing. Notice is sufficient if provided by certified mail to the employee's last known address. If the employee fails to request a hearing within 30 days from the date of the notice, the Inspector General shall report the name of the employee to the Registry ~~registry~~. Nothing in this subdivision (s)(2) shall diminish or impair the rights of a person who is a member of a collective bargaining unit under the Illinois Public Labor Relations

Act or under any other federal labor statute.

(3) Registry hearings. If the employee requests an administrative hearing, the employee shall be granted an opportunity to appear before an administrative law judge to present reasons why the employee's name should not be reported to the Registry ~~registry~~. The Department shall bear the burden of presenting evidence that establishes, by a preponderance of the evidence, that the substantiated finding warrants reporting to the Registry ~~registry~~. After considering all the evidence presented, the administrative law judge shall make a recommendation to the Secretary as to whether the substantiated finding warrants reporting the name of the employee to the Registry ~~registry~~. The Secretary shall render the final decision. The Department and the employee shall have the right to request that the administrative law judge consider a stipulated disposition of these proceedings.

(4) Testimony at Registry ~~registry~~ hearings. A person who makes a report or who investigates a report under this Act shall testify fully in any judicial proceeding resulting from such a report, as to any evidence of abuse or neglect, or the cause thereof. No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the individual alleged as the victim in the report, and the person making or

investigating the report. Testimony at hearings is exempt from the confidentiality requirements of subsection (f) of Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act.

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

(6) Removal from Registry ~~registry~~. At any time after the report to the Registry ~~registry~~, but no more than once in any 12-month period, an employee may petition the Department in writing to remove his or her name from the Registry ~~registry~~. Upon receiving notice of such request,

the Inspector General shall conduct an investigation into the petition. Upon receipt of such request, an administrative hearing will be set by the Department. At the hearing, the employee shall bear the burden of presenting evidence that establishes, by a preponderance of the evidence, that removal of the name from the Registry ~~registry~~ is in the public interest. The parties may jointly request that the administrative law judge consider a stipulated disposition of these proceedings.

(t) Review of Administrative Decisions. The Department shall preserve a record of all proceedings at any formal hearing conducted by the Department involving Health Care Worker Registry ~~health care worker registry~~ hearings. Final administrative decisions of the Department are subject to judicial review pursuant to provisions of the Administrative Review Law.

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

appoint a successor for the remainder of the unexpired term.

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

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

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

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

- (2) Review existing regulations relating to the operation of facilities.

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

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

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

(w) Program audit. The Auditor General shall conduct a program audit of the Office of the Inspector General on an

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

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

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

(Source: P.A. 98-49, eff. 7-1-13; 98-711, eff. 7-16-14; 99-143, eff. 7-27-15; 99-323, eff. 8-7-15; 99-642, eff. 7-28-16.)



Section 10. The Mental Health and Developmental Disabilities Administrative Act is amended by changing Section 7.3 as follows:

(20 ILCS 1705/7.3)

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

(Source: P.A. 94-934, eff. 6-26-06; 95-545, eff. 8-28-07.)

Section 15. The Nursing Home Care Act is amended by changing Sections 3-206 and 3-206.01 as follows:

(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.

(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 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 criminal history record check in accordance with the Health Care Worker Background Check Act at any time during or after a training

program.

(a-1) Nursing assistants, habilitation aides, or child care aides seeking to be included on the Health Care Worker Registry under the Health Care Worker Background Check Act ~~registry maintained under Section 3-206.01~~ on or after January 1, 1996 must authorize the Department of Public Health or its designee to request a 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 Health Care Worker Registry ~~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 ~~health care worker registry~~.

(e) Each facility shall obtain access to the Health Care Worker Registry's ~~health care worker registry's~~ web application, maintain the employment and demographic information relating to 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. 96-1372, eff. 7-29-10.)

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

Sec. 3-206.01. Health Care Worker Registry ~~care worker registry~~.

(a) ~~The Department shall establish and maintain a Health Care Worker Registry accessible by health care employers, as defined in the Health Care Worker Background Check Act, that includes background check and training information 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. 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 and the individual is listed on the Health Care Worker Registry as eligible to work for a health care employer ~~health care worker registry as to information in the registry concerning the individual.~~ The facility shall not employ an individual as a nursing assistant, habilitation aide, or child care aide if that individual is not on the Health Care Worker Registry ~~registry~~ unless the individual is enrolled in a training program under paragraph (5) of subsection (a) of Section 3-206 of this Act. The Department may also maintain a publicly accessible registry.

(a-5) The Health Care Worker Registry ~~registry~~ maintained by the Department exclusive to health care employers, as defined in the Health Care Worker Background Check Act, shall clearly indicate whether an applicant or employee is eligible for employment and shall include the following:

- (1) information about the individual, including the individual's name, his or her current address, Social Security number, the date and location of the training



course completed by the individual, 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 record check, whether the individual has a waiver pending under Section 40 of the Health Care Worker Background Check Act, and whether the individual has received a waiver under Section 40 of that Act;

(2) the following language:

"A waiver granted by the Department of Public Health is a determination that the applicant or employee is eligible to work in a health care facility. The Equal Employment Opportunity Commission provides guidance about federal law regarding hiring of individuals with criminal records."; and

(3) a link to Equal Employment Opportunity Commission guidance regarding hiring of individuals with criminal records.

(a-10) After January 1, 2017, the publicly accessible registry maintained by the Department shall report that an individual is ineligible to work if he or she has a disqualifying offense under Section 25 of the Health Care Worker Background Check Act and has not received a waiver under Section 40 of that Act. If an applicant or employee has received a waiver for one or more disqualifying offenses under Section 40 of the Health Care Worker Background Check Act and

he or she is otherwise eligible to work, the Department of Public Health shall report on the public registry that the applicant or employee is eligible to work. The Department, however, shall not report information regarding the waiver on the public registry.

(a-15) (Blank). ~~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 or misappropriated property of a resident or an individual under his or her care, 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 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 statement in the registry relating to the finding or a clear and accurate summary of the statement.~~

(b) (Blank). ~~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 (s) of Section 1-17 of the Department of Human Services Act.~~

(Source: P.A. 99-78, eff. 7-20-15; 99-872, eff. 1-1-17.)

(210 ILCS 45/3-206.02 rep.)

Section 20. The Nursing Home Care Act is amended by repealing Section 3-206.02.

Section 25. The MC/DD Act is amended by changing Sections 3-206 and 3-206.01 as follows:

(210 ILCS 46/3-206)

Sec. 3-206. Curriculum for training nursing assistants and aides. 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 Financial and 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 or her 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 employees 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 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 criminal history record check in accordance with the Health Care Worker Background Check Act at any time during or after a training program.

(a-1) Nursing assistants, habilitation aides, or child care aides seeking to be included on the Health Care Worker Registry under the Health Care Worker Background Check Act ~~registry maintained under Section 3-206.01 of this Act~~ must authorize the Department of Public Health or its designee to request a 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 Health Care Worker Registry ~~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 or other appropriately trained, licensed, or certified personnel.

(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 ~~health care worker registry~~.

(e) Each facility shall obtain access to the Health Care Worker Registry's ~~health care worker registry's~~ web application, maintain the employment and demographic information relating to 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 those licensed under this Act but remains continuously employed as a nursing assistant, habilitation aide, or child care aide. Individuals who have performed no nursing, nursing-related services, or



habilitation 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. 99-180, eff. 7-29-15.)

(210 ILCS 46/3-206.01)

Sec. 3-206.01. Health Care Worker Registry ~~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, or child care aide. The registry shall include the individual's name, his or her current address, Social Security number, 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 and location of the training course completed by the individual, and 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, 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 checked ~~inquired of~~ the Department's Health Care Worker Registry and the individual is listed on the Health Care Worker Registry as eligible to work for a health care employer ~~health care worker registry as to information in the registry concerning the individual~~. The facility shall not employ an individual as a nursing assistant, habilitation aide, or child care aide if that individual is not on the Health Care Worker Registry ~~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, child care aide, or an unlicensed individual, has abused or neglected a resident or an individual under his or her care, or misappropriated 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 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's 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 statement in the registry relating to the finding or a clear and accurate summary of the statement.~~

(b) (Blank). ~~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 (s) of Section 1-17 of the Department of Human Services Act.~~

(Source: P.A. 99-180, eff. 7-29-15.)

(210 ILCS 46/3-206.02 rep.)

Section 30. The MC/DD Act is amended by repealing Section 3-206.02.

Section 35. The ID/DD Community Care Act is amended by changing Sections 3-206 and 3-206.01 as follows:

(210 ILCS 47/3-206)

Sec. 3-206. Curriculum for training nursing assistants and aides. 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 Financial and 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 or her 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 employees 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 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 criminal history record check in accordance with the Health Care Worker Background Check Act at any time during or after a training program.

(a-1) Nursing assistants, habilitation aides, or child care aides seeking to be included on the Health Care Worker Registry under the Health Care Worker Background Check Act ~~registry maintained under Section 3-206.01 of this Act~~ must authorize the Department of Public Health or its designee to request a 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 Health Care Worker Registry ~~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 or other appropriately trained, licensed, or certified personnel.

(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 ~~health care worker registry~~.

(e) Each facility shall obtain access to the Health Care Worker Registry's ~~health care worker registry's~~ web application, maintain the employment and demographic information relating to 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 those licensed under this Act but remains continuously employed as a nursing assistant, habilitation aide, or child care aide. Individuals who have performed no nursing, nursing-related services, or habilitation 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. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11.)

(210 ILCS 47/3-206.01)

Sec. 3-206.01. Health Care Worker Registry ~~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, or child care aide. The registry shall include the individual's name, his or her current address, Social Security number, 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 and location of the training course completed by the individual, and 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, 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 checked ~~inquired of~~ the Department's Health Care Worker Registry and the individual is listed on the Health Care Worker Registry as eligible to work for a health care employer ~~health care worker registry as to information in the registry concerning the individual~~. The facility shall not employ an individual as a nursing assistant, habilitation aide, or child care aide if that individual is not on the Health Care Worker Registry ~~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, child care aide, or an unlicensed individual, has abused or neglected a resident or an individual under his or her care, or misappropriated 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 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's 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 statement in the registry relating to the finding or a clear and accurate summary of the statement.~~

(b) (Blank). ~~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~~

Public Act 100-0432

SB1400 Enrolled

LRB100 08265 MJP 18366 b

~~Human Services, under subsection (s) of Section 1-17 of the Department of Human Services Act.~~

(Source: P.A. 99-78, eff. 7-20-15.)

(210 ILCS 47/3-206.02 rep.)

Section 40. The ID/DD Community Care Act is amended by repealing Section 3-206.02.

Section 45. The Health Care Worker Background Check Act is amended by changing Sections 15, 25, 33, and 40 and by adding Sections 26, 27, 28, and 75 as follows:

(225 ILCS 46/15)

Sec. 15. Definitions. In this Act:

"Applicant" means an individual seeking employment, whether paid or on a volunteer basis, with a health care employer who has received a bona fide conditional offer of employment.

"Conditional offer of employment" means a bona fide offer of employment by a health care employer to an applicant, which is contingent upon the receipt of a report from the Department of Public Health indicating that the applicant does not have a record of conviction of any of the criminal offenses enumerated in Section 25.

"Department" means the Department of Public Health.

"Direct care" means the provision of nursing care or

assistance with feeding, dressing, movement, bathing, toileting, or other personal needs, including home services as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act. The entity responsible for inspecting and licensing, certifying, or registering the health care employer may, by administrative rule, prescribe guidelines for interpreting this definition with regard to the health care employers that it licenses.

"Director" means the Director of Public Health.

"Disqualifying offenses" means those offenses set forth in Section 25 of this Act.

"Employee" means any individual hired, employed, or retained, whether paid or on a volunteer basis, to which this Act applies.

"Finding" means the Department's determination of whether an allegation is verified and substantiated.

"Fingerprint-based criminal history records check" means a livescan fingerprint-based criminal history records check submitted as a fee applicant inquiry in the form and manner prescribed by the Department of State Police.

"Health care employer" means:

(1) the owner or licensee of any of the following:

(i) a community living facility, as defined in the Community Living Facilities Act;

(ii) a life care facility, as defined in the Life Care Facilities Act;

(iii) a long-term care facility;

(iv) a home health agency, home services agency, or home nursing agency as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act;

(v) a hospice care program or volunteer hospice program, as defined in the Hospice Program Licensing Act;

(vi) a hospital, as defined in the Hospital Licensing Act;

(vii) (blank);

(viii) a nurse agency, as defined in the Nurse Agency Licensing Act;

(ix) a respite care provider, as defined in the Respite Program Act;

(ix-a) an establishment licensed under the Assisted Living and Shared Housing Act;

(x) a supportive living program, as defined in the Illinois Public Aid Code;

(xi) early childhood intervention programs as described in 59 Ill. Adm. Code 121;

(xii) the University of Illinois Hospital, Chicago;

(xiii) programs funded by the Department on Aging through the Community Care Program;

(xiv) programs certified to participate in the Supportive Living Program authorized pursuant to

Section 5-5.01a of the Illinois Public Aid Code;

(xv) programs listed by the Emergency Medical Services (EMS) Systems Act as Freestanding Emergency Centers;

(xvi) locations licensed under the Alternative Health Care Delivery Act;

(2) a day training program certified by the Department of Human Services;

(3) a community integrated living arrangement operated by a community mental health and developmental service agency, as defined in the Community-Integrated Living Arrangements Licensing and Certification Act; or

(4) the State Long Term Care Ombudsman Program, including any regional long term care ombudsman programs under Section 4.04 of the Illinois Act on the Aging, only for the purpose of securing background checks.

"Initiate" means obtaining from a student, applicant, or employee his or her social security number, demographics, a disclosure statement, and an authorization for the Department of Public Health or its designee to request a fingerprint-based criminal history records check; transmitting this information electronically to the Department of Public Health; conducting Internet searches on certain web sites, including without limitation the Illinois Sex Offender Registry, the Department of Corrections' Sex Offender Search Engine, the Department of Corrections' Inmate Search Engine, the Department of

Corrections Wanted Fugitives Search Engine, the National Sex Offender Public Registry, and the List of Excluded Individuals and Entities database on the website of the Health and Human Services Office of Inspector General to determine if the applicant has been adjudicated a sex offender, has been a prison inmate, or has committed Medicare or Medicaid fraud, or conducting similar searches as defined by rule; and having the student, applicant, or employee's fingerprints collected and transmitted electronically to the Department of State Police.

"Livescan vendor" means an entity whose equipment has been certified by the Department of State Police to collect an individual's demographics and inkless fingerprints and, in a manner prescribed by the Department of State Police and the Department of Public Health, electronically transmit the fingerprints and required data to the Department of State Police and a daily file of required data to the Department of Public Health. The Department of Public Health shall negotiate a contract with one or more vendors that effectively demonstrate that the vendor has 2 or more years of experience transmitting fingerprints electronically to the Department of State Police and that the vendor can successfully transmit the required data in a manner prescribed by the Department of Public Health. Vendor authorization may be further defined by administrative rule.

"Long-term care facility" means a facility licensed by the State or certified under federal law as a long-term care



facility, including without limitation facilities licensed under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act, a supportive living facility, an assisted living establishment, or a shared housing establishment or registered as a board and care home.

"Resident" means a person, individual, or patient under the direct care of a health care employer or who has been provided goods or services by a health care employer.

(Source: P.A. 98-104, eff. 7-22-13; 99-180, eff. 7-29-15.)

(225 ILCS 46/25)

Sec. 25. Hiring of people with criminal records by health care employers and long-term care facilities.

(a) A health care employer or long-term care facility may hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of clients, patients, or residents who has been convicted of committing or attempting to commit one or more of the following offenses only with a waiver described in Section 40: those defined in Sections 8-1(b), 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3, 9-3.4, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-9.1, 11-9.2, 11-9.3, 11-9.4-1, 11-9.5, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-1, 12-2, 12-3.05,

12-3.1, 12-3.2, 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-20.5, 12-21, 12-21.5, 12-21.6, 12-32, 12-33, 12C-5, 12C-10, 16-1, 16-1.3, 16-25, 16A-3, 17-3, 17-56, 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 19-6, 20-1, 20-1.1, 24-1, 24-1.2, 24-1.5, 24-1.8, 24-3.8, or 33A-2, or subdivision (a)(4) of Section 11-14.4, or in subsection (a) of Section 12-3 or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012; those provided in Section 4 of the Wrongs to Children Act; those provided in Section 53 of the Criminal Jurisprudence Act; those defined in subsection (c), (d), (e), (f), or (g) of Section 5 or Section 5.1, 5.2, 7, or 9 of the Cannabis Control Act; those defined in the Methamphetamine Control and Community Protection Act; ~~or~~ those defined in Sections 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act; or subsection (a) of Section 3.01, Section 3.02, or Section 3.03 of the Humane Care for Animals Act.

(a-1) A health care employer or long-term care facility may hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of clients, patients, or residents who has been convicted of committing or attempting to commit one or more of the following offenses only with a waiver described in Section 40: those offenses defined in Section 12-3.3, 12-4.2-5, 16-2,

16-30, 16G-15, 16G-20, 17-33, 17-34, 17-36, 17-44, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3, or subsection (b) of Section 17-32, subsection (b) of Section 18-1, or subsection (b) of Section 20-1, of the Criminal Code of 1961 or the Criminal Code of 2012; Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; or Section 11-9.1A of the Criminal Code of 1961 or the Criminal Code of 2012 or Section 5.1 of the Wrongs to Children Act; or (ii) violated Section 50-50 of the Nurse Practice Act.

A health care employer is not required to retain an individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility is required to retain an individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit one or more of the offenses enumerated in this subsection.

(b) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records

of residents, if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsection (a) or (a-1), as verified by court records, records from a state agency, or an FBI criminal history record check, unless the applicant or employee obtains a waiver pursuant to Section 40 of this Act. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided.

(c) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents, who has a finding by the Department of abuse, neglect, misappropriation of property, or theft denoted on the Health Care Worker Registry.

(d) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents if the individual has a verified and substantiated finding of abuse, neglect, or financial exploitation, as identified within the Adult Protective Service Registry established under Section 7.5 of the Adult Protective Services Act.

(e) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in

a position with duties involving direct care of clients, patients, or residents who has a finding by the Department of Human Services of physical or sexual abuse, financial exploitation, or egregious neglect of an individual denoted on the Health Care Worker Registry.

(Source: P.A. 99-872, eff. 1-1-17.)

(225 ILCS 46/26 new)

Sec. 26. Health Care Worker Registry. The Department shall establish and maintain the Health Care Worker Registry, a registry of all individuals who (i) have satisfactorily completed the training required by Section 3-206 of the Nursing Home Care Act, Section 3-206 of the MC/DD Act, or Section 3-206 of the ID/DD Community Care Act, (ii) have begun a current course of training as set forth in Section 3-206 of the Nursing Home Care Act, Section 3-206 of the MC/DD Act, or Section 3-206 of the ID/DD Community Care Act, or (iii) are otherwise acting as a nursing assistant, habilitation aide, home health aide, or child care aide. The Health Care Worker Registry shall include the individual's name, current address, and Social Security number, the date and location of the training course completed by the individual, 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 training course completed by the individual, and the date of the individual's last criminal records check. Any individual

placed on the Health Care Worker Registry is required to inform the Department of any change of address within 30 days after the effective date of the change of address.

The Department shall include in the Health Care Worker Registry established under this Section the information contained in the registries established under Section 3-206.01 of the Nursing Home Care Act, Section 3-206.01 of the MC/DD Act, and Section 3-206.01 of the ID/DD Community Care Act.

(225 ILCS 46/27 new)

Sec. 27. Notice and hearing prior to designation on Health Care Worker Registry for offense.

(a) If the Department finds that an employee or former employee has abused or neglected a resident or misappropriated property of a resident, then the Department shall notify the employee or individual of this finding by certified mail sent to the address contained in the Health Care Worker Registry. The notice shall give the employee or individual an opportunity to contest the finding in a hearing before the Department or to submit a written response to the findings in lieu of requesting a hearing. As used in this subsection, "abuse" and "neglect" shall have the meanings provided in the Nursing Home Care Act, except that the term "resident" as used in those definitions shall have the meaning provided in this Act. As used in this subsection, "misappropriate property of a resident" shall have the meaning provided to "misappropriation of a resident's

property" in the Nursing Home Care Act, except that the term "resident" as used in that definition shall have the meaning provided in this Act.

(b) The Department shall have the authority to hold hearings to be conducted by the Director, or by an individual designated by the Director as hearing officer to conduct the hearing. On the basis of a hearing, or upon default of the employee, the Director shall make a determination specifying his or her findings and conclusions. A copy of the determination shall be sent by certified mail, return receipt requested, or served personally upon the employee to the address last provided by the employee to the Department.

(c) The procedure governing hearings authorized by this Section shall be in accordance with rules adopted by the Department. A full and complete record shall be kept of all proceedings, including the notice of hearing, and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director or the Director's designee. All testimony shall be reported but need not be transcribed unless the decision is sought to be reviewed under the Administrative Review Law. A copy or copies of the transcript and record of the proceedings may be obtained by any interested party subsequent to payment to the Department of the cost of preparing the copy or copies. All final administrative decisions of the Department under this Act are subject to judicial review under the Administrative Review Law

and the rules adopted pursuant thereto. For purposes of this subsection, "administrative decision" has the meaning provided in Section 3-101 of the Code of Civil Procedure.

(d) The Department may issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records, or memoranda. All subpoenas and subpoenas duces tecum issued under this Act may be served by mail or by any person of legal age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the courts of this State. The fees shall be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Department, the 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. A subpoena or subpoena duces tecum issued pursuant to this Section shall be served in the same manner as a subpoena issued by a circuit court.

(e) If, after a hearing or if the employee, or former employee, does not request a hearing, the Department finds that the employee, or former employee, abused a resident, neglected a resident, or misappropriated resident property or makes any other applicable finding as set forth by rule, the finding



shall be included as part of the Health Care Worker Registry as well as a clear and accurate summary from the employee, if he or she chooses to make a statement.

(f) The Department shall make the following information in the Health Care Worker 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 employee, or former employee, has been guilty of abuse or neglect of a resident or misappropriation of resident property or has made any other applicable finding as set forth by rule. In the case of inquiries to the Health Care Worker Registry concerning an employee, or former employee, listed in the Health Care Worker Registry, any information disclosed concerning a finding shall also include disclosure of the employee's, or former employee's, statement in the Health Care Worker Registry relating to the finding or a clear and accurate summary of the statement.

(g) 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 (s) of Section 1-17 of the Department of Human Services Act.

Sec. 28. Designation on Registry for offense.

(a) The Department, after notice to the employee, or former employee, may denote on the Health Care Worker Registry that the Department has found any of the following:

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

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

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

(4) The employee, or former employee, has been convicted of (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 an employee, 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, theft, or other applicable finding, and notice of the opportunity for a hearing to contest the designation.

(c) The Department shall document criminal history records check results pursuant to the requirements of this Act.

(d) After the designation of neglect on the Health Care Worker Registry, made pursuant to this Section, an employee, or former employee, may petition the Department for removal of a designation of neglect on the Health Care Worker Registry, after durations set forth within the Department's notice made

pursuant to subsections (a) and (b) of this Section. Upon receipt of a petition, the Department may remove the designation for a finding of neglect after no less than one year, or the designation of applicable findings set forth by rule of an employee, or former employee, for minimum durations set forth by the Department, on the Health Care Worker Registry unless the Department determines that removal of designation is not in the public interest. The Department shall set forth by rule the discretionary factors by which designations of employees or former employees may be removed.

(225 ILCS 46/33)

Sec. 33. Fingerprint-based criminal history records check.

(a) A fingerprint-based criminal history records check is not required for health care employees who have been continuously employed by a health care employer since October 1, 2007, have met the requirements for criminal history background checks prior to October 1, 2007, and have no disqualifying convictions or requested and received a waiver of those disqualifying convictions. These employees shall be retained on the Health Care Worker Registry as long as they remain active. Nothing in this subsection (a) shall be construed to prohibit a health care employer from initiating a criminal history records check for these employees. Should these employees seek a new position with a different health care employer, then a fingerprint-based criminal history

records check shall be required.

(b) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, any student, applicant, or employee who desires to be included on the Department of Public Health's Health Care Worker Registry shall ~~must~~ authorize the Department of Public Health or its designee to request a fingerprint-based criminal history records check to determine if the individual has a conviction for a disqualifying offense. This authorization shall allow the Department of Public Health to request and receive information and assistance from any State or ~~local~~ governmental agency. Each individual shall submit his or her fingerprints to the Department of State Police in an electronic format that complies with the form and manner for requesting and furnishing criminal history record information prescribed by the Department of State Police. The fingerprints submitted under this Section shall be checked against the fingerprint records now and hereafter filed in the Department of State Police criminal history record databases. The Department of State Police shall charge a fee for conducting the criminal history records check, which shall not exceed the actual cost of the records check. The livescan vendor may act as the designee for individuals, educational entities, or health care employers in the collection of Department of State Police fees and deposit those fees into the State Police Services Fund. The Department of State Police

shall provide information concerning any criminal convictions, now or hereafter filed, against the individual.

(c) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, an educational entity, other than a secondary school, conducting a nurse aide training program shall ~~must~~ initiate a fingerprint-based criminal history records check required by this Act ~~requested by the Department of Public Health~~ prior to entry of an individual into the training program.

(d) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, a health care employer who makes a conditional offer of employment to an applicant for a position as an employee shall ~~must~~ initiate a fingerprint-based criminal history record check, requested by the Department of Public Health, on the applicant, if such a background check has not been previously conducted.

(e) When initiating a background check requested by the Department of Public Health, an educational entity or health care employer shall electronically submit to the Department of Public Health the student's, applicant's, or employee's social security number, demographics, disclosure, and authorization information in a format prescribed by the Department of Public Health within 2 working days after the authorization is secured. The student, applicant, or employee shall ~~must~~ have

his or her fingerprints collected electronically and transmitted to the Department of State Police within 10 working days. The educational entity or health care employer shall ~~must~~ transmit all necessary information and fees to the livescan vendor and Department of State Police within 10 working days after receipt of the authorization. This information and the results of the criminal history record checks shall be maintained by the Department of Public Health's Health Care Worker Registry.

(f) A direct care employer may initiate a fingerprint-based background check required by this Act ~~requested by the Department of Public Health~~ for any of its employees, but may not use this process to initiate background checks for residents. The results of any fingerprint-based background check that is initiated with the Department as the requester ~~requestor~~ shall be entered in the Health Care Worker Registry.

(g) As long as the employee has had a fingerprint-based criminal history record check required by this Act ~~requested by the Department of Public Health~~ and stays active on the Health Care Worker Registry, no further criminal history record checks are required ~~shall be deemed necessary~~, as the Department of State Police shall notify the Department of Public Health of any additional convictions associated with the fingerprints previously submitted. Health care employers shall ~~are required~~ ~~to~~ check the Health Care Worker Registry before hiring an employee to determine that the individual has had a

fingerprint-based record check required by this Act ~~requested by the Department of Public Health~~ and has no disqualifying convictions or has been granted a waiver pursuant to Section 40 of this Act. If the individual has not had such a background check or is not active on the Health Care Worker Registry, then the health care employer shall ~~must~~ initiate a fingerprint-based record check requested by the Department of Public Health. If an individual is inactive on the Health Care Worker Registry, that individual is prohibited from being hired to work as a certified nursing assistant ~~nurse-aide~~ if, since the individual's most recent completion of a competency test, there has been a period of 24 consecutive months during which the individual has not provided nursing or nursing-related services for pay. If the individual can provide proof of having retained his or her certification by not having a 24-consecutive-month ~~24-consecutive-month~~ break in service for pay, he or she may be hired as a certified nursing assistant ~~nurse-aide~~ and that employment information shall be entered into the Health Care Worker Registry.

(h) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, if the Department of State Police notifies the Department of Public Health that an employee has a new conviction of a disqualifying offense, based upon the fingerprints that were previously submitted, then (i) the Health Care Worker Registry shall notify the employee's

last known employer of the offense, (ii) a record of the employee's disqualifying offense shall be entered on the Health Care Worker Registry, and (iii) the individual shall no longer be eligible to work as an employee unless he or she obtains a waiver pursuant to Section 40 of this Act.

(i) On October 1, 2007, or as soon thereafter, in the discretion of the Director of Public Health, as is reasonably practical, and thereafter, each direct care employer or its designee shall ~~must~~ provide an employment verification for each employee no less than annually. The direct care employer or its designee shall ~~must~~ log into the Health Care Worker Registry through a secure login. The health care employer or its designee shall ~~must~~ indicate employment and termination dates within 30 days after hiring or terminating an employee, as well as the employment category and type. Failure to comply with this subsection (i) constitutes a licensing violation. A ~~For~~ ~~health care employers that are not licensed or certified,~~ a fine of up to \$500 may be imposed for failure to maintain these records. This information shall be used by the Department of Public Health to notify the last known employer of any disqualifying offenses that are reported by the Department of State Police.

~~(j) The Department of Public Health shall notify each health care employer or long term care facility inquiring as to the information on the Health Care Worker Registry if the applicant or employee listed on the registry has a~~



~~disqualifying offense and is therefore ineligible to work.~~ In the event that an applicant or employee has a waiver for one or more disqualifying offenses pursuant to Section 40 of this Act and he or she is otherwise eligible to work, the Health Care Worker Registry ~~Department of Public Health~~ shall indicate ~~report~~ that the applicant or employee is eligible to work and that additional information is available on the Health Care Worker Registry. The Health Care Worker Registry ~~Department~~ may indicate ~~report~~ that the applicant or employee has received a waiver.

(k) The student, applicant, or employee shall ~~must~~ be notified of each of the following whenever a fingerprint-based criminal history records check is required:

(1) That the educational entity, health care employer, or long-term care facility shall initiate a fingerprint-based criminal history record check required by this Act ~~requested by the Department of Public Health of the student, applicant, or employee pursuant to this Act.~~

(2) That the student, applicant, or employee has a right to obtain a copy of the criminal records report that indicates a conviction for a disqualifying offense and challenge the accuracy and completeness of the report through an established Department of State Police procedure of Access and Review.

(3) That the applicant, if hired conditionally, may be terminated if the criminal records report indicates that

the applicant has a record of a conviction of any of the criminal offenses enumerated in Section 25, unless the applicant obtains a waiver pursuant to Section 40 of this Act.

(4) That the applicant, if not hired conditionally, shall not be hired if the criminal records report indicates that the applicant has a record of a conviction of any of the criminal offenses enumerated in Section 25, unless the applicant obtains a waiver pursuant to Section 40 of this Act.

(5) That the employee shall be terminated if the criminal records report indicates that the employee has a record of a conviction of any of the criminal offenses enumerated in Section 25.

(6) If, after the employee has originally been determined not to have disqualifying offenses, the employer is notified that the employee has a new conviction(s) of any of the criminal offenses enumerated in Section 25, then the employee shall be terminated.

(l) A health care employer or long-term care facility may conditionally employ an applicant for up to 3 months pending the results of a fingerprint-based criminal history record check requested by the Department of Public Health.

(m) The Department of Public Health or an entity responsible for inspecting, licensing, certifying, or registering the health care employer or long-term care facility

shall be immune from liability for notices given based on the results of a fingerprint-based criminal history record check.

(Source: P.A. 99-872, eff. 1-1-17.)

(225 ILCS 46/40)

Sec. 40. Waiver.

(a) Any student, applicant, or employee listed on the Health Care Worker Registry may request a waiver of the prohibition against employment by:

(1) completing a waiver application on a form prescribed by the Department of Public Health;

(2) providing a written explanation of each conviction to include (i) what happened, (ii) how many years have passed since the offense, (iii) the individuals involved, (iv) the age of the applicant at the time of the offense, and (v) any other circumstances surrounding the offense; and

(3) providing official documentation showing that all fines have been paid, if applicable and except for in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, and the date probation or parole was satisfactorily completed, if applicable.

(b) The applicant may, but is not required to, submit employment and character references and any other evidence demonstrating the ability of the applicant or employee to

perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, patients, or clients.

(c) The Department of Public Health may, at the discretion of the Director of Public Health, grant a waiver to an applicant, student, or employee listed on the Health Care Worker Registry ~~registry~~. The Department of Public Health shall act upon the waiver request within 30 days of receipt of all necessary information, as defined by rule. The Department of Public Health shall send an applicant, student, or employee written notification of its decision whether to grant a waiver, including listing the specific disqualifying offenses for which the waiver is being granted or denied. The Department shall issue additional copies of this written notification upon the applicant's, student's, or employee's request.

(d) An individual shall not be employed from the time that the employer receives a notification from the Department of Public Health based upon the results of a fingerprint-based criminal history records check containing disqualifying conditions until the time that the individual receives a waiver.

(e) The entity responsible for inspecting, licensing, certifying, or registering the health care employer and the Department of Public Health shall be immune from liability for any waivers granted under this Section.

(f) A health care employer is not obligated to employ or

offer permanent employment to an applicant, or to retain an employee who is granted a waiver under this Section.

(Source: P.A. 99-872, eff. 1-1-17.)

(225 ILCS 46/75 new)

Sec. 75. Rulemaking. The Department shall have the authority to adopt administrative rules and procedures to carry out the purpose of this Act. The provisions of the Illinois Administrative Procedure Act are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department under this Act.

Section 50. The Mental Health and Developmental Disabilities Confidentiality Act is amended by changing Section 10 as follows:

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

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

(1) Records and communications may be disclosed in a civil, criminal or administrative proceeding in which the recipient introduces his mental condition or any aspect of

his services received for such condition as an element of his claim or defense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal or other action for review of an administrative determination may be taken, finds, after in camera examination of testimony or other evidence, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise clearly admissible; that other satisfactory evidence is demonstrably unsatisfactory as evidence of the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from injury to the therapist-recipient relationship or to the recipient or other whom disclosure is likely to harm. Except in a criminal proceeding in which the recipient, who is accused in that proceeding, raises the defense of insanity, no record or communication between a therapist and a recipient shall be deemed relevant for purposes of this subsection, except the fact of treatment, the cost of services and the ultimate diagnosis unless the party seeking disclosure of the communication clearly establishes in the trial court a compelling need for its production. However, for purposes of this Act, in any action brought or defended under the Illinois Marriage and Dissolution of Marriage Act, or in any action in which pain

and suffering is an element of the claim, mental condition shall not be deemed to be introduced merely by making such claim and shall be deemed to be introduced only if the recipient or a witness on his behalf first testifies concerning the record or communication.

(2) Records or communications may be disclosed in a civil proceeding after the recipient's death when the recipient's physical or mental condition has been introduced as an element of a claim or defense by any party claiming or defending through or as a beneficiary of the recipient, provided the court finds, after in camera examination of the evidence, that it is relevant, probative, and otherwise clearly admissible; that other satisfactory evidence is not available regarding the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from any injury which disclosure is likely to cause.

(3) In the event of a claim made or an action filed by a recipient, or, following the recipient's death, by any party claiming as a beneficiary of the recipient for injury caused in the course of providing services to such recipient, the therapist and other persons whose actions are alleged to have been the cause of injury may disclose pertinent records and communications to an attorney or attorneys engaged to render advice about and to provide

representation in connection with such matter and to persons working under the supervision of such attorney or attorneys, and may testify as to such records or communication in any administrative, judicial or discovery proceeding for the purpose of preparing and presenting a defense against such claim or action.

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

(5) Records and communications may be disclosed in a proceeding under the Probate Act of 1975, to determine a recipient's competency or need for guardianship, provided that the disclosure is made only with respect to that issue.

(6) Records and communications may be disclosed to a



court-appointed therapist, psychologist, or psychiatrist for use in determining a person's fitness to stand trial if the records were made within the 180-day period immediately preceding the date of the therapist's, psychologist's or psychiatrist's court appointment. These records and communications shall be admissible only as to the issue of the person's fitness to stand trial. Records and communications may be disclosed when such are made during treatment which the recipient is ordered to undergo to render him fit to stand trial on a criminal charge, provided that the disclosure is made only with respect to the issue of fitness to stand trial.

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

(8) Records or communications may be disclosed when such are relevant to a matter in issue in any action brought under this Act and proceedings preliminary

thereto, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

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

(10) Records and communications of a deceased recipient shall be disclosed to a coroner conducting a preliminary investigation into the recipient's death under Section 3-3013 of the Counties Code.

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

(12) Records and communications of a recipient may be

disclosed when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed may not be used for any other purposes nor may it be redisclosed except in connection with collection activities. Whenever records are disclosed pursuant to this subdivision (12), the recipient of the records shall be advised in writing that any person who discloses mental health records and communications in violation of this Act may be subject to civil liability pursuant to Section 15 of this Act or to criminal penalties pursuant to Section 16 of this Act or both.

(b) Before a disclosure is made under subsection (a), any party to the proceeding or any other interested person may request an in camera review of the record or communications to be disclosed. The court or agency conducting the proceeding may hold an in camera review on its own motion. When, contrary to the express wish of the recipient, the therapist asserts a privilege on behalf and in the interest of a recipient, the court may require that the therapist, in an in camera hearing, establish that disclosure is not in the best interest of the recipient. The court or agency may prevent disclosure or limit disclosure to the extent that other admissible evidence is

sufficient to establish the facts in issue. The court or agency may enter such orders as may be necessary in order to protect the confidentiality, privacy, and safety of the recipient or of other persons. Any order to disclose or to not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal.

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

The facility shall notify the recipient, or his guardian, and therapist in writing of any disclosure request under this subsection within 5 business days after such request. Such notification shall also inform the recipient, or guardian, and therapist of their right to object to the disclosure within 10 business days after receipt of the notification and shall include the name, address and telephone number of the committee, commission or subcommittee member or staff person with whom an objection shall be filed. If no objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications to

the committee, commission or subcommittee. If an objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications only after the committee, commission or subcommittee has permitted the recipient, guardian or therapist to present his objection in person before it and has renewed its request for disclosure by a majority vote of its members.

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

(d) No party to any proceeding described under paragraphs (1), (2), (3), (4), (7), or (8) of subsection (a) of this Section, nor his or her attorney, shall serve a subpoena seeking to obtain access to records or communications under this Act unless the subpoena is accompanied by a written order issued by a judge or by the written consent under Section 5 of this Act of the person whose records are being sought, authorizing the disclosure of the records or the issuance of the subpoena. No such written order shall be issued without written notice of the motion to the recipient and the treatment provider. Prior to issuance of the order, each party or other person entitled to notice shall be permitted an opportunity to be heard pursuant to subsection (b) of this Section. In the absence of the written consent under Section 5 of this Act of

the person whose records are being sought, no person shall comply with a subpoena for records or communications under this Act, unless the subpoena is accompanied by a written order authorizing the issuance of the subpoena or the disclosure of the records. Each subpoena issued by a court or administrative agency or served on any person pursuant to this subsection (d) shall include the following language: "No person shall comply with a subpoena for mental health records or communications pursuant to Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/10, unless the subpoena is accompanied by a written order that authorizes the issuance of the subpoena and the disclosure of records or communications or by the written consent under Section 5 of that Act of the person whose records are being sought."

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

(f) A recipient's records and communications shall be disclosed to the Inspector General of the Department of Human Services within 10 business days of a request by the Inspector

General (i) in the course of an investigation authorized by the Department of Human Services Act and applicable rule or (ii) during the course of an assessment authorized by the Abuse of Adults with Disabilities Intervention Act and applicable rule. The request shall be in writing and signed by the Inspector General or his or her designee. The request shall state the purpose for which disclosure is sought. Any person who knowingly and willfully refuses to comply with such a request is guilty of a Class A misdemeanor. A recipient's records and communications shall also be disclosed pursuant to subsection (s) of Section 1-17 of the Department of Human Services Act in testimony at Health Care Worker Registry ~~health care worker registry~~ hearings or preliminary proceedings when such are relevant to the matter in issue, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

(Source: P.A. 98-221, eff. 1-1-14; 98-908, eff. 1-1-15; 99-78, eff. 7-20-15.)

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

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Statutes amended in order of appearance

20 ILCS 1305/1-17

20 ILCS 1705/7.3

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

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

210 ILCS 45/3-206.02 rep.

210 ILCS 46/3-206

210 ILCS 46/3-206.01

210 ILCS 46/3-206.02 rep.

210 ILCS 47/3-206

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225 ILCS 46/15

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225 ILCS 46/27 new

225 ILCS 46/28 new

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225 ILCS 46/40

225 ILCS 46/75 new

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