



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3179

Introduced 2/15/2018, by Sen. Laura M. Murphy

SYNOPSIS AS INTRODUCED:

See Index

Amends the Department of Human Services Act. Adds additional duties for the Inspector General for the Department of Human Services. Defines "substantiated" to mean that there is clear and convincing evidence (rather than a preponderance) to support the allegation of abuse, neglect, or financial exploitation. Amends the Mental Health and Developmental Disabilities Administrative Act. Defines "nurse-training". Changes the criteria for non-licensed authorized direct care staff. Provides that within one year after the bill's effective date, the Department shall prepare a report that identifies any efficiencies or improvements in Department operations, the oversight of agencies, and the reduction or elimination of duplicative activities. The report shall include a quality assessment of the feasibility of combining the functions of the Division of Developmental Disabilities' Bureau of Quality Management and the Department's Bureau of Accreditation, Licensure, and Certification. Upon the report's completion, the Department shall post the report on the Department's website and submit it to the General Assembly and Governor. Amends the Community-Integrated Living Arrangements Licensure and Certification Act. Provides that using contemporary data gathered on reports of allegations of abuse, neglect, and financial exploitation, the Department shall establish a process by which the Department requires responses from agencies that annually report a number of allegations that are 2 or more standard deviations from the mean for all agencies. Provides that if an agency has documented evidence and has determined that the agency cannot adequately staff a community-integrated living arrangement, then the agency may take immediate steps to close the community-integrated living arrangement. Effective immediately.

LRB100 18946 RLC 34196 b

1 AN ACT concerning health.

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

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

6 (20 ILCS 1305/1-17)

7 Sec. 1-17. Inspector General.

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

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

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

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

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

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

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

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

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

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

3 "Department" means the Department of Human Services.

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

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

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

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

26 "Financial exploitation" means taking unjust advantage of

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

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

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

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

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

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

21 "Mentally ill" means having a mental illness.

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

1 accused.

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

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

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

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

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

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

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

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

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

21 "Unfounded" means there is not a preponderance of ne
22 ~~credible~~ evidence to support the allegation.

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

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

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

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

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

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

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

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

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

11 (h) Training programs. The Inspector General shall (i)
12 establish a comprehensive program to ensure that every person
13 authorized to conduct investigations receives ongoing training
14 relative to investigation techniques, communication skills,
15 community models of providing long-term services and supports
16 for persons with intellectual or developmental disabilities
17 and serious mental illnesses, and the appropriate means of
18 interacting with persons with intellectual disabilities,
19 developmental disabilities, or mental illnesses who are
20 receiving services in a community setting ~~receiving treatment~~
21 ~~for mental illness, developmental disability, or both mental~~
22 ~~illness and developmental disability,~~ and (ii) establish and
23 conduct periodic training programs for facility and agency
24 employees concerning the prevention and reporting of any one or
25 more of the following: mental abuse, physical abuse, sexual
26 abuse, neglect, egregious neglect, or financial exploitation.

1 The Inspector General shall ensure all investigators are
2 trained on the role of nurses as provided in 59 Ill. Adm. Code
3 116. Nothing in this Section shall be deemed to prevent the
4 Office of Inspector General from conducting any other training
5 as determined by the Inspector General to be necessary or
6 helpful.

7 (i) Duty to cooperate.

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

20 (2) Any employee who fails to cooperate with an Office
21 of the Inspector General investigation is in violation of
22 this Act. Failure to cooperate with an investigation
23 includes, but is not limited to, any one or more of the
24 following: (i) creating and transmitting a false report to
25 the Office of the Inspector General hotline, (ii) providing
26 false information to an Office of the Inspector General

1 Investigator during an investigation, (iii) colluding with
2 other employees to cover up evidence, (iv) colluding with
3 other employees to provide false information to an Office
4 of the Inspector General investigator, (v) destroying
5 evidence, (vi) withholding evidence, or (vii) otherwise
6 obstructing an Office of the Inspector General
7 investigation. Additionally, any employee who, during an
8 unannounced site visit or written response compliance
9 check, fails to cooperate with requests from the Office of
10 the Inspector General is in violation of this Act.

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

24 (k) Reporting allegations and deaths.

25 (1) Allegations. If an employee witnesses, is told of,
26 or has reason to believe an incident of mental abuse,

1 physical abuse, sexual abuse, neglect, or financial
2 exploitation has occurred, the employee, agency, or
3 facility shall report the allegation by phone to the Office
4 of the Inspector General hotline according to the agency's
5 or facility's procedures, but in no event later than 4
6 hours after the initial discovery of the incident,
7 allegation, or suspicion of any one or more of the
8 following: mental abuse, physical abuse, sexual abuse,
9 neglect, or financial exploitation. A required reporter as
10 defined in subsection (b) of this Section who knowingly or
11 intentionally fails to comply with these reporting
12 requirements is guilty of a Class A misdemeanor.

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

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

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

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

25 (3) Retaliation. It is a violation of this Act for any
26 employee or administrator of an agency or facility to take

1 retaliatory action against an employee who acts in good
2 faith in conformance with his or her duties as a required
3 reporter.

4 (1) Reporting to law enforcement.

5 (1) Reporting criminal acts. Within 24 hours after
6 determining that there is credible evidence indicating
7 that a criminal act may have been committed or that special
8 expertise may be required in an investigation, the
9 Inspector General shall notify the Department of State
10 Police or other appropriate law enforcement authority, or
11 ensure that such notification is made. The Department of
12 State Police shall investigate any report from a
13 State-operated facility indicating a possible murder,
14 sexual assault, or other felony by an employee. All
15 investigations conducted by the Inspector General shall be
16 conducted in a manner designed to ensure the preservation
17 of evidence for possible use in a criminal prosecution.

18 (2) Reporting allegations of adult students with
19 disabilities. Upon receipt of a reportable allegation
20 regarding an adult student with a disability, the
21 Department's Office of the Inspector General shall
22 determine whether the allegation meets the criteria for the
23 Domestic Abuse Program under the Abuse of Adults with
24 Disabilities Intervention Act. If the allegation is
25 reportable to that program, the Office of the Inspector
26 General shall initiate an investigation. If the allegation

1 is not reportable to the Domestic Abuse Program, the Office
2 of the Inspector General shall make an expeditious referral
3 to the respective law enforcement entity. If the alleged
4 victim is already receiving services from the Department,
5 the Office of the Inspector General shall also make a
6 referral to the respective Department of Human Services'
7 Division or Bureau.

8 (m) Investigative reports. Upon completion of an
9 investigation, the Office of Inspector General shall issue an
10 investigative report identifying whether the allegations are
11 substantiated, unsubstantiated, or unfounded. Within 10
12 business days after the transmittal of a completed
13 investigative report substantiating an allegation, finding an
14 allegation is unsubstantiated, or if a recommendation is made,
15 the Inspector General shall provide the investigative report on
16 the case to the Secretary and to the director of the facility
17 or agency where any one or more of the following occurred:
18 mental abuse, physical abuse, sexual abuse, neglect, egregious
19 neglect, or financial exploitation. The director of the
20 facility or agency shall be responsible for maintaining the
21 confidentiality of the investigative report consistent with
22 State and federal law. In a substantiated case, the
23 investigative report shall include any mitigating or
24 aggravating circumstances that were identified during the
25 investigation. In an unsubstantiated case, the Inspector
26 General shall not issue recommendations to the director of the

1 facility or the agency. If the case involves substantiated
2 neglect, the investigative report shall also state whether
3 egregious neglect was found. An investigative report may also
4 set forth recommendations. All investigative reports prepared
5 by the Office of the Inspector General shall be considered
6 confidential and shall not be released except as provided by
7 the law of this State or as required under applicable federal
8 law. Unsubstantiated and unfounded reports shall not be
9 disclosed except as allowed under Section 6 of the Abused and
10 Neglected Long Term Care Facility Residents Reporting Act. Raw
11 data used to compile the investigative report shall not be
12 subject to release unless required by law or a court order.
13 "Raw data used to compile the investigative report" includes,
14 but is not limited to, any one or more of the following: the
15 initial complaint, witness statements, photographs,
16 investigator's notes, police reports, or incident reports. If
17 the allegations are substantiated, the accused shall be
18 provided with a redacted copy of the investigative report.
19 Death reports where there was no allegation of abuse or neglect
20 shall only be released pursuant to applicable State or federal
21 law or a valid court order. In all final reports, the
22 facility's or agency's director shall be given the opportunity
23 to provide written evaluations of the investigative process.

24 (n) Written responses and reconsideration requests.

25 (1) Written responses. Within 30 calendar days from
26 receipt of a substantiated investigative report or an

1 investigative report which contains recommendations,
2 absent a reconsideration request, the facility or agency
3 shall file a written response that addresses, in a concise
4 and reasoned manner, the actions taken to: (i) protect the
5 individual; (ii) prevent recurrences; and (iii) eliminate
6 the problems identified. The response shall include the
7 implementation and completion dates of such actions. If the
8 facility's or agency's director have recommendations that
9 differ from or are not identical to the recommendations
10 provided in the investigative report, then the Inspector
11 General must review and consider how these recommendations
12 might accomplish the actions required in this Section. If
13 the written response is not filed within the allotted 30
14 calendar day period, the Secretary shall determine the
15 appropriate corrective action to be taken.

16 (1.5) If, in a final investigative report, the
17 Inspector General recommends that the facility's or
18 agency's director assign or hire additional staff, and if,
19 in the written response, the director indicates additional
20 staff cannot be assigned or hired, then the director may
21 take immediate steps to close the facility or agency.

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

26 (n-5) If an investigative report under this Section is

1 submitted as evidence during the appeals process provided in
2 the Unemployment Insurance Act, then the investigator that
3 completed the report must attend all appeal hearings and Board
4 of Review hearings.

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

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

23 (q) Action by facility or agency. Within 30 days of the
24 date the Secretary approves the written response or directs
25 that further administrative action be taken, the facility or
26 agency shall provide an implementation report to the Inspector

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

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

20 (1) Appointment of on-site monitors.

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

23 (3) Closure of units.

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

25 (i) Department licensing, (ii) funding, or (iii)
26 certification.

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

4 (s) Health Care Worker Registry.

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

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

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

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

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

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

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

24 (6) Removal from Registry. At any time after the report
25 to the Registry, but no more than once in any 12-month
26 period, an employee may petition the Department in writing

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

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

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

1 appoint a successor for the remainder of the unexpired term.

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

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

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

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

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

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

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

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

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

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

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

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

24 (Source: P.A. 99-143, eff. 7-27-15; 99-323, eff. 8-7-15;
25 99-642, eff. 7-28-16; 100-313, eff. 8-24-17; 100-432, eff.
26 8-25-17; revised 9-27-17.)

1 Section 10. The Mental Health and Developmental
2 Disabilities Administrative Act is amended by changing Section
3 15.4 and by adding Section 18.8 as follows:

4 (20 ILCS 1705/15.4)

5 Sec. 15.4. Authorization for nursing delegation to permit
6 direct care staff to administer medications.

7 (a) This Section applies to (i) all residential programs
8 for persons with a developmental disability in settings of 16
9 persons or fewer that are funded or licensed by the Department
10 of Human Services and that distribute or administer
11 medications, (ii) all intermediate care facilities for persons
12 with developmental disabilities with 16 beds or fewer that are
13 licensed by the Department of Public Health, and (iii) all day
14 programs certified to serve persons with developmental
15 disabilities by the Department of Human Services. The
16 Department of Human Services shall develop a training program
17 for authorized direct care staff to administer medications
18 under the supervision and monitoring of a registered
19 professional nurse. The training program for authorized direct
20 care staff shall include educational and oversight components
21 for staff who work in day programs that are similar to those
22 for staff who work in residential programs. This training
23 program shall be developed in consultation with professional
24 associations representing (i) physicians licensed to practice

1 medicine in all its branches, (ii) registered professional
2 nurses, and (iii) pharmacists.

3 (b) For the purposes of this Section:

4 "Authorized direct care staff" means non-licensed persons
5 who have successfully completed a medication administration
6 training program approved by the Department of Human Services
7 and conducted by a nurse-trainer. This authorization is
8 specific to an individual receiving service in a specific
9 agency and does not transfer to another agency.

10 "Medications" means oral and topical medications, insulin
11 in an injectable form, oxygen, epinephrine auto-injectors, and
12 vaginal and rectal creams and suppositories. "Oral" includes
13 inhalants and medications administered through enteral tubes,
14 utilizing aseptic technique. "Topical" includes eye, ear, and
15 nasal medications. Any controlled substances must be packaged
16 specifically for an identified individual.

17 "Insulin in an injectable form" means a subcutaneous
18 injection via an insulin pen pre-filled by the manufacturer.
19 Authorized direct care staff may administer insulin, as ordered
20 by a physician, advanced practice registered nurse, or
21 physician assistant, if: (i) the staff has successfully
22 completed a Department-approved advanced training program
23 specific to insulin administration developed in consultation
24 with professional associations listed in subsection (a) of this
25 Section, and (ii) the staff consults with the registered nurse,
26 prior to administration, of any insulin dose that is determined

1 based on a blood glucose test result. The authorized direct
2 care staff shall not: (i) calculate the insulin dosage needed
3 when the dose is dependent upon a blood glucose test result, or
4 (ii) administer insulin to individuals who require blood
5 glucose monitoring greater than 3 times daily, unless directed
6 to do so by the registered nurse.

7 "Nurse-training" means a registered professional nurse or
8 advanced practice registered nurse who has successfully
9 completed the Department's nurse-trainer training program and
10 is in possession of one year of clinical registered
11 professional nursing experience within the last 5 years, at
12 least 90 days of which shall preferably have been developmental
13 disabilities experience.

14 "Nurse-trainer training program" means a standardized,
15 competency-based medication administration train-the-trainer
16 program provided by the Department of Human Services and
17 conducted by a Department of Human Services master
18 nurse-trainer for the purpose of training nurse-trainers to
19 train persons employed or under contract to provide direct care
20 or treatment to individuals receiving services to administer
21 medications and provide self-administration of medication
22 training to individuals under the supervision and monitoring of
23 the nurse-trainer. The program incorporates adult learning
24 styles, teaching strategies, classroom management, and a
25 curriculum overview, including the ethical and legal aspects of
26 supervising those administering medications.

1 "Self-administration of medications" means an individual
2 administers his or her own medications. To be considered
3 capable to self-administer their own medication, individuals
4 must, at a minimum, be able to identify their medication by
5 size, shape, or color, know when they should take the
6 medication, and know the amount of medication to be taken each
7 time.

8 "Training program" means a standardized medication
9 administration training program approved by the Department of
10 Human Services and conducted by a registered professional nurse
11 for the purpose of training persons employed or under contract
12 to provide direct care or treatment to individuals receiving
13 services to administer medications and provide
14 self-administration of medication training to individuals
15 under the delegation and supervision of a nurse-trainer. The
16 program incorporates adult learning styles, teaching
17 strategies, classroom management, curriculum overview,
18 including ethical-legal aspects, and standardized
19 competency-based evaluations on administration of medications
20 and self-administration of medication training programs.

21 (c) Training and authorization of non-licensed direct care
22 staff by nurse-trainers must meet the requirements of this
23 subsection.

24 (1) Prior to training non-licensed direct care staff to
25 administer medication, the nurse-trainer shall perform the
26 following for each individual to whom medication will be

1 administered by non-licensed direct care staff:

2 (A) An assessment of the individual's health
3 history and physical and mental status.

4 (B) An evaluation of the medications prescribed.

5 (2) Non-licensed authorized direct care staff shall
6 meet the following criteria:

7 (A) Be 18 years of age or older.

8 (B) Have completed high school or have a high
9 school equivalency certificate.

10 (C) Have demonstrated functional literacy.

11 (D) Have successfully completed the 40-hour
12 classroom training for direct care staff required by
13 the Division of Developmental Disabilities
14 ~~satisfactorily completed the Health and Safety~~
15 ~~component of a Department of Human Services authorized~~
16 ~~direct care staff training program.~~

17 (E) Have successfully completed competency-based
18 training as provided in 59 Ill. Adm. Code 116.40(d) ~~the~~
19 ~~training program, pass the written portion of the~~
20 ~~comprehensive exam, and score 100% on the~~
21 ~~competency-based assessment specific to the individual~~
22 ~~and his or her medications.~~

23 (F) (Blank). ~~Have received additional~~
24 ~~competency based assessment by the nurse trainer as~~
25 ~~deemed necessary by the nurse trainer whenever a~~
26 ~~change of medication occurs or a new individual that~~

1 ~~requires medication administration enters the program.~~

2 (3) Authorized direct care staff shall be re-evaluated
3 by a nurse-trainer at least annually or more frequently at
4 the discretion of the registered professional nurse. Any
5 necessary retraining shall be to the extent that is
6 necessary to ensure competency of the authorized direct
7 care staff to administer medication.

8 (4) Authorization of direct care staff to administer
9 medication shall be revoked if, in the opinion of the
10 registered professional nurse, the authorized direct care
11 staff is no longer competent to administer medication.

12 (5) The registered professional nurse shall assess an
13 individual's health status at least annually or more
14 frequently at the discretion of the registered
15 professional nurse.

16 (d) Medication self-administration shall meet the
17 following requirements:

18 (1) As part of the normalization process, in order for
19 each individual to attain the highest possible level of
20 independent functioning, all individuals shall be
21 permitted to participate in their total health care
22 program. This program shall include, but not be limited to,
23 individual training in preventive health and
24 self-medication procedures.

25 (A) Every program shall adopt written policies and
26 procedures for assisting individuals in obtaining

1 preventative health and self-medication skills in
2 consultation with a registered professional nurse,
3 advanced practice registered nurse, physician
4 assistant, or physician licensed to practice medicine
5 in all its branches.

6 (B) Individuals shall be evaluated to determine
7 their ability to self-medicate by the nurse-trainer
8 through the use of the Department's required,
9 standardized screening and assessment instruments.

10 (C) When the results of the screening and
11 assessment indicate an individual not to be capable to
12 self-administer his or her own medications, programs
13 shall be developed in consultation with the Community
14 Support Team or Interdisciplinary Team to provide
15 individuals with self-medication administration.

16 (2) Each individual shall be presumed to be competent
17 to self-administer medications if:

18 (A) authorized by an order of a physician licensed
19 to practice medicine in all its branches, an advanced
20 practice registered nurse, or a physician assistant;
21 and

22 (B) approved to self-administer medication by the
23 individual's Community Support Team or
24 Interdisciplinary Team, which includes a registered
25 professional nurse or an advanced practice registered
26 nurse.

1 (e) Quality Assurance.

2 (1) A registered professional nurse, advanced practice
3 registered nurse, licensed practical nurse, physician
4 licensed to practice medicine in all its branches,
5 physician assistant, or pharmacist shall review the
6 following for all individuals:

7 (A) Medication orders.

8 (B) Medication labels, including medications
9 listed on the medication administration record for
10 persons who are not self-medicating to ensure the
11 labels match the orders issued by the physician
12 licensed to practice medicine in all its branches,
13 advanced practice registered nurse, or physician
14 assistant.

15 (C) Medication administration records for persons
16 who are not self-medicating to ensure that the records
17 are completed appropriately for:

18 (i) medication administered as prescribed;

19 (ii) refusal by the individual; and

20 (iii) full signatures provided for all
21 initials used.

22 (2) Reviews shall occur at least quarterly, but may be
23 done more frequently at the discretion of the registered
24 professional nurse or advanced practice registered nurse.

25 (3) A quality assurance review of medication errors and
26 data collection for the purpose of monitoring and

1 recommending corrective action shall be conducted within 7
2 days and included in the required annual review.

3 (f) Programs using authorized direct care staff to
4 administer medications are responsible for documenting and
5 maintaining records on the training that is completed.

6 (g) The absence of this training program constitutes a
7 threat to the public interest, safety, and welfare and
8 necessitates emergency rulemaking by the Departments of Human
9 Services and Public Health under Section 5-45 of the Illinois
10 Administrative Procedure Act.

11 (h) Direct care staff who fail to qualify for delegated
12 authority to administer medications pursuant to the provisions
13 of this Section shall be given additional education and testing
14 to meet criteria for delegation authority to administer
15 medications. Any direct care staff person who fails to qualify
16 as an authorized direct care staff after initial training and
17 testing must within 3 months be given another opportunity for
18 retraining and retesting. A direct care staff person who fails
19 to meet criteria for delegated authority to administer
20 medication, including, but not limited to, failure of the
21 written test on 2 occasions shall be given consideration for
22 shift transfer or reassignment, if possible. No employee shall
23 be terminated for failure to qualify during the 3-month time
24 period following initial testing. Refusal to complete training
25 and testing required by this Section may be grounds for
26 immediate dismissal.

1 (i) No authorized direct care staff person delegated to
2 administer medication shall be subject to suspension or
3 discharge for errors resulting from the staff person's acts or
4 omissions when performing the functions unless the staff
5 person's actions or omissions constitute willful and wanton
6 conduct. Nothing in this subsection is intended to supersede
7 paragraph (4) of subsection (c).

8 (j) A registered professional nurse, advanced practice
9 registered nurse, physician licensed to practice medicine in
10 all its branches, or physician assistant shall be on duty or on
11 call at all times in any program covered by this Section.

12 (k) The employer shall be responsible for maintaining
13 liability insurance for any program covered by this Section.

14 (l) Any direct care staff person who qualifies as
15 authorized direct care staff pursuant to this Section shall be
16 granted consideration for a one-time additional salary
17 differential. The Department shall determine and provide the
18 necessary funding for the differential in the base. This
19 subsection (l) is inoperative on and after June 30, 2000.

20 (Source: P.A. 99-78, eff. 7-20-15; 99-143, eff. 7-27-15;
21 99-581, eff. 1-1-17; 100-50, eff. 1-1-18; 100-513, eff. 1-1-18;
22 revised 9-22-17.)

23 (20 ILCS 1705/18.8 new)

24 Sec. 18.8. Streamlined Department oversight. Within one
25 year after the effective date of this amendatory Act of the

1 100th General Assembly, the Department shall prepare a report
2 that identifies any efficiencies or improvements in Department
3 operations, the oversight of agencies, and the reduction or
4 elimination of duplicative activities. The report shall
5 include a quality assessment of the feasibility of combining
6 the functions of the Division of Developmental Disabilities'
7 Bureau of Quality Management and the Department's Bureau of
8 Accreditation, Licensure, and Certification. Upon the report's
9 completion, the Department shall post the report on the
10 Department's website and submit the report to the General
11 Assembly and Governor.

12 Section 15. The Community-Integrated Living Arrangements
13 Licensure and Certification Act is amended by changing Section
14 4 and by adding Section 9.3 as follows:

15 (210 ILCS 135/4) (from Ch. 91 1/2, par. 1704)

16 Sec. 4. (a) Any community mental health or developmental
17 services agency who wishes to develop and support a variety of
18 community-integrated living arrangements may do so pursuant to
19 a license issued by the Department under this Act. However,
20 programs established under or otherwise subject to the Child
21 Care Act of 1969, the Nursing Home Care Act, the Specialized
22 Mental Health Rehabilitation Act of 2013, the ID/DD Community
23 Care Act, or the MC/DD Act, as now or hereafter amended, shall
24 remain subject thereto, and this Act shall not be construed to

1 limit the application of those Acts.

2 (b) The system of licensure established under this Act
3 shall be for the purposes of:

4 (1) ensuring ~~Insuring~~ that all recipients residing in
5 community-integrated living arrangements are receiving
6 appropriate community-based services, including treatment,
7 training and habilitation or rehabilitation;

8 (2) ensuring ~~Insuring~~ that recipients' rights are
9 protected and that all programs provided to and placements
10 arranged for recipients comply with this Act, the Mental
11 Health and Developmental Disabilities Code, and applicable
12 Department rules and regulations;

13 (3) maintaining ~~Maintaining~~ the integrity of
14 communities by requiring regular monitoring and inspection
15 of placements and other services provided in
16 community-integrated living arrangements.

17 The licensure system shall be administered by a quality
18 assurance unit within the Department which shall be
19 administratively independent of units responsible for funding
20 of agencies or community services.

21 (c) As a condition of being licensed by the Department as a
22 community mental health or developmental services agency under
23 this Act, the agency shall certify to the Department that:

24 (1) all ~~All~~ recipients residing in
25 community-integrated living arrangements are receiving
26 appropriate community-based services, including treatment,

1 training and habilitation or rehabilitation;

2 (2) all ~~All~~ programs provided to and placements
3 arranged for recipients are supervised by the agency; and

4 (3) all ~~All~~ programs provided to and placements
5 arranged for recipients comply with this Act, the Mental
6 Health and Developmental Disabilities Code, and applicable
7 Department rules and regulations.

8 (d) An applicant for licensure as a community mental health
9 or developmental services agency under this Act shall submit an
10 application pursuant to the application process established by
11 the Department by rule and shall pay an application fee in an
12 amount established by the Department, which amount shall not be
13 more than \$200.

14 (e) If an applicant meets the requirements established by
15 the Department to be licensed as a community mental health or
16 developmental services agency under this Act, after payment of
17 the licensing fee, the Department shall issue a license valid
18 for 3 years from the date thereof unless suspended or revoked
19 by the Department or voluntarily surrendered by the agency.

20 (f) Upon application to the Department, the Department may
21 issue a temporary permit to an applicant for up to a 2-year
22 period to allow the holder of such permit reasonable time to
23 become eligible for a license under this Act.

24 (g) (1) The Department may conduct site visits to an agency
25 licensed under this Act, or to any program or placement
26 certified by the agency, and inspect the records or premises,

1 or both, of such agency, program or placement as it deems
2 appropriate, for the purpose of determining compliance with
3 this Act, the Mental Health and Developmental Disabilities
4 Code, and applicable Department rules and regulations. The
5 Department shall conduct inspections of the records and
6 premises of each community-integrated living arrangement
7 certified under this Act at least once every 2 years.

8 (2) If the Department determines that an agency licensed
9 under this Act is not in compliance with this Act or the rules
10 and regulations promulgated under this Act, the Department
11 shall serve a notice of violation upon the licensee. Each
12 notice of violation shall be prepared in writing and shall
13 specify the nature of the violation, the statutory provision or
14 rule alleged to have been violated, and that the licensee
15 submit a plan of correction to the Department if required. The
16 notice shall also inform the licensee of any other action which
17 the Department might take pursuant to this Act and of the right
18 to a hearing.

19 (g-5) As determined by the Department, a disproportionate
20 number or percentage of licensure complaints; a
21 disproportionate number or percentage of substantiated cases
22 of abuse, neglect, or exploitation involving an agency; an
23 apparent unnatural death of an individual served by an agency;
24 any egregious or life-threatening abuse or neglect within an
25 agency; or any other significant event as determined by the
26 Department shall initiate a review of the agency's license by

1 the Department, as well as a review of its service agreement
2 for funding. The Department shall adopt rules to establish the
3 process by which the determination to initiate a review shall
4 be made and the timeframe to initiate a review upon the making
5 of such determination.

6 (g-6) Using contemporary data gathered on reports of
7 allegations of abuse, neglect, and financial exploitation, the
8 Department shall establish a process by which the Department
9 requires responses from agencies that annually report a number
10 of allegations that are 2 or more standard deviations from the
11 mean for all agencies.

12 (h) Upon the expiration of any license issued under this
13 Act, a license renewal application shall be required of and a
14 license renewal fee in an amount established by the Department
15 shall be charged to a community mental health or developmental
16 services agency, provided that such fee shall not be more than
17 \$200.

18 (i) A public or private agency, association, partnership,
19 corporation, or organization that has had a license revoked
20 under subsection (b) of Section 6 of this Act may not apply for
21 or possess a license under a different name.

22 (Source: P.A. 99-180, eff. 7-29-15; 100-58, eff. 8-11-17;
23 100-313, eff. 8-24-17; revised 9-28-17.)

24 (210 ILCS 135/9.3 new)

25 Sec. 9.3. Emergency closure of a community-integrated

1 living arrangement due to inadequate staffing. If an agency has
2 documented evidence and has determined that the agency cannot
3 adequately staff a community-integrated living arrangement,
4 then the agency may take immediate steps to close the
5 community-integrated living arrangement. The agency shall work
6 with the Department under established processes and procedures
7 to ensure residents at the closing of the community-integrated
8 living arrangement receive services at another
9 community-integrated living arrangement or through another
10 agency.

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

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 1305/1-17

4 20 ILCS 1705/15.4

5 20 ILCS 1705/18.8 new

6 210 ILCS 135/4 from Ch. 91 1/2, par. 1704

7 210 ILCS 135/9.3 new