

1 AN ACT concerning regulation.

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

4 Section 5. The Nursing Home Care Act is amended by
5 changing Sections 3-212 and 3-702 as follows:

6 (210 ILCS 45/3-212) (from Ch. 111 1/2, par. 4153-212)

7 Sec. 3-212. Inspection.

8 (a) The Department, whenever it deems necessary in
9 accordance with subsection (b), shall inspect, survey and
10 evaluate every facility to determine compliance with
11 applicable licensure requirements and standards. Submission of
12 a facility's current Consumer Choice Information Report
13 required by Section 2-214 shall be verified at time of
14 inspection. An inspection should occur within 120 days prior
15 to license renewal. The Department may periodically visit a
16 facility for the purpose of consultation. An inspection,
17 survey, or evaluation, other than an inspection of financial
18 records, shall be conducted without prior notice to the
19 facility. A visit for the sole purpose of consultation may be
20 announced. The Department shall provide training to surveyors
21 about the appropriate assessment, care planning, and care of
22 persons with mental illness (other than Alzheimer's disease or
23 related disorders) to enable its surveyors to determine

1 whether a facility is complying with State and federal
2 requirements about the assessment, care planning, and care of
3 those persons.

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

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

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

24 (a-2) An employee of a State or unit of local government
25 agency charged with inspecting, surveying, or evaluating
26 facilities who willfully profits from violating the

1 confidentiality of the inspection, survey, or evaluation
2 process shall be guilty of a Class 4 felony and that conduct
3 shall be deemed unprofessional conduct that may subject a
4 person to loss of his or her professional license. An action to
5 prosecute a person for violating this subsection (a-2) may be
6 brought by either the Attorney General or the State's Attorney
7 in the county where the violation took place.

8 (a-3) The Department shall by rule establish guidelines
9 for required continuing education of all employees who
10 inspect, survey, review, or evaluate a facility. The
11 Department shall offer continuing education opportunities at
12 least quarterly. Employees of a State or unit of local
13 government agency charged with inspecting, surveying,
14 reviewing, or evaluating a facility are required to complete
15 at least 10 hours of continuing education annually on topics
16 including, but not limited to, trauma-informed care, infection
17 control, abuse and neglect, and civil monetary penalties.
18 Qualifying hours of continuing education shall only be offered
19 by the Department. Content presented during the continuing
20 education shall be consistent throughout the State, regardless
21 of survey region. The continuing education required by this
22 subsection is separate from any continuing education required
23 for any license that the employee holds.

24 (b) In determining whether to make more than the required
25 number of unannounced inspections, surveys and evaluations of
26 a facility the Department shall consider one or more of the

1 following: previous inspection reports; the facility's history
2 of compliance with standards, rules and regulations
3 promulgated under this Act and correction of violations,
4 penalties or other enforcement actions; the number and
5 severity of complaints received about the facility; any
6 allegations of resident abuse or neglect; weather conditions;
7 health emergencies; other reasonable belief that deficiencies
8 exist.

9 (b-1) The Department shall not be required to determine
10 whether a facility certified to participate in the Medicare
11 program under Title XVIII of the Social Security Act, or the
12 Medicaid program under Title XIX of the Social Security Act,
13 and which the Department determines by inspection under this
14 Section or under Section 3-702 of this Act to be in compliance
15 with the certification requirements of Title XVIII or XIX, is
16 in compliance with any requirement of this Act that is less
17 stringent than or duplicates a federal certification
18 requirement. In accordance with subsection (a) of this Section
19 or subsection (d) of Section 3-702, the Department shall
20 determine whether a certified facility is in compliance with
21 requirements of this Act that exceed federal certification
22 requirements. If a certified facility is found to be out of
23 compliance with federal certification requirements, the
24 results of an inspection conducted pursuant to Title XVIII or
25 XIX of the Social Security Act may be used as the basis for
26 enforcement remedies authorized and commenced, with the

1 Department's discretion to evaluate whether penalties are
2 warranted, under this Act. Enforcement of this Act against a
3 certified facility shall be commenced pursuant to the
4 requirements of this Act, unless enforcement remedies sought
5 pursuant to Title XVIII or XIX of the Social Security Act
6 exceed those authorized by this Act. As used in this
7 subsection, "enforcement remedy" means a sanction for
8 violating a federal certification requirement or this Act.

9 (c) Upon completion of each inspection, survey and
10 evaluation, the appropriate Department personnel who conducted
11 the inspection, survey or evaluation shall submit a physical
12 or electronic copy of their report to the licensee upon
13 exiting the facility, and shall submit the actual report to
14 the appropriate regional office of the Department. Such report
15 and any recommendations for action by the Department under
16 this Act shall be transmitted to the appropriate offices of
17 the associate director of the Department, together with
18 related comments or documentation provided by the licensee
19 which may refute findings in the report, which explain
20 extenuating circumstances that the facility could not
21 reasonably have prevented, or which indicate methods and
22 timetables for correction of deficiencies described in the
23 report. Without affecting the application of subsection (a) of
24 Section 3-303, any documentation or comments of the licensee
25 shall be provided within 10 days of receipt of the copy of the
26 report. Such report shall recommend to the Director

1 appropriate action under this Act with respect to findings
2 against a facility. The Director shall then determine whether
3 the report's findings constitute a violation or violations of
4 which the facility must be given notice. Such determination
5 shall be based upon the severity of the finding, the danger
6 posed to resident health and safety, the comments and
7 documentation provided by the facility, the diligence and
8 efforts to correct deficiencies, correction of the reported
9 deficiencies, the frequency and duration of similar findings
10 in previous reports and the facility's general inspection
11 history. Violations shall be determined under this subsection
12 no later than 75 calendar days after completion of each
13 inspection, survey and evaluation.

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

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

20 (f) Notwithstanding any other provision of this Act, the
21 Department shall, no later than 180 days after the effective
22 date of this amendatory Act of the 98th General Assembly,
23 implement a single survey process that encompasses federal
24 certification and State licensure requirements, health and
25 life safety requirements, and an enhanced complaint
26 investigation initiative.

1 (1) To meet the requirement of a single survey
2 process, the portions of the health and life safety survey
3 associated with federal certification and State licensure
4 surveys must be started within 7 working days of each
5 other. Nothing in this paragraph (1) of subsection (f) of
6 this Section applies to a complaint investigation.

7 (2) The enhanced complaint and incident report
8 investigation initiative shall permit the facility to
9 challenge the amount of the fine due to the excessive
10 length of the investigation which results in one or more
11 of the following conditions:

12 (A) prohibits the timely development and
13 implementation of a plan of correction;

14 (B) creates undue financial hardship impacting the
15 quality of care delivered to the resident;

16 (C) delays initiation of corrective training; and

17 (D) negatively impacts quality assurance and
18 patient improvement standards.

19 This paragraph (2) does not apply to complaint
20 investigations exited within 14 working days or a
21 situation that triggers an extended survey.

22 (Source: P.A. 98-104, eff. 7-22-13.)

23 (210 ILCS 45/3-702) (from Ch. 111 1/2, par. 4153-702)

24 Sec. 3-702. (a) A person who believes that this Act or a
25 rule promulgated under this Act may have been violated may

1 request an investigation. The request may be submitted to the
2 Department in writing, by telephone, by electronic means, or
3 by personal visit. An oral complaint shall be reduced to
4 writing by the Department. The Department shall make
5 available, through its website and upon request, information
6 regarding the oral and phone intake processes and the list of
7 questions that will be asked of the complainant. The
8 Department shall request information identifying the
9 complainant, including the name, address and telephone number,
10 to help enable appropriate follow-up. The Department shall act
11 on such complaints via on-site visits or other methods deemed
12 appropriate to handle the complaints with or without such
13 identifying information, as otherwise provided under this
14 Section. The complainant shall be informed that compliance
15 with such request is not required to satisfy the procedures
16 for filing a complaint under this Act. The Department must
17 notify complainants that complaints with less information
18 provided are far more difficult to respond to and investigate.

19 (b) The substance of the complaint shall be provided in
20 writing to the licensee, owner, or administrator upon ~~no~~
21 ~~earlier than at~~ the commencement of an on-site inspection of
22 the facility which takes place pursuant to the complaint.

23 (c) The Department shall not disclose the name of the
24 complainant unless the complainant consents in writing to the
25 disclosure or the investigation results in a judicial
26 proceeding, or unless disclosure is essential to the

1 investigation. The complainant shall be given the opportunity
2 to withdraw the complaint before disclosure. Upon the request
3 of the complainant, the Department may permit the complainant
4 or a representative of the complainant to accompany the person
5 making the on-site inspection of the facility.

6 (d) Upon receipt of a complaint, the Department shall
7 determine whether this Act or a rule promulgated under this
8 Act has been or is being violated. The Department shall
9 investigate all complaints alleging abuse or neglect within 7
10 days after the receipt of the complaint except that complaints
11 of abuse or neglect which indicate that a resident's life or
12 safety is in imminent danger shall be investigated within 24
13 hours after receipt of the complaint. All other complaints
14 shall be investigated within 30 days after the receipt of the
15 complaint. The Department employees investigating a complaint
16 shall conduct a brief, informal exit conference with the
17 facility to alert its administration of any suspected serious
18 deficiency that poses a direct threat to the health, safety or
19 welfare of a resident to enable an immediate correction for
20 the alleviation or elimination of such threat. Such
21 information and findings discussed in the brief exit
22 conference shall become a part of the investigating record but
23 shall not in any way constitute an official or final notice of
24 violation as provided under Section 3-301. All complaints
25 shall be classified as "an invalid report", "a valid report",
26 or "an undetermined report". For any complaint classified as

1 "a valid report", the Department must determine within 30
2 working days after any Department employee enters a facility
3 to begin an on-site inspection if any rule or provision of this
4 Act has been or is being violated.

5 (d-1) The Department shall, whenever possible, combine an
6 on-site investigation of a complaint in a facility with other
7 inspections in order to avoid duplication of inspections.

8 (e) In all cases, the Department shall inform the
9 complainant of its findings within 10 days of its
10 determination unless otherwise indicated by the complainant,
11 and the complainant may direct the Department to send a copy of
12 such findings to another person. The Department's findings may
13 include comments or documentation provided by either the
14 complainant or the licensee pertaining to the complaint. The
15 Department shall also notify the facility of such findings
16 within 10 days of the determination, but the name of the
17 complainant or residents shall not be disclosed in this notice
18 to the facility. The notice of such findings shall include a
19 copy of the written determination; the correction order, if
20 any; the warning notice, if any; the inspection report; or the
21 State licensure form on which the violation is listed.

22 (f) A written determination, correction order, or warning
23 notice concerning a complaint, together with the facility's
24 response, shall be available for public inspection, but the
25 name of the complainant or resident shall not be disclosed
26 without his consent.

1 (g) A complainant who is dissatisfied with the
2 determination or investigation by the Department may request a
3 hearing under Section 3-703. The facility shall be given
4 notice of any such hearing and may participate in the hearing
5 as a party. If a facility requests a hearing under Section
6 3-703 which concerns a matter covered by a complaint, the
7 complainant shall be given notice and may participate in the
8 hearing as a party. A request for a hearing by either a
9 complainant or a facility shall be submitted in writing to the
10 Department within 30 days after the mailing of the
11 Department's findings as described in subsection (e) of this
12 Section. Upon receipt of the request the Department shall
13 conduct a hearing as provided under Section 3-703.

14 (g-5) The Department shall conduct an annual review of all
15 survey activity from the preceding calendar year and make a
16 report concerning the complaint and survey process. The report
17 shall include, but not be limited to: ~~that includes~~ the total
18 number of complaints received; the total number of 24-hour,
19 7-day, and 30-day complaints; ~~the~~ the breakdown of anonymous and
20 non-anonymous complaints; ~~and whether~~ the number of complaints
21 that were substantiated versus unsubstantiated; ~~or not,~~ the
22 total number of substantiated complaints that were completed
23 in the time frame determined under subsection (d); the total
24 number of informal dispute resolutions requested; the total
25 number of informal dispute resolution requests approved; the
26 total number of informal dispute resolutions that were

1 overturned or reduced in severity; the total number of
2 independent informal dispute resolutions requested; the total
3 number of independent informal dispute resolution requests
4 approved; the total number of independent informal dispute
5 resolutions that were overturned or reduced in severity; the
6 total number of revisits not completed within the statutorily
7 mandated time frames; the total number of nurse surveyors
8 hired during the calendar year; the total number of nurse
9 surveyors who left Department employment; the total number of
10 times the Department recommended a discretionary denial of
11 payment for new Medicare or Medicaid admissions with an
12 effective date that is (i) less than 15 days after the date of
13 the Department's notice to the facility, (ii) at least 15 days
14 and less than 31 days after the date of the Department's notice
15 to the facility, (iii) at least 31 days and less than 60 days
16 after the date of the Department's notice to the facility, and
17 (iv) at least 60 days after the date of the Department's notice
18 to the facility; the total number of Department employees who
19 entered long-term care facilities for any reason who were
20 fully vaccinated for influenza and COVID-19; the total number
21 of Department employees who entered long-term care facilities
22 for any reason who were not fully vaccinated for influenza and
23 COVID-19 and the number of instances in which Department
24 employees not fully vaccinated against influenza and COVID-19
25 entered a long-term care facility; the total number of
26 Department employees who entered long-term care facilities and

1 who tested positive for COVID-19 within 7 calendar days after
2 entering a long-term care facility and the number of instances
3 in which a Department employee entered a long-term care
4 facility within 7 calendar days after testing positive for
5 COVID-19; and any other complaint information requested by
6 the Long-Term Care Facility Advisory Board created under
7 Section 2-204 of this Act or the Illinois Long-Term Care
8 Council created under Section 4.04a of the Illinois Act on the
9 Aging. All of the listed reporting criteria in this subsection
10 and additional complaint information requested by the
11 Long-Term Care Facility Advisory Board, the Illinois Long-Term
12 Care Council, or the General Assembly shall be provided in
13 aggregate and broken down by Office of Health Care Regulation
14 region. In addition, the Department shall provide health
15 vaccine and health equity report findings, information about
16 continued progress toward correcting identified deficiencies,
17 and annual Centers for Medicare and Medicaid Services' State
18 Performance Standards System results for the State of
19 Illinois. This report shall be provided to the Long-Term Care
20 Facility Advisory Board, the Illinois Long-Term Care Council,
21 and the General Assembly. The Long-Term Care Facility Advisory
22 Board and the Illinois Long-Term Care Council shall review the
23 report and suggest any changes deemed necessary to the
24 Department for review and action, including how to investigate
25 and substantiate anonymous complaints.

26 (h) Any person who knowingly transmits a false report to

1 the Department commits the offense of disorderly conduct under
2 subsection (a)(8) of Section 26-1 of the Criminal Code of
3 2012.

4 (Source: P.A. 102-432, eff. 8-20-21.)