



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0849

Introduced 2/18/2005, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

210 ILCS 30/6.2
210 ILCS 30/10

from Ch. 111 1/2, par. 4166.2
from Ch. 111 1/2, par. 4170

Amends the Abused and Neglected Long Term Care Facility Residents Reporting Act. Requires the Inspector General to immediately notify the Department of State Police or the appropriate law enforcement entity (now, only the Department of State Police) if the Inspector General determines that a possible criminal act has been committed or that special expertise is required in the investigation. Makes corresponding changes. Provides that the Department of State Police shall investigate any report from a State-operated facility (now, any report) indicating a possible murder, rape, or other felony. Effective immediately.

LRB094 04021 MKM 34037 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning health facilities.

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

4 Section 10. The Abused and Neglected Long Term Care
5 Facility Residents Reporting Act is amended by changing
6 Sections 6.2 and 10 as follows:

7 (210 ILCS 30/6.2) (from Ch. 111 1/2, par. 4166.2)

8 Sec. 6.2. Inspector General.

9 (a) The Governor shall appoint, and the Senate shall
10 confirm, an Inspector General. The Inspector General shall be
11 appointed for a term of 4 years and shall function within the
12 Department of Human Services and report to the Secretary of
13 Human Services and the Governor. The Inspector General shall
14 function independently within the Department of Human Services
15 with respect to the operations of the office, including the
16 performance of investigations and issuance of findings and
17 recommendations. The appropriation for the Office of Inspector
18 General shall be separate from the overall appropriation for
19 the Department of Human Services. The Inspector General shall
20 investigate reports of suspected abuse or neglect (as those
21 terms are defined in Section 3 of this Act) of patients or
22 residents in any mental health or developmental disabilities
23 facility operated by the Department of Human Services and shall
24 have authority to investigate and take immediate action on
25 reports of abuse or neglect of recipients, whether patients or
26 residents, in any mental health or developmental disabilities
27 facility or program that is licensed or certified by the
28 Department of Human Services (as successor to the Department of
29 Mental Health and Developmental Disabilities) or that is funded
30 by the Department of Human Services (as successor to the
31 Department of Mental Health and Developmental Disabilities)
32 and is not licensed or certified by any agency of the State. At

1 the specific, written request of an agency of the State other
2 than the Department of Human Services (as successor to the
3 Department of Mental Health and Developmental Disabilities),
4 the Inspector General may cooperate in investigating reports of
5 abuse and neglect of persons with mental illness or persons
6 with developmental disabilities. The Inspector General shall
7 have no supervision over or involvement in routine,
8 programmatic, licensure, or certification operations of the
9 Department of Human Services or any of its funded agencies.

10 The Inspector General shall promulgate rules establishing
11 minimum requirements for reporting allegations of abuse and
12 neglect and initiating, conducting, and completing
13 investigations. The promulgated rules shall clearly set forth
14 that in instances where 2 or more State agencies could
15 investigate an allegation of abuse or neglect, the Inspector
16 General shall not conduct an investigation that is redundant to
17 an investigation conducted by another State agency. The rules
18 shall establish criteria for determining, based upon the nature
19 of the allegation, the appropriate method of investigation,
20 which may include, but need not be limited to, site visits,
21 telephone contacts, or requests for written responses from
22 agencies. The rules shall also clarify how the Office of the
23 Inspector General shall interact with the licensing unit of the
24 Department of Human Services in investigations of allegations
25 of abuse or neglect. Any allegations or investigations of
26 reports made pursuant to this Act shall remain confidential
27 until a final report is completed. The resident or patient who
28 allegedly was abused or neglected and his or her legal guardian
29 shall be informed by the facility or agency of the report of
30 alleged abuse or neglect. Final reports regarding
31 unsubstantiated or unfounded allegations shall remain
32 confidential, except that final reports may be disclosed
33 pursuant to Section 6 of this Act.

34 When the Office of the Inspector General has substantiated
35 a case of abuse or neglect, the Inspector General shall include
36 in the final report any mitigating or aggravating circumstances

1 that were identified during the investigation. Upon
2 determination that a report of neglect is substantiated, the
3 Inspector General shall then determine whether such neglect
4 rises to the level of egregious neglect.

5 (b) The Inspector General shall within 24 hours after
6 receiving a report of suspected abuse or neglect determine
7 whether the evidence indicates that any possible criminal act
8 has been committed. If the Inspector General ~~he~~ determines that
9 a possible criminal act has been committed, or that special
10 expertise is required in the investigation, the Inspector
11 General ~~he~~ shall immediately notify the Department of State
12 Police or the appropriate law enforcement entity. The
13 Department of State Police shall investigate any report from a
14 State-operated facility indicating a possible murder, rape, or
15 other felony. All investigations conducted by the Inspector
16 General shall be conducted in a manner designed to ensure the
17 preservation of evidence for possible use in a criminal
18 prosecution.

19 (b-5) The Inspector General shall make a determination to
20 accept or reject a preliminary report of the investigation of
21 alleged abuse or neglect based on established investigative
22 procedures. Notice of the Inspector General's determination
23 must be given to the person who claims to be the victim of the
24 abuse or neglect, to the person or persons alleged to have been
25 responsible for abuse or neglect, and to the facility or
26 agency. The facility or agency or the person or persons alleged
27 to have been responsible for the abuse or neglect and the
28 person who claims to be the victim of the abuse or neglect may
29 request clarification or reconsideration based on additional
30 information. For cases where the allegation of abuse or neglect
31 is substantiated, the Inspector General shall require the
32 facility or agency to submit a written response. The written
33 response from a facility or agency shall address in a concise
34 and reasoned manner the actions that the agency or facility
35 will take or has taken to protect the resident or patient from
36 abuse or neglect, prevent reoccurrences, and eliminate

1 problems identified and shall include implementation and
2 completion dates for all such action.

3 (c) The Inspector General shall, within 10 calendar days
4 after the transmittal date of a completed investigation where
5 abuse or neglect is substantiated or administrative action is
6 recommended, provide a complete report on the case to the
7 Secretary of Human Services and to the agency in which the
8 abuse or neglect is alleged to have happened. The complete
9 report shall include a written response from the agency or
10 facility operated by the State to the Inspector General that
11 addresses in a concise and reasoned manner the actions that the
12 agency or facility will take or has taken to protect the
13 resident or patient from abuse or neglect, prevent
14 reoccurrences, and eliminate problems identified and shall
15 include implementation and completion dates for all such
16 action. The Secretary of Human Services shall accept or reject
17 the response and establish how the Department will determine
18 whether the facility or program followed the approved response.
19 The Secretary may require Department personnel to visit the
20 facility or agency for training, technical assistance,
21 programmatic, licensure, or certification purposes.
22 Administrative action, including sanctions, may be applied
23 should the Secretary reject the response or should the facility
24 or agency fail to follow the approved response. Within 30 days
25 after the Secretary has approved a response, the facility or
26 agency making the response shall provide an implementation
27 report to the Inspector General on the status of the corrective
28 action implemented. Within 60 days after the Secretary has
29 approved the response, the facility or agency shall send notice
30 of the completion of the corrective action or shall send an
31 updated implementation report. The facility or agency shall
32 continue sending updated implementation reports every 60 days
33 until the facility or agency sends a notice of the completion
34 of the corrective action. The Inspector General shall review
35 any implementation plan that takes more than 120 days. The
36 Inspector General shall monitor compliance through a random

1 review of completed corrective actions. This monitoring may
2 include, but need not be limited to, site visits, telephone
3 contacts, or requests for written documentation from the
4 facility or agency to determine whether the facility or agency
5 is in compliance with the approved response. The facility or
6 agency shall inform the resident or patient and the legal
7 guardian whether the reported allegation was substantiated,
8 unsubstantiated, or unfounded. There shall be an appeals
9 process for any person or agency that is subject to any action
10 based on a recommendation or recommendations.

11 (d) The Inspector General may recommend to the Departments
12 of Public Health and Human Services sanctions to be imposed
13 against mental health and developmental disabilities
14 facilities under the jurisdiction of the Department of Human
15 Services for the protection of residents, including
16 appointment of on-site monitors or receivers, transfer or
17 relocation of residents, and closure of units. The Inspector
18 General may seek the assistance of the Attorney General or any
19 of the several State's attorneys in imposing such sanctions.
20 Whenever the Inspector General issues any recommendations to
21 the Secretary of Human Services, the Secretary shall provide a
22 written response.

23 (e) The Inspector General shall establish and conduct
24 periodic training programs for Department of Human Services
25 employees concerning the prevention and reporting of neglect
26 and abuse.

27 (f) The Inspector General shall at all times be granted
28 access to any mental health or developmental disabilities
29 facility operated by the Department of Human Services, shall
30 establish and conduct unannounced site visits to those
31 facilities at least once annually, and shall be granted access,
32 for the purpose of investigating a report of abuse or neglect,
33 to the records of the Department of Human Services and to any
34 facility or program funded by the Department of Human Services
35 that is subject under the provisions of this Section to
36 investigation by the Inspector General for a report of abuse or

1 neglect.

2 (g) Nothing in this Section shall limit investigations by
3 the Department of Human Services that may otherwise be required
4 by law or that may be necessary in that Department's capacity
5 as the central administrative authority responsible for the
6 operation of State mental health and developmental disability
7 facilities.

8 (g-5) After notice and an opportunity for a hearing that is
9 separate and distinct from the Office of the Inspector
10 General's appeals process as implemented under subsection (c)
11 of this Section, the Inspector General shall report to the
12 Department of Public Health's nurse aide registry under Section
13 3-206.01 of the Nursing Home Care Act the identity of
14 individuals against whom there has been a substantiated finding
15 of physical or sexual abuse or egregious neglect of a service
16 recipient.

17 Nothing in this subsection shall diminish or impair the
18 rights of a person who is a member of a collective bargaining
19 unit pursuant to the Illinois Public Labor Relations Act or
20 pursuant to any federal labor statute. An individual who is a
21 member of a collective bargaining unit as described above shall
22 not be reported to the Department of Public Health's nurse aide
23 registry until the exhaustion of that individual's grievance
24 and arbitration rights, or until 3 months after the initiation
25 of the grievance process, whichever occurs first, provided that
26 the Department of Human Services' hearing under subsection (c),
27 that is separate and distinct from the Office of the Inspector
28 General's appeals process, has concluded. Notwithstanding
29 anything hereinafter or previously provided, if an action taken
30 by an employer against an individual as a result of the
31 circumstances that led to a finding of physical or sexual abuse
32 or egregious neglect is later overturned under a grievance or
33 arbitration procedure provided for in Section 8 of the Illinois
34 Public Labor Relations Act or under a collective bargaining
35 agreement, the report must be removed from the registry.

36 The Department of Human Services shall promulgate or amend

1 rules as necessary or appropriate to establish procedures for
2 reporting to the registry, including the definition of
3 egregious neglect, procedures for notice to the individual and
4 victim, appeal and hearing procedures, and petition for removal
5 of the report from the registry. The portion of the rules
6 pertaining to hearings shall provide that, at the hearing, both
7 parties may present written and oral evidence. The Department
8 shall be required to establish by a preponderance of the
9 evidence that the Office of the Inspector General's finding of
10 physical or sexual abuse or egregious neglect warrants
11 reporting to the Department of Public Health's nurse aide
12 registry under Section 3-206.01 of the Nursing Home Care Act.

13 Notice to the individual shall include a clear and concise
14 statement of the grounds on which the report to the registry is
15 based and notice of the opportunity for a hearing to contest
16 the report. The Department of Human Services shall provide the
17 notice by certified mail to the last known address of the
18 individual. The notice shall give the individual an opportunity
19 to contest the report in a hearing before the Department of
20 Human Services or to submit a written response to the findings
21 instead of requesting a hearing. If the individual does not
22 request a hearing or if after notice and a hearing the
23 Department of Human Services finds that the report is valid,
24 the finding shall be included as part of the registry, as well
25 as a brief statement from the reported individual if he or she
26 chooses to make a statement. The Department of Public Health
27 shall make available to the public information reported to the
28 registry. In a case of inquiries concerning an individual
29 listed in the registry, any information disclosed concerning a
30 finding of abuse or neglect shall also include disclosure of
31 the individual's brief statement in the registry relating to
32 the reported finding or include a clear and accurate summary of
33 the statement.

34 At any time after the report of the registry, an individual
35 may petition the Department of Human Services for removal from
36 the registry of the finding against him or her. Upon receipt of

1 such a petition, the Department of Human Services shall conduct
2 an investigation and hearing on the petition. Upon completion
3 of the investigation and hearing, the Department of Human
4 Services shall report the removal of the finding to the
5 registry unless the Department of Human Services determines
6 that removal is not in the public interest.

7 (Source: P.A. 92-358, eff. 8-15-01; 92-473, eff. 1-1-02;
8 92-651, eff. 7-11-02; 93-636, eff. 12-31-03.)

9 (210 ILCS 30/10) (from Ch. 111 1/2, par. 4170)

10 Sec. 10. If, during the investigation of a report made
11 pursuant to this Act, the Department obtains information
12 indicating possible criminal acts, the Department shall refer
13 the matter to the appropriate law enforcement agency or
14 agencies for further investigation or prosecution. The
15 Department shall make the entire file of its investigation
16 available to the appropriate law enforcement agencies.

17 With respect to reports of suspected abuse or neglect of
18 residents of facilities operated by the Department of Human
19 Services (as successor to the Department of Rehabilitation
20 Services) or recipients of services through any home,
21 institution, program or other entity licensed in whole or in
22 part by the Department of Human Services (as successor to the
23 Department of Rehabilitation Services), the Department shall
24 refer reports indicating possible criminal acts to the
25 Department of State Police or the appropriate law enforcement
26 entity for investigation.

27 (Source: P.A. 89-507, eff. 7-1-97.)

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