



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2491

Introduced 1/18/2006, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

20 ILCS 1705/7.3

210 ILCS 30/6.2

from Ch. 111 1/2, par. 4166.2

Amends the Mental Health and Developmental Disabilities Administrative Act. Provides that any owner or operator of a community agency who is identified by the nurse aide registry as having been the subject of a substantiated finding of abuse or neglect of a service recipient is prohibited from any involvement in any capacity with the provision of Department funded mental health or developmental disability services. Amends the Abused and Neglected Long Term Care Facility Residents Reporting Act. Provides that an individual who is a member of a collective bargaining unit shall not be reported to the Department of Public Health's nurse aide registry as an individual against whom there has been a substantiated finding of physical or sexual abuse or egregious neglect of a service recipient until the exhaustion of that individual's grievance and arbitration rights, or until 3 months after the initiation of the grievance process, whichever occurs first, provided that the Department of Human Services' hearing under these provisions regarding the reporting of an individual to the Department of Public Health's nurse aide registry (instead of the Department's hearing under provisions concerning investigations by the Inspector General, which is separate and distinct from the Office of the Inspector General's appeals process) has concluded. Effective immediately.

LRB094 16480 DRJ 51740 b

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 Mental Health and Developmental
5 Disabilities Administrative Act is amended by changing Section
6 7.3 as follows:

7 (20 ILCS 1705/7.3)

8 Sec. 7.3. Nurse aide registry; finding of abuse or neglect.

9 The Department shall require that no facility, service agency,
10 or support agency providing mental health or developmental
11 disability services that is licensed, certified, operated, or
12 funded by the Department shall employ a person, in any
13 capacity, who is identified by the nurse aide registry as
14 having been subject of a substantiated finding of abuse or
15 neglect of a service recipient. Any owner or operator of a
16 community agency who is identified by the nurse aide registry
17 as having been the subject of a substantiated finding of abuse
18 or neglect of a service recipient is prohibited from any
19 involvement in any capacity with the provision of Department
20 funded mental health or developmental disability services. The
21 Department shall establish and maintain the rules that are
22 necessary or appropriate to effectuate the intent of this
23 Section. The provisions of this Section shall not apply to any
24 facility, service agency, or support agency licensed or
25 certified by a State agency other than the Department, unless
26 operated by the Department of Human Services.

27 (Source: P.A. 92-473, eff. 1-1-02.)

28 Section 10. The Abused and Neglected Long Term Care
29 Facility Residents Reporting Act is amended by changing Section
30 6.2 as follows:

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

2 Sec. 6.2. Inspector General.

3 (a) The Governor shall appoint, and the Senate shall
4 confirm, an Inspector General. The Inspector General shall be
5 appointed for a term of 4 years and shall function within the
6 Department of Human Services and report to the Secretary of
7 Human Services and the Governor. The Inspector General shall
8 function independently within the Department of Human Services
9 with respect to the operations of the office, including the
10 performance of investigations and issuance of findings and
11 recommendations. The appropriation for the Office of Inspector
12 General shall be separate from the overall appropriation for
13 the Department of Human Services. The Inspector General shall
14 investigate reports of suspected abuse or neglect (as those
15 terms are defined in Section 3 of this Act) of patients or
16 residents in any mental health or developmental disabilities
17 facility operated by the Department of Human Services and shall
18 have authority to investigate and take immediate action on
19 reports of abuse or neglect of recipients, whether patients or
20 residents, in any mental health or developmental disabilities
21 facility or program that is licensed or certified by the
22 Department of Human Services (as successor to the Department of
23 Mental Health and Developmental Disabilities) or that is funded
24 by the Department of Human Services (as successor to the
25 Department of Mental Health and Developmental Disabilities)
26 and is not licensed or certified by any agency of the State. At
27 the specific, written request of an agency of the State other
28 than the Department of Human Services (as successor to the
29 Department of Mental Health and Developmental Disabilities),
30 the Inspector General may cooperate in investigating reports of
31 abuse and neglect of persons with mental illness or persons
32 with developmental disabilities. The Inspector General shall
33 have no supervision over or involvement in routine,
34 programmatic, licensure, or certification operations of the
35 Department of Human Services or any of its funded agencies.

36 The Inspector General shall promulgate rules establishing

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

24 When the Office of the Inspector General has substantiated
25 a case of abuse or neglect, the Inspector General shall include
26 in the final report any mitigating or aggravating circumstances
27 that were identified during the investigation. Upon
28 determination that a report of neglect is substantiated, the
29 Inspector General shall then determine whether such neglect
30 rises to the level of egregious neglect.

31 (b) The Inspector General shall, within 24 hours after
32 determining that a reported allegation of suspected abuse or
33 neglect indicates that any possible criminal act has been
34 committed or that special expertise is required in the
35 investigation, immediately notify the Department of State
36 Police or the appropriate law enforcement entity. The

1 Department of State Police shall investigate any report from a
2 State-operated facility indicating a possible murder, rape, or
3 other felony. All investigations conducted by the Inspector
4 General shall be conducted in a manner designed to ensure the
5 preservation of evidence for possible use in a criminal
6 prosecution.

7 (b-5) The Inspector General shall make a determination to
8 accept or reject a preliminary report of the investigation of
9 alleged abuse or neglect based on established investigative
10 procedures. Notice of the Inspector General's determination
11 must be given to the person who claims to be the victim of the
12 abuse or neglect, to the person or persons alleged to have been
13 responsible for abuse or neglect, and to the facility or
14 agency. The facility or agency or the person or persons alleged
15 to have been responsible for the abuse or neglect and the
16 person who claims to be the victim of the abuse or neglect may
17 request clarification or reconsideration based on additional
18 information. For cases where the allegation of abuse or neglect
19 is substantiated, the Inspector General shall require the
20 facility or agency to submit a written response. The written
21 response from a facility or agency shall address in a concise
22 and reasoned manner the actions that the agency or facility
23 will take or has taken to protect the resident or patient from
24 abuse or neglect, prevent reoccurrences, and eliminate
25 problems identified and shall include implementation and
26 completion dates for all such action.

27 (c) The Inspector General shall, within 10 calendar days
28 after the transmittal date of a completed investigation where
29 abuse or neglect is substantiated or administrative action is
30 recommended, provide a complete report on the case to the
31 Secretary of Human Services and to the agency in which the
32 abuse or neglect is alleged to have happened. The complete
33 report shall include a written response from the agency or
34 facility operated by the State to the Inspector General that
35 addresses in a concise and reasoned manner the actions that the
36 agency or facility will take or has taken to protect the

1 resident or patient from abuse or neglect, prevent
2 reoccurrences, and eliminate problems identified and shall
3 include implementation and completion dates for all such
4 action. The Secretary of Human Services shall accept or reject
5 the response and establish how the Department will determine
6 whether the facility or program followed the approved response.
7 The Secretary may require Department personnel to visit the
8 facility or agency for training, technical assistance,
9 programmatic, licensure, or certification purposes.
10 Administrative action, including sanctions, may be applied
11 should the Secretary reject the response or should the facility
12 or agency fail to follow the approved response. Within 30 days
13 after the Secretary has approved a response, the facility or
14 agency making the response shall provide an implementation
15 report to the Inspector General on the status of the corrective
16 action implemented. Within 60 days after the Secretary has
17 approved the response, the facility or agency shall send notice
18 of the completion of the corrective action or shall send an
19 updated implementation report. The facility or agency shall
20 continue sending updated implementation reports every 60 days
21 until the facility or agency sends a notice of the completion
22 of the corrective action. The Inspector General shall review
23 any implementation plan that takes more than 120 days. The
24 Inspector General shall monitor compliance through a random
25 review of completed corrective actions. This monitoring may
26 include, but need not be limited to, site visits, telephone
27 contacts, or requests for written documentation from the
28 facility or agency to determine whether the facility or agency
29 is in compliance with the approved response. The facility or
30 agency shall inform the resident or patient and the legal
31 guardian whether the reported allegation was substantiated,
32 unsubstantiated, or unfounded. There shall be an appeals
33 process for any person or agency that is subject to any action
34 based on a recommendation or recommendations.

35 (d) The Inspector General may recommend to the Departments
36 of Public Health and Human Services sanctions to be imposed

1 against mental health and developmental disabilities
2 facilities under the jurisdiction of the Department of Human
3 Services for the protection of residents, including
4 appointment of on-site monitors or receivers, transfer or
5 relocation of residents, and closure of units. The Inspector
6 General may seek the assistance of the Attorney General or any
7 of the several State's attorneys in imposing such sanctions.
8 Whenever the Inspector General issues any recommendations to
9 the Secretary of Human Services, the Secretary shall provide a
10 written response.

11 (e) The Inspector General shall establish and conduct
12 periodic training programs for Department of Human Services
13 employees concerning the prevention and reporting of neglect
14 and abuse.

15 (f) The Inspector General shall at all times be granted
16 access to any mental health or developmental disabilities
17 facility operated by the Department of Human Services, shall
18 establish and conduct unannounced site visits to those
19 facilities at least once annually, and shall be granted access,
20 for the purpose of investigating a report of abuse or neglect,
21 to the records of the Department of Human Services and to any
22 facility or program funded by the Department of Human Services
23 that is subject under the provisions of this Section to
24 investigation by the Inspector General for a report of abuse or
25 neglect.

26 (g) Nothing in this Section shall limit investigations by
27 the Department of Human Services that may otherwise be required
28 by law or that may be necessary in that Department's capacity
29 as the central administrative authority responsible for the
30 operation of State mental health and developmental disability
31 facilities.

32 (g-5) After notice and an opportunity for a hearing that is
33 separate and distinct from the Office of the Inspector
34 General's appeals process as implemented under subsection (c)
35 of this Section, the Inspector General shall report to the
36 Department of Public Health's nurse aide registry under Section

1 3-206.01 of the Nursing Home Care Act the identity of
2 individuals against whom there has been a substantiated finding
3 of physical or sexual abuse or egregious neglect of a service
4 recipient.

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

26 The Department of Human Services shall promulgate or amend
27 rules as necessary or appropriate to establish procedures for
28 reporting to the registry, including the definition of
29 egregious neglect, procedures for notice to the individual and
30 victim, appeal and hearing procedures, and petition for removal
31 of the report from the registry. The portion of the rules
32 pertaining to hearings shall provide that, at the hearing, both
33 parties may present written and oral evidence. The Department
34 shall be required to establish by a preponderance of the
35 evidence that the Office of the Inspector General's finding of
36 physical or sexual abuse or egregious neglect warrants

1 reporting to the Department of Public Health's nurse aide
2 registry under Section 3-206.01 of the Nursing Home Care Act.

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

24 At any time after the report of the registry, an individual
25 may petition the Department of Human Services for removal from
26 the registry of the finding against him or her. Upon receipt of
27 such a petition, the Department of Human Services shall conduct
28 an investigation and hearing on the petition. Upon completion
29 of the investigation and hearing, the Department of Human
30 Services shall report the removal of the finding to the
31 registry unless the Department of Human Services determines
32 that removal is not in the public interest.

33 (Source: P.A. 93-636, eff. 12-31-03; 94-428, eff. 8-2-05.)

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