

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.