



## 95TH GENERAL ASSEMBLY

### State of Illinois

#### 2007 and 2008

#### SB1368

Introduced 2/9/2007, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

20 ILCS 1305/1-17 new  
20 ILCS 1705/7.3  
210 ILCS 30/6 from Ch. 111 1/2, par. 4166  
210 ILCS 30/6.2 rep.  
210 ILCS 30/6.3 rep.  
210 ILCS 30/6.4 rep.  
210 ILCS 30/6.5 rep.  
210 ILCS 30/6.6 rep.  
210 ILCS 30/6.7 rep.  
210 ILCS 30/6.8 rep.  
210 ILCS 45/3-206.01 from Ch. 111 1/2, par. 4153-206.01  
225 ILCS 46/30  
225 ILCS 46/40

Amends the Department of Human Services Act and the Abused and Neglected Long Term Care Facility Residents Reporting Act. Transfers provisions concerning the Office of the Inspector General within the Department of Human Services from the Abused and Neglected Long Term Care Facility Residents Reporting Act to the Department of Human Services Act. Also provides that the Inspector General shall establish and conduct periodic training programs for community agency employees concerning the prevention and reporting of neglect and abuse. Amends the Nursing Home Care Act to make conforming changes. Also changes references to the Department of Public Health's "nurse aide registry" to "health care worker registry", and amends the Mental Health and Developmental Disabilities Administrative Act and the Health Care Worker Background Check Act to make conforming changes. Effective immediately.

LRB095 04137 DRJ 26714 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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 adding Section 1-17 as follows:

6 (20 ILCS 1305/1-17 new)

7 Sec. 1-17. Inspector General.

8 (a) Appointment; powers and duties. The Governor shall  
9 appoint, and the Senate shall confirm, an Inspector General.  
10 The Inspector General shall be appointed for a term of 4 years  
11 and shall function within the Department of Human Services and  
12 report to the Secretary of Human Services and the Governor. The  
13 Inspector General shall function independently within the  
14 Department of Human Services with respect to the operations of  
15 the office, including the performance of investigations and  
16 issuance of findings and recommendations. The appropriation  
17 for the Office of Inspector General shall be separate from the  
18 overall appropriation for the Department of Human Services. The  
19 Inspector General shall investigate reports of suspected abuse  
20 or neglect (as those terms are defined by the Department of  
21 Human Services) of patients or residents in any mental health  
22 or developmental disabilities facility operated by the  
23 Department of Human Services and shall have authority to

1 investigate and take immediate action on reports of abuse or  
2 neglect of recipients, whether patients or residents, in any  
3 mental health or developmental disabilities facility or  
4 program that is licensed or certified by the Department of  
5 Human Services (as successor to the Department of Mental Health  
6 and Developmental Disabilities) or that is funded by the  
7 Department of Human Services (as successor to the Department of  
8 Mental Health and Developmental Disabilities) and is not  
9 licensed or certified by any agency of the State. At the  
10 specific, written request of an agency of the State other than  
11 the Department of Human Services (as successor to the  
12 Department of Mental Health and Developmental Disabilities),  
13 the Inspector General may cooperate in investigating reports of  
14 abuse and neglect of persons with mental illness or persons  
15 with developmental disabilities. The Inspector General shall  
16 have no supervision over or involvement in routine,  
17 programmatic, licensure, or certification operations of the  
18 Department of Human Services or any of its funded agencies.

19 The Inspector General shall promulgate rules establishing  
20 minimum requirements for reporting allegations of abuse and  
21 neglect and initiating, conducting, and completing  
22 investigations. The promulgated rules shall clearly set forth  
23 that in instances where 2 or more State agencies could  
24 investigate an allegation of abuse or neglect, the Inspector  
25 General shall not conduct an investigation that is redundant to  
26 an investigation conducted by another State agency. The rules

1 shall establish criteria for determining, based upon the nature  
2 of the allegation, the appropriate method of investigation,  
3 which may include, but need not be limited to, site visits,  
4 telephone contacts, or requests for written responses from  
5 agencies. The rules shall also clarify how the Office of the  
6 Inspector General shall interact with the licensing unit of the  
7 Department of Human Services in investigations of allegations  
8 of abuse or neglect. Any allegations or investigations of  
9 reports made pursuant to this Act shall remain confidential  
10 until a final report is completed. The resident or patient who  
11 allegedly was abused or neglected and his or her legal guardian  
12 shall be informed by the facility or agency of the report of  
13 alleged abuse or neglect. Final reports regarding  
14 unsubstantiated or unfounded allegations shall remain  
15 confidential, except that final reports may be disclosed  
16 pursuant to Section 6 of the Abused and Neglected Long Term  
17 Care Facility Residents Reporting Act.

18 For purposes of this Section, "required reporter" means a  
19 person who suspects, witnesses, or is informed of an allegation  
20 of abuse and neglect at a State-operated facility or a  
21 community agency and who is either: (i) a person employed at a  
22 State-operated facility or a community agency on or off site  
23 who is providing or monitoring services to an individual or  
24 individuals or is providing services to the State-operated  
25 facility or the community agency; or (ii) any person or  
26 contractual agent of the Department of Human Services involved

1 in providing, monitoring, or administering mental health or  
2 developmental services, including, but not limited to, payroll  
3 personnel, contractors, subcontractors, and volunteers. A  
4 required reporter shall report the allegation of abuse or  
5 neglect, or cause a report to be made, to the Office of the  
6 Inspector General (OIG) Hotline no later than 4 hours after the  
7 initial discovery of the incident of alleged abuse or neglect.  
8 A required reporter as defined in this paragraph who willfully  
9 fails to comply with the reporting requirement is guilty of a  
10 Class A misdemeanor.

11 For purposes of this Section, "State-operated facility"  
12 means a mental health facility or a developmental disability  
13 facility as defined in Sections 1-114 and 1-107 of the Mental  
14 Health and Developmental Disabilities Code.

15 For purposes of this Section, "community agency" or  
16 "agency" means any community entity or program providing mental  
17 health or developmental disabilities services that is  
18 licensed, certified, or funded by the Department of Human  
19 Services and is not licensed or certified by an other human  
20 services agency of the State (for example, the Department of  
21 Public Health, the Department of Children and Family Services,  
22 or the Department of Healthcare and Family Services).

23 When the Office of the Inspector General has substantiated  
24 a case of abuse or neglect, the Inspector General shall include  
25 in the final report any mitigating or aggravating circumstances  
26 that were identified during the investigation. Upon

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

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

16 (b-5) Preliminary report of investigation; facility or  
17 agency response. The Inspector General shall make a  
18 determination to accept or reject a preliminary report of the  
19 investigation of alleged abuse or neglect based on established  
20 investigative procedures. Notice of the Inspector General's  
21 determination must be given to the person who claims to be the  
22 victim of the abuse or neglect, to the person or persons  
23 alleged to have been responsible for abuse or neglect, and to  
24 the facility or agency. The facility or agency or the person or  
25 persons alleged to have been responsible for the abuse or  
26 neglect and the person who claims to be the victim of the abuse

1 or neglect may request clarification or reconsideration based  
2 on additional information. For cases where the allegation of  
3 abuse or neglect is substantiated, the Inspector General shall  
4 require the facility or agency to submit a written response.  
5 The written response from a facility or agency shall address in  
6 a concise and reasoned manner the actions that the agency or  
7 facility will take or has taken to protect the resident or  
8 patient from abuse or neglect, prevent reoccurrences, and  
9 eliminate problems identified and shall include implementation  
10 and completion dates for all such action.

11 (c) Inspector General's report; facility's or agency's  
12 implementation reports. The Inspector General shall, within 10  
13 calendar days after the transmittal date of a completed  
14 investigation where abuse or neglect is substantiated or  
15 administrative action is recommended, provide a complete  
16 report on the case to the Secretary of Human Services and to  
17 the agency in which the abuse or neglect is alleged to have  
18 happened. The complete report shall include a written response  
19 from the agency or facility operated by the State to the  
20 Inspector General that addresses in a concise and reasoned  
21 manner the actions that the agency or facility will take or has  
22 taken to protect the resident or patient from abuse or neglect,  
23 prevent reoccurrences, and eliminate problems identified and  
24 shall include implementation and completion dates for all such  
25 action. The Secretary of Human Services shall accept or reject  
26 the response and establish how the Department will determine

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



1 unsubstantiated, or unfounded. There shall be an appeals  
2 process for any person or agency that is subject to any action  
3 based on a recommendation or recommendations.

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

16 (e) Training programs. The Inspector General shall  
17 establish and conduct periodic training programs for  
18 Department of Human Services employees and community agency  
19 employees concerning the prevention and reporting of neglect  
20 and abuse.

21 (f) Access to facilities. The Inspector General shall at  
22 all times be granted access to any mental health or  
23 developmental disabilities facility operated by the Department  
24 of Human Services, shall establish and conduct unannounced site  
25 visits to those facilities at least once annually, and shall be  
26 granted access, for the purpose of investigating a report of

1 abuse or neglect, to the records of the Department of Human  
2 Services and to any facility or program funded by the  
3 Department of Human Services that is subject under the  
4 provisions of this Section to investigation by the Inspector  
5 General for a report of abuse or neglect.

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

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

21 Nothing in this subsection shall diminish or impair the  
22 rights of a person who is a member of a collective bargaining  
23 unit pursuant to the Illinois Public Labor Relations Act or  
24 pursuant to any federal labor statute. An individual who is a  
25 member of a collective bargaining unit as described above shall  
26 not be reported to the Department of Public Health's health

1 care worker registry until the exhaustion of that individual's  
2 grievance and arbitration rights, or until 3 months after the  
3 initiation of the grievance process, whichever occurs first,  
4 provided that the Department of Human Services' hearing under  
5 this subsection regarding the reporting of an individual to the  
6 Department of Public Health's health care worker registry has  
7 concluded. Notwithstanding anything hereinafter or previously  
8 provided, if an action taken by an employer against an  
9 individual as a result of the circumstances that led to a  
10 finding of physical or sexual abuse or egregious neglect is  
11 later overturned under a grievance or arbitration procedure  
12 provided for in Section 8 of the Illinois Public Labor  
13 Relations Act or under a collective bargaining agreement, the  
14 report must be removed from the registry.

15 The Department of Human Services shall promulgate or amend  
16 rules as necessary or appropriate to establish procedures for  
17 reporting to the registry, including the definition of  
18 egregious neglect, procedures for notice to the individual and  
19 victim, appeal and hearing procedures, and petition for removal  
20 of the report from the registry. The portion of the rules  
21 pertaining to hearings shall provide that, at the hearing, both  
22 parties may present written and oral evidence. The Department  
23 shall be required to establish by a preponderance of the  
24 evidence that the Office of the Inspector General's finding of  
25 physical or sexual abuse or egregious neglect warrants  
26 reporting to the Department of Public Health's health care

1 worker registry under Section 3-206.01 of the Nursing Home Care  
2 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

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 (h) Quality Care Board. There is created, within the Office  
8 of the Inspector General, a Quality Care Board to be composed  
9 of 7 members appointed by the Governor with the advice and  
10 consent of the Senate. One of the members shall be designated  
11 as chairman by the Governor. Of the initial appointments made  
12 by the Governor, 4 Board members shall each be appointed for a  
13 term of 4 years and 3 members shall each be appointed for a  
14 term of 2 years. Upon the expiration of each member's term, a  
15 successor shall be appointed for a term of 4 years. In the case  
16 of a vacancy in the office of any member, the Governor shall  
17 appoint a successor for the remainder of the unexpired term.

18 Members appointed by the Governor shall be qualified by  
19 professional knowledge or experience in the area of law,  
20 investigatory techniques, or in the area of care of the  
21 mentally ill or developmentally disabled. Two members  
22 appointed by the Governor shall be persons with a disability or  
23 a parent of a person with a disability. Members shall serve  
24 without compensation, but shall be reimbursed for expenses  
25 incurred in connection with the performance of their duties as  
26 members.

1       The Board shall meet quarterly, and may hold other meetings  
2 on the call of the chairman. Four members shall constitute a  
3 quorum. The Board may adopt rules and regulations it deems  
4 necessary to govern its own procedures.

5       (i) Scope and function of the Quality Care Board. The Board  
6 shall monitor and oversee the operations, policies, and  
7 procedures of the Inspector General to assure the prompt and  
8 thorough investigation of allegations of neglect and abuse. In  
9 fulfilling these responsibilities, the Board may do the  
10 following:

11           (1) Provide independent, expert consultation to the  
12 Inspector General on policies and protocols for  
13 investigations of alleged neglect and abuse.

14           (2) Review existing regulations relating to the  
15 operation of facilities under the control of the Department  
16 of Human Services.

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

19           (4) Recommend policies concerning methods for  
20 improving the intergovernmental relationships between the  
21 office of the Inspector General and other State or federal  
22 agencies.

23       (j) Investigators. The Inspector General shall establish a  
24 comprehensive program to ensure that every person employed or  
25 newly hired to conduct investigations shall receive training on  
26 an on-going basis concerning investigative techniques,

1 communication skills, and the appropriate means of contact with  
2 persons admitted or committed to the mental health or  
3 developmental disabilities facilities under the jurisdiction  
4 of the Department of Human Services.

5 (k) Subpoenas; testimony; penalty. The Inspector General  
6 shall have the power to subpoena witnesses and compel the  
7 production of books and papers pertinent to an investigation  
8 authorized by this Act, provided that the power to subpoena or  
9 to compel the production of books and papers shall not extend  
10 to the person or documents of a labor organization or its  
11 representatives insofar as the person or documents of a labor  
12 organization relate to the function of representing an employee  
13 subject to investigation under this Act. Mental health records  
14 of patients shall be confidential as provided under the Mental  
15 Health and Developmental Disabilities Confidentiality Act. Any  
16 person who fails to appear in response to a subpoena or to  
17 answer any question or produce any books or papers pertinent to  
18 an investigation under this Act, except as otherwise provided  
19 in this Section, or who knowingly gives false testimony in  
20 relation to an investigation under this Act is guilty of a  
21 Class A misdemeanor.

22 (l) Annual report. The Inspector General shall provide to  
23 the General Assembly and the Governor, no later than January 1  
24 of each year, a summary of reports and investigations made  
25 under this Act for the prior fiscal year with respect to  
26 residents of institutions under the jurisdiction of the

1 Department of Human Services. The report shall detail the  
2 imposition of sanctions and the final disposition of those  
3 recommendations. The summaries shall not contain any  
4 confidential or identifying information concerning the  
5 subjects of the reports and investigations. The report shall  
6 also include a trend analysis of the number of reported  
7 allegations and their disposition, for each facility and  
8 Department-wide, for the most recent 3-year time period and a  
9 statement, for each facility, of the staffing-to-patient  
10 ratios. The ratios shall include only the number of direct care  
11 staff. The report shall also include detailed recommended  
12 administrative actions and matters for consideration by the  
13 General Assembly.

14 (m) Program audit. The Auditor General shall conduct a  
15 biennial program audit of the office of the Inspector General  
16 in relation to the Inspector General's compliance with this  
17 Act. The audit shall specifically include the Inspector  
18 General's effectiveness in investigating reports of alleged  
19 neglect or abuse of residents in any facility operated by the  
20 Department of Human Services and in making recommendations for  
21 sanctions to the Departments of Human Services and Public  
22 Health. The Auditor General shall conduct the program audit  
23 according to the provisions of the Illinois State Auditing Act  
24 and shall report its findings to the General Assembly no later  
25 than January 1 of each odd-numbered year.



1 Section 7. The Mental Health and Developmental  
2 Disabilities Administrative Act is amended by changing Section  
3 7.3 as follows:

4 (20 ILCS 1705/7.3)

5 Sec. 7.3. Health care worker ~~nurse-aide~~ registry; finding  
6 of abuse or neglect. The Department shall require that no  
7 facility, service agency, or support agency providing mental  
8 health or developmental disability services that is licensed,  
9 certified, operated, or funded by the Department shall employ a  
10 person, in any capacity, who is identified by the health care  
11 worker ~~nurse-aide~~ registry as having been subject of a  
12 substantiated finding of abuse or neglect of a service  
13 recipient. Any owner or operator of a community agency who is  
14 identified by the health care worker ~~nurse-aide~~ registry as  
15 having been the subject of a substantiated finding of abuse or  
16 neglect of a service recipient is prohibited from any  
17 involvement in any capacity with the provision of Department  
18 funded mental health or developmental disability services. The  
19 Department shall establish and maintain the rules that are  
20 necessary or appropriate to effectuate the intent of this  
21 Section. The provisions of this Section shall not apply to any  
22 facility, service agency, or support agency licensed or  
23 certified by a State agency other than the Department, unless  
24 operated by the Department of Human Services.

25 (Source: P.A. 94-934, eff. 6-26-06.)

1           Section 10. The Abused and Neglected Long Term Care  
2 Facility Residents Reporting Act is amended by changing Section  
3 6 as follows:

4           (210 ILCS 30/6) (from Ch. 111 1/2, par. 4166)

5           Sec. 6. All reports of suspected abuse or neglect made  
6 under this Act shall be made immediately by telephone to the  
7 Department's central register established under Section 14 on  
8 the single, State-wide, toll-free telephone number established  
9 under Section 13, or in person or by telephone through the  
10 nearest Department office. No long term care facility  
11 administrator, agent or employee, or any other person, shall  
12 screen reports or otherwise withhold any reports from the  
13 Department, and no long term care facility, department of State  
14 government, or other agency shall establish any rules,  
15 criteria, standards or guidelines to the contrary. Every long  
16 term care facility, department of State government and other  
17 agency whose employees are required to make or cause to be made  
18 reports under Section 4 shall notify its employees of the  
19 provisions of that Section and of this Section, and provide to  
20 the Department documentation that such notification has been  
21 given. The Department of Human Services shall train all of its  
22 mental health and developmental disabilities employees in the  
23 detection and reporting of suspected abuse and neglect of  
24 residents. Reports made to the central register through the

1 State-wide, toll-free telephone number shall be transmitted to  
2 appropriate Department offices and municipal health  
3 departments that have responsibility for licensing long term  
4 care facilities under the Nursing Home Care Act. All reports  
5 received through offices of the Department shall be forwarded  
6 to the central register, in a manner and form described by the  
7 Department. The Department shall be capable of receiving  
8 reports of suspected abuse and neglect 24 hours a day, 7 days a  
9 week. Reports shall also be made in writing deposited in the  
10 U.S. mail, postage prepaid, within 24 hours after having  
11 reasonable cause to believe that the condition of the resident  
12 resulted from abuse or neglect. Such reports may in addition be  
13 made to the local law enforcement agency in the same manner.  
14 However, in the event a report is made to the local law  
15 enforcement agency, the reporter also shall immediately so  
16 inform the Department. The Department shall initiate an  
17 investigation of each report of resident abuse and neglect  
18 under this Act, whether oral or written, as provided for in  
19 Section 3-702 of the Nursing Home Care Act, except that reports  
20 of abuse which indicate that a resident's life or safety is in  
21 imminent danger shall be investigated within 24 hours of such  
22 report. The Department may delegate to law enforcement  
23 officials or other public agencies the duty to perform such  
24 investigation.

25 With respect to investigations of reports of suspected  
26 abuse or neglect of residents of mental health and

1 developmental disabilities institutions under the jurisdiction  
2 of the Department of Human Services, the Department shall  
3 transmit copies of such reports to the Department of State  
4 Police, the Department of Human Services, and the Inspector  
5 General appointed under Section 1-17 of the Department of Human  
6 Services Act ~~6.2~~. If the Department receives a report of  
7 suspected abuse or neglect of a recipient of services as  
8 defined in Section 1-123 of the Mental Health and Developmental  
9 Disabilities Code, the Department shall transmit copies of such  
10 report to the Inspector General and the Directors of the  
11 Guardianship and Advocacy Commission and the agency designated  
12 by the Governor pursuant to the Protection and Advocacy for  
13 Developmentally Disabled Persons Act. When requested by the  
14 Director of the Guardianship and Advocacy Commission, the  
15 agency designated by the Governor pursuant to the Protection  
16 and Advocacy for Developmentally Disabled Persons Act, or the  
17 Department of Financial and Professional Regulation, the  
18 Department, the Department of Human Services and the Department  
19 of State Police shall make available a copy of the final  
20 investigative report regarding investigations conducted by  
21 their respective agencies on incidents of suspected abuse or  
22 neglect of residents of mental health and developmental  
23 disabilities institutions or individuals receiving services at  
24 community agencies under the jurisdiction of the Department of  
25 Human Services. Such final investigative report shall not  
26 contain witness statements, investigation notes, draft

1 summaries, results of lie detector tests, investigative files  
2 or other raw data which was used to compile the final  
3 investigative report. Specifically, the final investigative  
4 report of the Department of State Police shall mean the  
5 Director's final transmittal letter. The Department of Human  
6 Services shall also make available a copy of the results of  
7 disciplinary proceedings of employees involved in incidents of  
8 abuse or neglect to the Directors. All identifiable information  
9 in reports provided shall not be further disclosed except as  
10 provided by the Mental Health and Developmental Disabilities  
11 Confidentiality Act. Nothing in this Section is intended to  
12 limit or construe the power or authority granted to the agency  
13 designated by the Governor pursuant to the Protection and  
14 Advocacy for Developmentally Disabled Persons Act, pursuant to  
15 any other State or federal statute.

16 With respect to investigations of reported resident abuse  
17 or neglect, the Department shall effect with appropriate law  
18 enforcement agencies formal agreements concerning methods and  
19 procedures for the conduct of investigations into the criminal  
20 histories of any administrator, staff assistant or employee of  
21 the nursing home or other person responsible for the residents  
22 care, as well as for other residents in the nursing home who  
23 may be in a position to abuse, neglect or exploit the patient.  
24 Pursuant to the formal agreements entered into with appropriate  
25 law enforcement agencies, the Department may request  
26 information with respect to whether the person or persons set

1     forth in this paragraph have ever been charged with a crime and  
2     if so, the disposition of those charges. Unless the criminal  
3     histories of the subjects involved crimes of violence or  
4     resident abuse or neglect, the Department shall be entitled  
5     only to information limited in scope to charges and their  
6     dispositions. In cases where prior crimes of violence or  
7     resident abuse or neglect are involved, a more detailed report  
8     can be made available to authorized representatives of the  
9     Department, pursuant to the agreements entered into with  
10    appropriate law enforcement agencies. Any criminal charges and  
11    their disposition information obtained by the Department shall  
12    be confidential and may not be transmitted outside the  
13    Department, except as required herein, to authorized  
14    representatives or delegates of the Department, and may not be  
15    transmitted to anyone within the Department who is not duly  
16    authorized to handle resident abuse or neglect investigations.

17       The Department shall effect formal agreements with  
18    appropriate law enforcement agencies in the various counties  
19    and communities to encourage cooperation and coordination in  
20    the handling of resident abuse or neglect cases pursuant to  
21    this Act. The Department shall adopt and implement methods and  
22    procedures to promote statewide uniformity in the handling of  
23    reports of abuse and neglect under this Act, and those methods  
24    and procedures shall be adhered to by personnel of the  
25    Department involved in such investigations and reporting. The  
26    Department shall also make information required by this Act

1 available to authorized personnel within the Department, as  
2 well as its authorized representatives.

3 The Department shall keep a continuing record of all  
4 reports made pursuant to this Act, including indications of the  
5 final determination of any investigation and the final  
6 disposition of all reports.

7 The Department shall report annually to the General  
8 Assembly on the incidence of abuse and neglect of long term  
9 care facility residents, with special attention to residents  
10 who are mentally disabled. The report shall include but not be  
11 limited to data on the number and source of reports of  
12 suspected abuse or neglect filed under this Act, the nature of  
13 any injuries to residents, the final determination of  
14 investigations, the type and number of cases where abuse or  
15 neglect is determined to exist, and the final disposition of  
16 cases.

17 (Source: P.A. 94-852, eff. 6-13-06.)

18 (210 ILCS 30/6.2 rep.)

19 (210 ILCS 30/6.3 rep.)

20 (210 ILCS 30/6.4 rep.)

21 (210 ILCS 30/6.5 rep.)

22 (210 ILCS 30/6.6 rep.)

23 (210 ILCS 30/6.7 rep.)

24 (210 ILCS 30/6.8 rep.)

25 Section 15. The Abused and Neglected Long Term Care

1 Facility Residents Reporting Act is amended by repealing  
2 Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8.

3 Section 20. The Nursing Home Care Act is amended by  
4 changing Section 3-206.01 as follows:

5 (210 ILCS 45/3-206.01) (from Ch. 111 1/2, par. 4153-206.01)  
6 Sec. 3-206.01. Health care worker ~~Nurse aide~~ registry.

7 (a) The Department shall establish and maintain a registry  
8 of all individuals who have satisfactorily completed the  
9 training required by Section 3-206. The registry shall include  
10 the name of the nursing assistant, habilitation aide, or child  
11 care aide, his or her current address, Social Security number,  
12 and the date and location of the training course completed by  
13 the individual, and the date of the individual's last criminal  
14 records check. Any individual placed on the registry is  
15 required to inform the Department of any change of address  
16 within 30 days. A facility shall not employ an individual as a  
17 nursing assistant, habilitation aide, or child care aide unless  
18 the facility has inquired of the Department as to information  
19 in the registry concerning the individual and shall not employ  
20 anyone not on the registry unless the individual is enrolled in  
21 a training program under paragraph (5) of subsection (a) of  
22 Section 3-206 of this Act.

23 If the Department finds that a nursing assistant,  
24 habilitation aide, or child care aide has abused a resident,



1 neglected a resident, or misappropriated resident property in a  
2 facility, the Department shall notify the individual of this  
3 finding by certified mail sent to the address contained in the  
4 registry. The notice shall give the individual an opportunity  
5 to contest the finding in a hearing before the Department or to  
6 submit a written response to the findings in lieu of requesting  
7 a hearing. If, after a hearing or if the individual does not  
8 request a hearing, the Department finds that the individual  
9 abused a resident, neglected a resident, or misappropriated  
10 resident property in a facility, the finding shall be included  
11 as part of the registry as well as a brief statement from the  
12 individual, if he or she chooses to make such a statement. The  
13 Department shall make information in the registry available to  
14 the public. In the case of inquiries to the registry concerning  
15 an individual listed in the registry, any information disclosed  
16 concerning such a finding shall also include disclosure of any  
17 statement in the registry relating to the finding or a clear  
18 and accurate summary of the statement.

19 (b) The Department shall add to the health care worker  
20 ~~nurse-aide~~ registry records of findings as reported by the  
21 Inspector General or remove from the health care worker ~~nurse~~  
22 ~~aide~~ registry records of findings as reported by the Department  
23 of Human Services, under subsection (g-5) of Section 1-17 of  
24 the Department of Human Services Act ~~Section 6.2 of the Abused~~  
25 ~~and Neglected Long Term Care Facility Residents Reporting Act.~~

26 (Source: P.A. 91-598, eff. 1-1-00; 92-473, eff. 1-1-02; 92-651,

1 eff. 7-11-02.)

2 Section 25. The Health Care Worker Background Check Act is  
3 amended by changing Sections 30 and 40 as follows:

4 (225 ILCS 46/30)

5 Sec. 30. Non-fingerprint based UCIA criminal records  
6 check.

7 (a) Beginning on January 1, 1997, an educational entity,  
8 other than a secondary school, conducting a nurse aide training  
9 program must initiate a UCIA criminal history records check  
10 prior to entry of an individual into the training program. A  
11 nurse aide seeking to be included on the health care worker  
12 ~~nurse aide~~ registry shall authorize the Department of Public  
13 Health or its designee that tests nurse aides or the health  
14 care employer or its designee to request a criminal history  
15 record check pursuant to the Uniform Conviction Information Act  
16 (UCIA) for each nurse aide applying for inclusion on the State  
17 health care worker ~~nurse aide~~ registry. Any nurse aide not  
18 submitting the required authorization and information for the  
19 record check will not be added to the State health care worker  
20 ~~nurse aide~~ registry. A nurse aide will not be entered on the  
21 State health care worker ~~nurse aide~~ registry if the report from  
22 the Department of State Police indicates that the nurse aide  
23 has a record of conviction of any of the criminal offenses  
24 enumerated in Section 25 unless the nurse aide's identity is

1 validated and it is determined that the nurse aide does not  
2 have a disqualifying criminal history record based upon a  
3 fingerprint-based records check pursuant to Section 35 or the  
4 nurse aide receives a waiver pursuant to Section 40.

5 (b) The Department of Public Health shall notify each  
6 health care employer inquiring as to the information on the  
7 State health care worker ~~nurse aide~~ registry of the date of the  
8 nurse aide's last UCIA criminal history record check. If it has  
9 been more than one year since the records check, the health  
10 care employer must initiate or have initiated on his or her  
11 behalf a UCIA criminal history record check for the nurse aide  
12 pursuant to this Section. The health care employer must send a  
13 copy of the results of the record check to the State health  
14 care worker ~~nurse aide~~ registry for an individual employed as a  
15 nurse aide.

16 (c) Beginning January 1, 1996, a health care employer who  
17 makes a conditional offer of employment to an applicant other  
18 than a nurse aide for position with duties that involve direct  
19 care for clients, patients, or residents must initiate or have  
20 initiated on his or her behalf a UCIA criminal history record  
21 check for that applicant.

22 (d) No later than January 1, 1997, a health care employer  
23 must initiate or have initiated on his or her behalf a UCIA  
24 criminal history record check for all employees other than  
25 those enumerated in subsections (a), (b), and (c) of this  
26 Section with duties that involve direct care for clients,

1 patients, or residents. A health care employer having actual  
2 knowledge from a source other than a non-fingerprint check that  
3 an employee has been convicted of committing or attempting to  
4 commit one of the offenses enumerated in Section 25 of this Act  
5 must initiate a fingerprint-based background check within 10  
6 working days of acquiring that knowledge. The employer may  
7 continue to employ that individual in a direct care position,  
8 may reassign that individual to a non-direct care position, or  
9 may suspend the individual until the results of the  
10 fingerprint-based background check are received.

11 (d-5) Beginning January 1, 2006, each long-term care  
12 facility operating in the State must initiate, or have  
13 initiated on its behalf, a criminal history record check for  
14 all employees hired on or after January 1, 2006 with duties  
15 that involve or may involve contact with residents or access to  
16 the living quarters or the financial, medical, or personal  
17 records of residents.

18 (e) The request for a UCIA criminal history record check  
19 must be in the form prescribed by the Department of State  
20 Police.

21 (f) The applicant or employee must be notified of the  
22 following whenever a non-fingerprint check is made:

23 (i) that the health care employer shall request or have  
24 requested on his or her behalf a UCIA criminal history  
25 record check pursuant to this Act;

26 (ii) that the applicant or employee has a right to

1 obtain a copy of the criminal records report from the  
2 health care employer, challenge the accuracy and  
3 completeness of the report, and request a waiver under  
4 Section 40 of this Act;

5 (iii) that the applicant, if hired conditionally, may  
6 be terminated if the criminal records report indicates that  
7 the applicant has a record of conviction of any of the  
8 criminal offenses enumerated in Section 25 unless the  
9 applicant's identity is validated and it is determined that  
10 the applicant does not have a disqualifying criminal  
11 history record based on a fingerprint-based records check  
12 pursuant to Section 35.

13 (iv) that the applicant, if not hired conditionally,  
14 shall not be hired if the criminal records report indicates  
15 that the applicant has a record of conviction of any of the  
16 criminal offenses enumerated in Section 25 unless the  
17 applicant's record is cleared based on a fingerprint-based  
18 records check pursuant to Section 35.

19 (v) that the employee may be terminated if the criminal  
20 records report indicates that the employee has a record of  
21 conviction of any of the criminal offenses enumerated in  
22 Section 25 unless the employee's record is cleared based on  
23 a fingerprint-based records check pursuant to Section 35.

24 (g) A health care employer may conditionally employ an  
25 applicant for up to 3 months pending the results of a UCIA  
26 criminal history record check.

1 (Source: P.A. 94-665, eff. 1-1-06.)

2 (225 ILCS 46/40)

3 Sec. 40. Waiver.

4 (a) An applicant, employee, or nurse aide may request a  
5 waiver of the prohibition against employment by submitting the  
6 following information to the entity responsible for  
7 inspecting, licensing, certifying, or registering the health  
8 care employer within 5 working days after the receipt of the  
9 criminal records report:

10 (1) Information necessary to initiate a  
11 fingerprint-based UCIA criminal records check in a form and  
12 manner prescribed by the Department of State Police; and

13 (2) The fee for a fingerprint-based UCIA criminal  
14 records check, which shall not exceed the actual cost of  
15 the record check.

16 (a-5) The entity responsible for inspecting, licensing,  
17 certifying, or registering the health care employer may accept  
18 the results of the fingerprint-based UCIA criminal records  
19 check instead of the items required by paragraphs (1) and (2)  
20 of subsection (a).

21 (b) The entity responsible for inspecting, licensing,  
22 certifying, or registering the health care employer may grant a  
23 waiver based upon any mitigating circumstances, which may  
24 include, but need not be limited to:

25 (1) The age of the individual at which the crime was

1 committed;

2 (2) The circumstances surrounding the crime;

3 (3) The length of time since the conviction;

4 (4) The applicant or employee's criminal history since  
5 the conviction;

6 (5) The applicant or employee's work history;

7 (6) The applicant or employee's current employment  
8 references;

9 (7) The applicant or employee's character references;

10 (8) Health care worker ~~Nurse aide~~ registry records; and

11 (9) Other evidence demonstrating the ability of the  
12 applicant or employee to perform the employment  
13 responsibilities competently and evidence that the  
14 applicant or employee does not pose a threat to the health  
15 or safety of residents, patients, or clients.

16 (c) The entity responsible for inspecting, licensing,  
17 certifying, or registering a health care employer must inform  
18 the health care employer if a waiver is being sought and must  
19 act upon the waiver request within 30 days of receipt of all  
20 necessary information, as defined by rule.

21 (d) An individual shall not be employed from the time that  
22 the employer receives the results of a non-fingerprint check  
23 containing disqualifying conditions until the time that the  
24 individual receives a waiver from the Department. If the  
25 individual challenges the results of the non-fingerprint  
26 check, the employer may continue to employ the individual if

1 the individual presents convincing evidence to the employer  
2 that the non-fingerprint check is invalid. If the individual  
3 challenges the results of the non-fingerprint check, his or her  
4 identity shall be validated by a fingerprint-based records  
5 check in accordance with Section 35.

6 (e) The entity responsible for inspecting, licensing,  
7 certifying, or registering the health care employer shall be  
8 immune from liability for any waivers granted under this  
9 Section.

10 (f) A health care employer is not obligated to employ or  
11 offer permanent employment to an applicant, or to retain an  
12 employee who is granted a waiver under this Section.

13 (Source: P.A. 94-665, eff. 1-1-06.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.