



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3844

Introduced 2/25/2009, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

20 ILCS 1305/1-17

Amends the Department of Human Services Act. Requires the Inspector General to investigate the abuse and neglect of individuals who receive services within mental health facilities, developmental disabilities facilities, and community agencies operated, licensed, funded, or certified by the Department of Human Services, but not licensed or certified by any other State agency. Authorizes the Inspector to investigate these facilities upon an allegation that an employee has mentally abused, physically abused, sexually abused, neglected, or financially exploited an individual. Creates a duty for employees to cooperate with the Inspector's investigations. Grants the Inspector the power to subpoena witnesses and compel the production of documents. Requires employees to report certain allegations. Requires the Inspector, upon completion of an investigation, to issue a report. Requires a facility or agency to file a written response to the report under certain circumstances. Authorizes the Secretary to review the report and to specify other administrative sanctions. Requires the Inspector to report to the Illinois Department of Public Health's healthcare worker registry the identity of and the finding associated with each employee against whom there is a finding of physical abuse, sexual abuse, or egregious neglect. Provides for the notice of and an administrative hearing for persons whose names are to appear on the registry. Changes audit cycle by the Auditor General from every 2 years to an as-needed basis to be determined by the Auditor General. Effective immediately.

LRB096 11344 JDS 21794 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 changing Section 1-17 as follows:

6 (20 ILCS 1305/1-17)

7 Sec. 1-17. Inspector General.

8 (a) Nature and purpose. It is the express intent of the
9 General Assembly to ensure the health, safety, and financial
10 condition of individuals receiving services in this State due
11 to mental illness, developmental disability, or both by
12 protecting those persons from acts of abuse, neglect, or both
13 by service providers. To that end, the Office of the Inspector
14 General for the Department of Human Services is created to
15 investigate and report upon allegations of the abuse, neglect,
16 or financial exploitation of individuals receiving services
17 within mental health facilities, developmental disabilities
18 facilities, and community agencies operated, licensed, funded
19 or certified by the Department of Human Services, but not
20 licensed or certified by any other State agency. It is also the
21 express intent of the General Assembly to authorize the
22 Inspector General to investigate alleged or suspected cases of
23 abuse, neglect, or financial exploitation of adults with

1 disabilities living in domestic settings in the community under
2 the Abuse of Adults with Disabilities Intervention Act.

3 (b) Definitions. The following definitions apply to this
4 Section:

5 "Agency" or "community agency" means (i) a community agency
6 licensed, funded, or certified by the Department, but not
7 licensed or certified by any other human services agency of the
8 State, to provide mental health service or developmental
9 disabilities service, or (ii) a program licensed, funded, or
10 certified by the Department, but not licensed or certified by
11 any other human services agency of the State, to provide mental
12 health service or developmental disabilities service.

13 "Aggravating circumstance" means a factor that is
14 attendant to a finding and that tends to compound or increase
15 the culpability of the accused.

16 "Allegation" means an assertion, complaint, suspicion, or
17 incident involving any of the following conduct by an employee,
18 facility, or agency against an individual or individuals:
19 mental abuse, physical abuse, sexual abuse, neglect, or
20 financial exploitation.

21 "Day" means working day, unless otherwise specified.

22 "Deflection" means a situation in which an individual is
23 presented for admission to a facility or agency, and the
24 facility staff or agency staff do not admit the individual.

25 "Deflection" includes triage, redirection, and denial of
26 admission.

1 "Department" means the Department of Human Services.

2 "Developmentally disabled" means having a developmental
3 disability.

4 "Developmental disability" means "developmental
5 disability" as defined in the Mental Health and Developmental
6 Disabilities Code.

7 "Egregious neglect" means a finding of neglect as
8 determined by the Inspector General that (i) represents a gross
9 failure to adequately provide for, or a callused indifference
10 to, the health, safety, or medical needs of an individual and
11 (ii) results in an individual's death or other serious
12 deterioration of an individual's physical condition or mental
13 condition.

14 "Employee" means any person who provides services at the
15 facility or agency on-site or off-site. The service
16 relationship can be with the individual or with the facility or
17 agency. Also, "employee" includes any employee or contractual
18 agent of the Department of Human Services or the community
19 agency involved in providing or monitoring or administering
20 mental health or developmental disability services. This
21 includes but is not limited to: owners, operators, payroll
22 personnel, contractors, subcontractors, and volunteers.

23 "Facility" or "State-operated facility" means a mental
24 health facility or developmental disabilities facility
25 operated by the Department.

26 "Financial exploitation" means taking unjust advantage of

1 an individual's assets, property, or financial resources
2 through deception, intimidation, or conversion for the
3 employee's, facility's, or agency's own advantage or benefit.

4 "Finding" means the Office of Inspector General's
5 determination regarding whether an allegation is
6 substantiated, unsubstantiated, or unfounded.

7 "Health care worker registry" or "registry" means the
8 health care worker registry created by the Nursing Home Care
9 Act.

10 "Individual" means any person receiving mental health
11 service, developmental disabilities service, or both from a
12 facility or agency, while either on-site or off-site.

13 "Mental abuse" means the use of demeaning, intimidating, or
14 threatening words, signs, gestures, or other actions by an
15 employee about an individual and in the presence of an
16 individual or individuals that results in emotional distress or
17 maladaptive behavior, or could have resulted in emotional
18 distress or maladaptive behavior, for any individual present.

19 "Mental illness" means "mental illness" as defined in the
20 Mental Health and Developmental Disabilities Code.

21 "Mentally ill" means having a mental illness.

22 "Mitigating circumstance" means a condition that (i) is
23 attendant to a finding, (ii) does not excuse or justify the
24 conduct in question, but (iii) may be considered in evaluating
25 the severity of the conduct, the culpability of the accused, or
26 both the severity of the conduct and the culpability of the

1 accused.

2 "Neglect" means an employee's, agency's, or facility's
3 failure to provide adequate medical care, personal care, or
4 maintenance and that, as a consequence, (i) causes an
5 individual pain, injury, or emotional distress, (ii) results in
6 either an individual's maladaptive behavior or the
7 deterioration of an individual's physical condition or mental
8 condition, or (iii) places the individual's health or safety at
9 substantial risk.

10 "Physical abuse" means an employee's non-accidental and
11 inappropriate contact with an individual that causes bodily
12 harm or is insulting or provocative. "Physical abuse" includes
13 actions by an employee directing an individual or person to
14 physically abuse another individual.

15 "Recommendation" means an admonition, separate from a
16 finding, that requires action by the facility, agency, or
17 Department to correct a systemic issue, problem, or deficiency
18 identified during an investigation.

19 "Required reporter" means any employee who suspects,
20 witnesses, or is informed of an allegation of any one or more
21 of the following: mental abuse, physical abuse, sexual abuse,
22 neglect, or financial exploitation.

23 "Secretary" means the Chief Administrative Officer of the
24 Department.

25 "Sexual abuse" means any sexual contact or intimate
26 physical contact between an employee and an individual,

1 including an employee's coercion or encouragement of an
2 individual to engage in sexual contact, intimate physical
3 contact, sexual behavior, or intimate physical behavior.

4 "Substantiated" means there is a preponderance of the
5 evidence to support the allegation.

6 "Unfounded" means there is no credible evidence to support
7 the allegation.

8 "Unsubstantiated" means there is credible evidence, but
9 less than a preponderance of evidence to support the
10 allegation.

11 (c) ~~(a)~~ Appointment, ~~powers and duties.~~ The Governor shall
12 appoint, and the Senate shall confirm, an Inspector General.
13 The Inspector General shall be appointed for a term of 4 years
14 and shall function within the Department of Human Services and
15 report to the Secretary ~~of Human Services~~ and the Governor.

16 (d) Operation and appropriation. The Inspector General
17 shall function independently within the Department ~~of Human~~
18 ~~Services~~ with respect to the operations of the Office ~~office,~~
19 including the performance of investigations and issuance of
20 findings and recommendations. The appropriation for the Office
21 of Inspector General shall be separate from the overall
22 appropriation for the Department ~~of Human Services.~~

23 (e) Powers and duties. The Inspector General shall
24 investigate reports of suspected mental abuse, physical abuse,
25 sexual abuse, ~~or~~ neglect, or financial exploitation of
26 individuals ~~(as those terms are defined by the Department of~~

1 ~~Human Services) of patients or residents in any mental health~~
2 ~~or developmental disabilities facility or agency operated by~~
3 ~~the Department of Human Services and shall have authority to~~
4 ~~investigate and take immediate action to prevent any one or~~
5 ~~more of the following from happening to individuals under its~~
6 ~~jurisdiction: mental abuse, physical abuse, sexual abuse,~~
7 ~~neglect, or financial exploitation. on reports of abuse or~~
8 ~~neglect of recipients, whether patients or residents, in any~~
9 ~~mental health or developmental disabilities facility or~~
10 ~~program that is licensed or certified by the Department of~~
11 ~~Human Services (as successor to the Department of Mental Health~~
12 ~~and Developmental Disabilities) or that is funded by the~~
13 ~~Department of Human Services (as successor to the Department of~~
14 ~~Mental Health and Developmental Disabilities) and is not~~
15 ~~licensed or certified by any agency of the State. The Inspector~~
16 ~~General shall also have the authority to investigate alleged or~~
17 ~~suspected cases of abuse, neglect, and exploitation of adults~~
18 ~~with disabilities living in domestic settings in the community~~
19 ~~pursuant to the Abuse of Adults with Disabilities Intervention~~
20 ~~Act (20 ILCS 2435/). At the specific, Upon written request of~~
21 ~~an agency of this the State, other than the Department of Human~~
22 ~~Services (as successor to the Department of Mental Health and~~
23 ~~Developmental Disabilities), the Inspector General may assist~~
24 ~~another agency of the State cooperate in investigating reports~~
25 ~~of the abuse, and neglect, or abuse and neglect of persons with~~
26 ~~mental illness, or persons with developmental disabilities, or~~

1 persons with both. To comply with the requirements of
2 subsection (k) of this Section, the ~~The~~ Inspector General shall
3 also review all reportable deaths for which there is no
4 allegation of abuse or neglect. Nothing in this Section shall
5 preempt any duties of the Medical Review Board set forth in the
6 Mental Health and Developmental Disabilities Code. ~~have no~~
7 ~~supervision over or involvement in routine, programmatic,~~
8 ~~licensure, or certification operations of the Department of~~
9 ~~Human Services or any of its funded agencies.~~

10 (f) Limitations. The Inspector General shall not conduct an
11 investigation within an agency or facility if that
12 investigation would be redundant to or interfere with an
13 investigation conducted by another State agency. The Inspector
14 General shall have no supervision over, or involvement in, the
15 routine programmatic, licensing, funding, or certification
16 operations of the Department. Nothing in this subsection limits
17 investigations by the Department that may otherwise be required
18 by law or that may be necessary in the Department's capacity as
19 central administrative authority responsible for the operation
20 of the State's mental health and developmental disabilities
21 facilities.

22 (g) Rulemaking authority. The Inspector General shall
23 promulgate rules establishing minimum requirements for
24 reporting allegations as well as for ~~of abuse and neglect and~~
25 initiating, conducting, and completing investigations based
26 upon the nature of the allegation or allegations. The

1 ~~promulgated~~ rules shall clearly establish ~~set forth~~ that if in
2 ~~instances where~~ 2 or more State agencies could investigate an
3 allegation ~~of abuse or neglect~~, the Inspector General shall not
4 conduct an investigation that would be ~~is~~ redundant to, or
5 interfere with, an investigation conducted by another State
6 agency. ~~The rules shall establish criteria for determining,~~
7 ~~based upon the nature of the allegation, the appropriate method~~
8 ~~of investigation, which may include, but need not be limited~~
9 ~~to, site visits, telephone contacts, or requests for written~~
10 ~~responses from agencies.~~ The rules shall further ~~also~~ clarify
11 the method and circumstances under which ~~how~~ the Office of ~~the~~
12 Inspector General may ~~shall~~ interact with the licensing,
13 funding, or certification units ~~unit~~ of the Department ~~of Human~~
14 ~~Services~~ in preventing further occurrences of mental abuse,
15 physical abuse, sexual abuse, neglect, egregious neglect, and
16 financial exploitation. ~~investigations of allegations of abuse~~
17 ~~or neglect. Any allegations or investigations of reports made~~
18 ~~pursuant to this Act shall remain confidential until a final~~
19 ~~report is completed. The resident or patient who allegedly was~~
20 ~~abused or neglected and his or her legal guardian shall be~~
21 ~~informed by the facility or agency of the report of alleged~~
22 ~~abuse or neglect. Final reports regarding unsubstantiated or~~
23 ~~unfounded allegations shall remain confidential, except that~~
24 ~~final reports may be disclosed pursuant to Section 6 of the~~
25 ~~Abused and Neglected Long Term Care Facility Residents~~
26 ~~Reporting Act.~~

1 ~~For purposes of this Section, "required reporter" means a~~
2 ~~person who suspects, witnesses, or is informed of an allegation~~
3 ~~of abuse and neglect at a State-operated facility or a~~
4 ~~community agency and who is either: (i) a person employed at a~~
5 ~~State-operated facility or a community agency on or off site~~
6 ~~who is providing or monitoring services to an individual or~~
7 ~~individuals or is providing services to the State-operated~~
8 ~~facility or the community agency; or (ii) any person or~~
9 ~~contractual agent of the Department of Human Services involved~~
10 ~~in providing, monitoring, or administering mental health or~~
11 ~~developmental services, including, but not limited to, payroll~~
12 ~~personnel, contractors, subcontractors, and volunteers. A~~
13 ~~required reporter shall report the allegation of abuse or~~
14 ~~neglect, or cause a report to be made, to the Office of the~~
15 ~~Inspector General (OIG) Hotline no later than 4 hours after the~~
16 ~~initial discovery of the incident of alleged abuse or neglect.~~
17 ~~A required reporter as defined in this paragraph who willfully~~
18 ~~fails to comply with the reporting requirement is guilty of a~~
19 ~~Class A misdemeanor.~~

20 ~~For purposes of this Section, "State-operated facility"~~
21 ~~means a mental health facility or a developmental disability~~
22 ~~facility as defined in Sections 1-114 and 1-107 of the Mental~~
23 ~~Health and Developmental Disabilities Code.~~

24 ~~For purposes of this Section, "community agency" or~~
25 ~~"agency" means any community entity or program providing mental~~
26 ~~health or developmental disabilities services that is~~

1 ~~licensed, certified, or funded by the Department of Human~~
2 ~~Services and is not licensed or certified by an other human~~
3 ~~services agency of the State (for example, the Department of~~
4 ~~Public Health, the Department of Children and Family Services,~~
5 ~~or the Department of Healthcare and Family Services).~~

6 ~~When the Office of the Inspector General has substantiated~~
7 ~~a case of abuse or neglect, the Inspector General shall include~~
8 ~~in the final report any mitigating or aggravating circumstances~~
9 ~~that were identified during the investigation. Upon~~
10 ~~determination that a report of neglect is substantiated, the~~
11 ~~Inspector General shall then determine whether such neglect~~
12 ~~rises to the level of egregious neglect.~~

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

25 ~~(b-5) Preliminary report of investigation; facility or~~
26 ~~agency response. The Inspector General shall make a~~

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

20 ~~(c) Inspector General's report, facility's or agency's~~
21 ~~implementation reports. The Inspector General shall, within 10~~
22 ~~calendar days after the transmittal date of a completed~~
23 ~~investigation where abuse or neglect is substantiated or~~
24 ~~administrative action is recommended, provide a complete~~
25 ~~report on the case to the Secretary of Human Services and to~~
26 ~~the agency in which the abuse or neglect is alleged to have~~

1 ~~happened. The complete report shall include a written response~~
2 ~~from the agency or facility operated by the State to the~~
3 ~~Inspector General that addresses in a concise and reasoned~~
4 ~~manner the actions that the agency or facility will take or has~~
5 ~~taken to protect the resident or patient from abuse or neglect,~~
6 ~~prevent reoccurrences, and eliminate problems identified and~~
7 ~~shall include implementation and completion dates for all such~~
8 ~~action. The Secretary of Human Services shall accept or reject~~
9 ~~the response and establish how the Department will determine~~
10 ~~whether the facility or program followed the approved response.~~
11 ~~The Secretary may require Department personnel to visit the~~
12 ~~facility or agency for training, technical assistance,~~
13 ~~programmatic, licensure, or certification purposes.~~
14 ~~Administrative action, including sanctions, may be applied~~
15 ~~should the Secretary reject the response or should the facility~~
16 ~~or agency fail to follow the approved response. Within 30 days~~
17 ~~after the Secretary has approved a response, the facility or~~
18 ~~agency making the response shall provide an implementation~~
19 ~~report to the Inspector General on the status of the corrective~~
20 ~~action implemented. Within 60 days after the Secretary has~~
21 ~~approved the response, the facility or agency shall send notice~~
22 ~~of the completion of the corrective action or shall send an~~
23 ~~updated implementation report. The facility or agency shall~~
24 ~~continue sending updated implementation reports every 60 days~~
25 ~~until the facility or agency sends a notice of the completion~~
26 ~~of the corrective action. The Inspector General shall review~~

1 ~~any implementation plan that takes more than 120 days. The~~
2 ~~Inspector General shall monitor compliance through a random~~
3 ~~review of completed corrective actions. This monitoring may~~
4 ~~include, but need not be limited to, site visits, telephone~~
5 ~~contacts, or requests for written documentation from the~~
6 ~~facility or agency to determine whether the facility or agency~~
7 ~~is in compliance with the approved response. The facility or~~
8 ~~agency shall inform the resident or patient and the legal~~
9 ~~guardian whether the reported allegation was substantiated,~~
10 ~~unsubstantiated, or unfounded. There shall be an appeals~~
11 ~~process for any person or agency that is subject to any action~~
12 ~~based on a recommendation or recommendations.~~

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

25 (h) (e) Training programs. The Inspector General shall (i)
26 establish a comprehensive program to ensure that every person

1 authorized to conduct investigations receives ongoing training
2 relative to investigation techniques, communication skills,
3 and the appropriate means of interacting with persons receiving
4 treatment for mental illness, developmental disability, or
5 both mental illness and developmental disability, and (ii)
6 establish and conduct periodic training programs for facility
7 and agency ~~Department of Human Services employees and community~~
8 ~~agency~~ employees concerning the prevention and reporting of any
9 one or more of the following: mental abuse, physical abuse,
10 sexual abuse, neglect, egregious neglect, or financial
11 exploitation. Nothing in this Section shall be deemed to
12 prevent the Office of Inspector General from conducting any
13 other training as determined by the Inspector General to be
14 necessary or helpful. ~~neglect and abuse.~~

15 (i) Duty to cooperate. ~~(f) Access to facilities.~~

16 (1) The Inspector General shall at all times be granted
17 access to any ~~mental health or developmental disabilities~~
18 facility or agency for the purpose of investigating any
19 allegation, conducting ~~operated by the Department of Human~~
20 ~~Services, shall establish and conduct~~ unannounced site
21 visits, monitoring compliance with a written response, or
22 completing any other statutorily assigned duty. The
23 Inspector General shall conduct unannounced site visits to
24 each facility at least annually for the purpose of
25 reviewing and making recommendations on systemic issues
26 relative to preventing, reporting, investigating, and

1 responding to all of the following: mental abuse, physical
2 abuse, sexual abuse, neglect, egregious neglect, or
3 financial exploitation.

4 (2) Any employee who fails to cooperate with an Office
5 of the Inspector General investigation is in violation of
6 this Act. Failure to cooperate with an investigation
7 includes, but is not limited to, any one or more of the
8 following: (i) creating and transmitting a false report to
9 the Office of the Inspector General hotline, (ii) providing
10 false information to an Office of the Inspector General
11 Investigator during an investigation, (iii) colluding with
12 other employees to cover up evidence, (iv) colluding with
13 other employees to provide false information to an Office
14 of the Inspector General investigator, (v) destroying
15 evidence, (vi) withholding evidence, or (vii) otherwise
16 obstructing an Office of the Inspector General
17 investigation. Additionally, any employee who, during an
18 unannounced site visit or written response compliance
19 check, fails to cooperate with requests from the Office of
20 the Inspector General is in violation of this Act. ~~to these~~
21 ~~facilities at least once annually, and shall be granted~~
22 ~~access, for the purpose of investigating a report of abuse~~
23 ~~or neglect, to the records of the Department of Human~~
24 ~~Services and to any facility or program funded by the~~
25 ~~Department of Human Services that is subject under the~~
26 ~~provisions of this Section to investigation by the~~

1 ~~Inspector General for a report of abuse or neglect.~~

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

8 (j) Subpoena powers. The Inspector General shall have the
9 power to subpoena witnesses and compel the production of all
10 documents and physical evidence relating to his or her
11 investigations and any hearings authorized by this Act. This
12 subpoena power shall not extend to persons or documents of a
13 labor organization or its representatives insofar as the
14 persons are acting in a representative capacity to an employee
15 whose conduct is the subject of an investigation or the
16 documents relate to that representation. Any person who
17 otherwise fails to respond to a subpoena or who knowingly
18 provides false information to the Office of the Inspector
19 General by subpoena during an investigation is guilty of a
20 Class A misdemeanor.

21 (k) Reporting allegations and deaths.

22 (1) Allegations. If an employee witnesses, is told of,
23 or has reason to believe an incident of mental abuse,
24 physical abuse, sexual abuse, neglect, or financial
25 exploitation has occurred, the employee, agency, or
26 facility shall report the allegation by phone to the Office

1 of the Inspector General hotline according to the agency's
2 or facility's procedures, but in no event later than 4
3 hours after the initial discovery of the incident,
4 allegation, or suspicion of any one or more of the
5 following: mental abuse, physical abuse, sexual abuse,
6 neglect, or financial exploitation. A required reporter as
7 defined in subsection (b) of this Section who knowingly or
8 intentionally fails to comply with these reporting
9 requirements is guilty of a Class A misdemeanor.

10 (2) Deaths. Absent an allegation, a required reporter
11 shall, within 24 hours after initial discovery, report by
12 phone to the Office of the Inspector General hotline each
13 of the following:

14 (i) Any death of an individual occurring within 14
15 calendar days after discharge or transfer of the
16 individual from a residential program or facility.

17 (ii) Any death of an individual occurring within 24
18 hours after deflection from a residential program or
19 facility.

20 (iii) Any other death of an individual occurring at
21 an agency or facility or at any Department-funded site.

22 (3) Retaliation. It is a violation of this Act for any
23 employee or administrator of an agency or facility to take
24 retaliatory action against an employee who acts in good
25 faith in conformance with his or her duties as a required
26 reporter.

1 (l) Reporting criminal acts. Within 24 hours after
2 determining that there is credible evidence indicating that a
3 criminal act may have been committed or that special expertise
4 may be required in an investigation, the Inspector General
5 shall notify the Department of State Police or other
6 appropriate law enforcement authority, or ensure that such
7 notification is made. The Department of State Police shall
8 investigate any report from a State-operated facility
9 indicating a possible murder, sexual assault, or other felony
10 by an employee. All investigations conducted by the Inspector
11 General shall be conducted in a manner designed to ensure the
12 preservation of evidence for possible use in a criminal
13 prosecution.

14 (m) Investigative reports. Upon completion of an
15 investigation, the Office of Inspector General shall issue an
16 investigative report identifying whether the allegations are
17 substantiated, unsubstantiated, or unfounded. Within 10
18 business days after the transmittal of a completed
19 investigative report substantiating an allegation, or if a
20 recommendation is made, the Inspector General shall provide the
21 investigative report on the case to the Secretary and to the
22 director of the facility or agency where any one or more of the
23 following occurred: mental abuse, physical abuse, sexual
24 abuse, neglect, egregious neglect, or financial exploitation.
25 In a substantiated case, the investigative report shall include
26 any mitigating or aggravating circumstances that were

1 identified during the investigation. If the case involves
2 substantiated neglect, the investigative report shall also
3 state whether egregious neglect was found. An investigative
4 report may also set forth recommendations. All investigative
5 reports prepared by the Office of the Inspector General shall
6 be considered confidential and shall not be released except as
7 provided by the law of this State or as required under
8 applicable federal law. Unsubstantiated and unfounded reports
9 shall not be disclosed except as allowed under Section 6 of the
10 Abused and Neglected Long Term Care Facility Residents
11 Reporting Act. Raw data used to compile the investigative
12 report shall not be subject to release unless required by law
13 or a court order. "Raw data used to compile the investigative
14 report" includes, but is not limited to, any one or more of the
15 following: the initial complaint, witness statements,
16 photographs, investigator's notes, police reports, or incident
17 reports. If the allegations are substantiated, the accused
18 shall be provided with a redacted copy of the investigative
19 report. Death reports where there was no allegation of abuse or
20 neglect shall only be released pursuant to applicable State or
21 federal law or a valid court order.

22 (n) Written responses and reconsideration requests.

23 (1) Written responses. Within 30 calendar days from
24 receipt of a substantiated investigative report or an
25 investigative report which contains recommendations,
26 absent a reconsideration request, the facility or agency

1 shall file a written response that addresses, in a concise
2 and reasoned manner, the actions taken to: (i) protect the
3 individual; (ii) prevent recurrences; and (iii) eliminate
4 the problems identified. The response shall include the
5 implementation and completion dates of such actions. If the
6 written response is not filed within the allotted 30
7 calendar day period, the Secretary shall determine the
8 appropriate corrective action to be taken.

9 (2) Reconsideration requests. The facility, agency,
10 victim or guardian, or the subject employee may request
11 that the Office of Inspector General reconsider or clarify
12 its finding based upon additional information.

13 (o) Disclosure of the finding by the Inspector General. The
14 Inspector General may disclose the finding of an investigation
15 to the following persons: (i) the Governor, (ii) the Secretary,
16 (iii) the director of the facility or agency, (iv) the alleged
17 victims and their guardians, (v) the complainant, and (vi) the
18 accused. This information shall include whether the
19 allegations were deemed substantiated, unsubstantiated, or
20 unfounded.

21 (p) Secretary review. Upon review of the Inspector
22 General's investigative report and any agency or facility
23 written response, the Secretary shall accept or reject the
24 written response and notify the Inspector General of that
25 determination. The Secretary may further direct that other
26 administrative action be taken, including, but not limited to,

1 any one or more of the following: (i) additional site visits,
2 (ii) training, (iii) provision of technical assistance
3 relative to administrative needs, licensure or certification,
4 or (iv) the imposition of appropriate sanctions.

5 (q) Action by facility or agency. Within 30 days of the
6 date the Secretary approves the written response or directs
7 that further administrative action be taken, the facility or
8 agency shall provide an implementation report to the Inspector
9 General that provides the status of the action taken. The
10 facility or agency shall be allowed an additional 30 days to
11 send notice of completion of the action or to send an updated
12 implementation report. If the action has not been completed
13 within the additional 30 day period, the facility or agency
14 shall send updated implementation reports every 60 days until
15 completion. The Inspector General shall conduct a review of any
16 implementation plan that takes more than 120 days after
17 approval to complete, and shall monitor compliance through a
18 random review of approved written responses, which may include,
19 but are not limited to: (i) site visits, (ii) telephone
20 contact, and (iii) requests for additional documentation
21 evidencing compliance.

22 (r) Sanctions. Sanctions, if imposed by the Secretary under
23 Subdivision (p)(iv) of this Section, shall be designed to
24 prevent further acts of mental abuse, physical abuse, sexual
25 abuse, neglect, egregious neglect, or financial exploitation
26 or some combination of one or more of those acts at a facility

1 or agency, and may include any one or more of the following:

2 (1) Appointment of on-site monitors.

3 (2) Transfer or relocation of an individual or
4 individuals.

5 (3) Closure of units.

6 (4) Termination of any one or more of the following:

7 (i) Department licensing, (ii) funding, or (iii)
8 certification.

9 The Inspector General may seek the assistance of the
10 Illinois Attorney General or the office of any State's Attorney
11 in implementing sanctions.

12 ~~(s) ~~(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,~~

16 (1) Reporting to the registry. The the Inspector
17 General shall report to the Department of Public Health's
18 health care worker registry, a public registry, under
19 Section 3-206.01 of the Nursing Home Care Act the identity
20 and finding of each employee of a facility or agency of
21 individuals against whom there is a final investigative
22 report containing a substantiated allegation has been a
23 substantiated finding of physical or sexual abuse or
24 egregious neglect of an individual a service recipient.

25 ~~Nothing in this subsection shall diminish or impair the~~
26 ~~rights of a person who is a member of a collective bargaining~~

1 ~~unit pursuant to the Illinois Public Labor Relations Act or~~
2 ~~pursuant to any federal labor statute. An individual who is a~~
3 ~~member of a collective bargaining unit as described above shall~~
4 ~~not be reported to the Department of Public Health's health~~
5 ~~care worker registry until the exhaustion of that individual's~~
6 ~~grievance and arbitration rights, or until 3 months after the~~
7 ~~initiation of the grievance process, whichever occurs first,~~
8 ~~provided that the Department of Human Services' hearing under~~
9 ~~this subsection regarding the reporting of an individual to the~~
10 ~~Department of Public Health's health care worker registry has~~
11 ~~concluded. Notwithstanding anything hereinafter or previously~~
12 ~~provided, if an action taken by an employer against an~~
13 ~~individual as a result of the circumstances that led to a~~
14 ~~finding of physical or sexual abuse or egregious neglect is~~
15 ~~later overturned under a grievance or arbitration procedure~~
16 ~~provided for in Section 8 of the Illinois Public Labor~~
17 ~~Relations Act or under a collective bargaining agreement, the~~
18 ~~report must be removed from the registry.~~

19 ~~The Department of Human Services shall promulgate or amend~~
20 ~~rules as necessary or appropriate to establish procedures for~~
21 ~~reporting to the registry, including the definition of~~
22 ~~egregious neglect, procedures for notice to the individual and~~
23 ~~victim, appeal and hearing procedures, and petition for removal~~
24 ~~of the report from the registry. The portion of the rules~~
25 ~~pertaining to hearings shall provide that, at the hearing, both~~
26 ~~parties may present written and oral evidence. The Department~~

1 ~~shall be required to establish by a preponderance of the~~
2 ~~evidence that the Office of the Inspector General's finding of~~
3 ~~physical or sexual abuse or egregious neglect warrants~~
4 ~~reporting to the Department of Public Health's health care~~
5 ~~worker registry under Section 3-206.01 of the Nursing Home Care~~
6 ~~Act.~~

7 (2) Notice to employee. Prior to reporting the name of
8 an employee, the employee shall be notified of the
9 Department's obligation to report and shall be granted an
10 opportunity to request an administrative hearing, the sole
11 purpose of which is to determine if the substantiated
12 finding warrants reporting to the registry. Notice to the
13 employee individual shall contain include a clear and
14 concise statement of the grounds on which the report to the
15 registry is based, offer the employee an and notice of the
16 opportunity for a hearing, and identify the process for
17 requesting such a hearing to contest the report. Notice is
18 sufficient if provided ~~The Department of Human Services~~
19 ~~shall provide the notice by certified mail to the~~
20 ~~employee's last known address of the individual. The notice~~
21 ~~shall give the individual an opportunity to contest the~~
22 ~~report in a hearing before the Department of Human Services~~
23 ~~or to submit a written response to the findings instead of~~
24 ~~requesting a hearing. If the employee fails to individual~~
25 ~~does not request a hearing within 30 days from the date of~~
26 the notice, the Inspector General shall report the name of

1 ~~the employee to or if after notice and a hearing the~~
2 ~~Department of Human Services finds that the report is~~
3 ~~valid, the finding shall be included as part of the~~
4 ~~registry, as well as a brief statement from the reported~~
5 ~~individual if he or she chooses to make a statement. The~~
6 ~~Department of Public Health shall make available to the~~
7 ~~public information reported to the registry. In a case of~~
8 ~~inquiries concerning an individual listed in the registry,~~
9 ~~any information disclosed concerning a finding of abuse or~~
10 ~~neglect shall also include disclosure of the individual's~~
11 ~~brief statement in the registry relating to the reported~~
12 ~~finding or include a clear and accurate summary of the~~
13 ~~statement.~~

14 (3) Registry hearings. If the employee requests an
15 administrative hearing, the employee shall be granted an
16 opportunity to appear before an administrative law judge to
17 present reasons why the employee's name should not be
18 reported to the registry. The Department shall bear the
19 burden of presenting evidence that establishes, by a
20 preponderance of the evidence, that the substantiated
21 finding warrants reporting to the registry. After
22 considering all the evidence presented, the administrative
23 law judge shall make a recommendation to the Secretary as
24 to whether the substantiated finding warrants reporting
25 the name of the employee to the registry. The Secretary
26 shall render the final decision. The Department and the

1 employee shall have the right to request that the
2 administrative law judge consider a stipulated disposition
3 of these proceedings.

4 (4) Testimony at registry hearings. A person who makes
5 a report or who investigates a report under this Act shall
6 testify fully in any judicial proceeding resulting from
7 such a report, as to any evidence of abuse or neglect, or
8 the cause thereof. No evidence shall be excluded by reason
9 of any common law or statutory privilege relating to
10 communications between the alleged perpetrator of abuse or
11 neglect, or the individual alleged as the victim in the
12 report, and the person making or investigating the report.
13 Testimony at hearings is exempt from the confidentiality
14 requirements of subsection (f) of Section 10 of the Mental
15 Health and Developmental Disabilities Confidentiality Act.

16 (5) Employee's rights to collateral action. No
17 reporting to the registry shall occur and no hearing shall
18 be set or proceed if an employee notifies the Inspector
19 General in writing, including any supporting
20 documentation, that he or she is formally contesting an
21 adverse employment action resulting from a substantiated
22 finding by complaint filed with the Illinois Civil Service
23 Commission, or which otherwise seeks to enforce the
24 employee's rights pursuant to any applicable collective
25 bargaining agreement. When a decision is rendered
26 following one of these hearings, the hearing officer,

1 arbitrator, administrative law judge, or other official
2 rendering the decision shall not order the Department to
3 return an employee to work if the physical abuse, sexual
4 abuse, or egregious neglect finding is upheld.

5 (6) Removal from registry. At any time after the report
6 to ~~of~~ the registry, but no more than once in any 12-month
7 period, an employee individual may petition the Department
8 in writing to remove his or her name ~~of Human Services for~~
9 removal from the registry ~~of the finding against him or~~
10 her. Upon receiving notice of such request, the Inspector
11 General ~~receipt of such a petition, the Department of Human~~
12 Services shall conduct an investigation into and ~~hearing on~~
13 the petition. Upon receipt of such request an
14 administrative hearing will be set by the Department. At
15 the hearing, the employee shall bear the burden of
16 presenting evidence that establishes, by a preponderance
17 of the evidence, that removal of the name from the registry
18 is ~~completion of the investigation and hearing, the~~
19 Department of Human Services shall report the removal of
20 the finding to the registry unless the Department of Human
21 Services determines that removal is not in the public
22 interest. The parties may jointly request that the
23 administrative law judge consider a stipulated disposition
24 of these proceedings.

25 (t) Review of Administrative Decisions. The Department
26 shall preserve a record of all proceedings at any formal

1 hearing conducted by the Department involving health care
2 worker registry hearings. Final administrative decisions of
3 the Department are subject to judicial review pursuant to
4 provisions of the Administrative Review Law.

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

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

26 The Board shall meet quarterly, and may hold other meetings

1 on the call of the chairman. Four members shall constitute a
2 quorum allowing the Board to conduct its business. The Board
3 may adopt rules and regulations it deems necessary to govern
4 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 ensure ~~assure~~ the prompt
8 and thorough investigation of allegations of neglect and abuse.
9 In 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, neglect, or
14 both abuse and neglect.

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

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

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

24 ~~(j) Investigators. The Inspector General shall establish a~~
25 ~~comprehensive program to ensure that every person employed or~~
26 ~~newly hired to conduct investigations shall receive training on~~

1 ~~an on-going basis concerning investigative techniques,~~
2 ~~communication skills, and the appropriate means of contact with~~
3 ~~persons admitted or committed to the mental health or~~
4 ~~developmental disabilities facilities under the jurisdiction~~
5 ~~of the Department of Human Services.~~

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

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

1 individuals receiving mental health or developmental
2 disabilities services residents of institutions under the
3 jurisdiction of the Department of Human Services. The report
4 shall detail the imposition of sanctions, if any, and the final
5 disposition of any corrective or administrative action
6 directed by the Secretary. ~~those recommendations.~~ The
7 summaries shall not contain any confidential or identifying
8 information of any individual, but ~~concerning the subjects of~~
9 ~~the reports and investigations.~~ The report shall also include
10 objective data identifying any trends in ~~a trend analysis of~~
11 the number of reported allegations and their disposition, for
12 each facility and Department-wide, for the most recent 3-year
13 time period. The report shall also identify, by facility, the
14 staff-to-patient ratios taking account ~~and a statement, for~~
15 ~~each facility, of the staffing to patient ratios.~~ The ratios
16 ~~shall include only the number~~ of direct care staff only. The
17 report shall also include detailed recommended administrative
18 actions and matters for consideration by the General Assembly.

19 (w) ~~(m)~~ Program audit. The Auditor General shall conduct a
20 ~~biennial~~ program audit of the Office of the Inspector General
21 on an as-needed basis, as determined by the Auditor General. ~~in~~
22 ~~relation to the Inspector General's compliance with this Act.~~
23 The audit shall specifically include the Inspector General's
24 compliance with the Act and effectiveness in investigating
25 reports of allegations occurring in any facility or agency.
26 ~~alleged neglect or abuse of residents in any facility operated~~

1 ~~by the Department of Human Services and in making~~
2 ~~recommendations for sanctions to the Departments of Human~~
3 ~~Services and Public Health.~~ The Auditor General shall conduct
4 the program audit according to the provisions of the Illinois
5 State Auditing Act and shall report its findings to the General
6 Assembly no later than January 1 following ~~of~~ the audit period
7 ~~each odd numbered year.~~

8 (Source: P.A. 95-545, eff. 8-28-07.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.