SB2809 Engrossed

1 AN ACT concerning children.

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

- Section 5. The Department of Human Services Act is amended
 by changing Section 1-17 as follows:
- 6 (20 ILCS 1305/1-17)

7 (Text of Section before amendment by P.A. 96-339)

8 Sec. 1-17. Inspector General.

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

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abuse, neglect, or financial exploitation of adults with
 disabilities living in domestic settings in the community under
 the Abuse of Adults with Disabilities Intervention Act.

4 (b) Definitions. The following definitions apply to this5 Section:

6 "Agency" or "community agency" means (i) a community agency 7 licensed, funded, or certified by the Department, but not 8 licensed or certified by any other human services agency of the 9 State, to provide mental health service or developmental 10 disabilities service, or (ii) a program licensed, funded, or 11 certified by the Department, but not licensed or certified by 12 any other human services agency of the State, to provide mental 13 health service or developmental disabilities service.

14 "Aggravating circumstance" means a factor that is 15 attendant to a finding and that tends to compound or increase 16 the culpability of the accused.

17 "Allegation" means an assertion, complaint, suspicion, or 18 incident involving any of the following conduct by an employee, 19 facility, or agency against an individual or individuals: 20 mental abuse, physical abuse, sexual abuse, neglect, or 21 financial exploitation.

22

"Day" means working day, unless otherwise specified.

"Deflection" means a situation in which an individual is presented for admission to a facility or agency, and the facility staff or agency staff do not admit the individual. Deflection" includes triage, redirection, and denial of SB2809 Engrossed - 3 - LRB096 17346 KTG 32697 b

1 admission.

2

"Department" means the Department of Human Services.

3 "Developmentally disabled" means having a developmental 4 disability.

5 "Developmental disability" means "developmental 6 disability" as defined in the Mental Health and Developmental 7 Disabilities Code.

8 "Egregious neglect" means a finding of neglect as 9 determined by the Inspector General that (i) represents a gross 10 failure to adequately provide for, or a callused indifference 11 to, the health, safety, or medical needs of an individual and 12 (ii) results in an individual's death or other serious 13 deterioration of an individual's physical condition or mental 14 condition.

15 "Employee" means any person who provides services at the 16 facility or agency on-site or off-site. The service 17 relationship can be with the individual or with the facility or agency. Also, "employee" includes any employee or contractual 18 agent of the Department of Human Services or the community 19 20 agency involved in providing or monitoring or administering 21 mental health or developmental disability services. This 22 includes but is not limited to: owners, operators, payroll 23 personnel, contractors, subcontractors, and volunteers.

24 "Facility" or "State-operated facility" means a mental 25 health facility or developmental disabilities facility 26 operated by the Department. SB2809 Engrossed - 4 - LRB096 17346 KTG 32697 b

1 "Financial exploitation" means taking unjust advantage of 2 an individual's assets, property, or financial resources 3 through deception, intimidation, or conversion for the 4 employee's, facility's, or agency's own advantage or benefit.

5 "Finding" means the Office of Inspector General's 6 determination regarding whether an allegation is 7 substantiated, unsubstantiated, or unfounded.

8 "Health care worker registry" or "registry" means the 9 health care worker registry created by the Nursing Home Care 10 Act.

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

14 "Mental abuse" means the use of demeaning, intimidating, or 15 threatening words, signs, gestures, or other actions by an 16 employee about an individual and in the presence of an 17 individual or individuals that results in emotional distress or 18 maladaptive behavior, or could have resulted in emotional 19 distress or maladaptive behavior, for any individual present.

20 "Mental illness" means "mental illness" as defined in the21 Mental Health and Developmental Disabilities Code.

22

"Mentally ill" means having a mental illness.

23 "Mitigating circumstance" means a condition that (i) is 24 attendant to a finding, (ii) does not excuse or justify the 25 conduct in question, but (iii) may be considered in evaluating 26 the severity of the conduct, the culpability of the accused, or SB2809 Engrossed - 5 - LRB096 17346 KTG 32697 b

both the severity of the conduct and the culpability of the accused.

"Neglect" means an employee's, agency's, or facility's 3 failure to provide adequate medical care, personal care, or 4 5 maintenance and that, as a consequence, (i) causes an 6 individual pain, injury, or emotional distress, (ii) results in 7 individual's maladaptive behavior either an or the 8 deterioration of an individual's physical condition or mental 9 condition, or (iii) places the individual's health or safety at 10 substantial risk.

"Physical abuse" means an employee's non-accidental and inappropriate contact with an individual that causes bodily harm. "Physical abuse" includes actions that cause bodily harm as a result of an employee directing an individual or person to physically abuse another individual.

16 "Recommendation" means an admonition, separate from a 17 finding, that requires action by the facility, agency, or 18 Department to correct a systemic issue, problem, or deficiency 19 identified during an investigation.

20 "Required reporter" means any employee who suspects, 21 witnesses, or is informed of an allegation of any one or more 22 of the following: mental abuse, physical abuse, sexual abuse, 23 neglect, or financial exploitation.

24 "Secretary" means the Chief Administrative Officer of the25 Department.

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"Sexual abuse" means any sexual contact or intimate

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1 physical contact between an employee and an individual, 2 including an employee's coercion or encouragement of an 3 individual to engage in sexual behavior that results in sexual 4 contact, intimate physical contact, sexual behavior, or 5 intimate physical behavior.

6 "Substantiated" means there is a preponderance of the 7 evidence to support the allegation.

8 "Unfounded" means there is no credible evidence to support9 the allegation.

10 "Unsubstantiated" means there is credible evidence, but 11 less than a preponderance of evidence to support the 12 allegation.

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

(d) Operation and appropriation. The Inspector General shall function independently within the Department with respect to the operations of the Office, including the performance of investigations and issuance of findings and recommendations. The appropriation for the Office of Inspector General shall be separate from the overall appropriation for the Department.

(e) Powers and duties. The Inspector General shall
 investigate reports of suspected mental abuse, physical abuse,

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1 sexual abuse, neglect, or financial exploitation of 2 individuals in any mental health or developmental disabilities facility or agency and shall have authority to take immediate 3 action to prevent any one or more of the following from 4 5 happening to individuals under its jurisdiction: mental abuse, 6 physical abuse, sexual abuse, neglect, or financial 7 exploitation. Upon written request of an agency of this State, 8 the Inspector General may assist another agency of the State in 9 investigating reports of the abuse, neglect, or abuse and 10 neglect of persons with mental illness, persons with 11 developmental disabilities, or persons with both. To comply 12 with the requirements of subsection (k) of this Section, the 13 Inspector General shall also review all reportable deaths for 14 which there is no allegation of abuse or neglect. Nothing in 15 this Section shall preempt any duties of the Medical Review 16 Board set forth in the Mental Health and Developmental 17 Disabilities Code. The Inspector General shall have no authority to investigate alleged violations of the State 18 Officials and Employees Ethics Act. Allegations of misconduct 19 under the State Officials and Employees Ethics Act shall be 20 21 referred to the Office of the Governor's Executive Inspector 22 General for investigation.

(f) Limitations. The Inspector General shall not conduct an investigation within an agency or facility if that investigation would be redundant to or interfere with an investigation conducted by another State agency. The Inspector SB2809 Engrossed - 8 - LRB096 17346 KTG 32697 b

General shall have no supervision over, or involvement in, the 1 2 routine programmatic, licensing, funding, or certification 3 operations of the Department. Nothing in this subsection limits investigations by the Department that may otherwise be required 4 5 by law or that may be necessary in the Department's capacity as central administrative authority responsible for the operation 6 of the State's mental health and developmental disabilities 7 8 facilities.

9 (g) Rulemaking authority. The Inspector General shall 10 promulgate rules establishing minimum requirements for 11 reporting allegations as well as for initiating, conducting, 12 and completing investigations based upon the nature of the 13 allegation or allegations. The rules shall clearly establish that if 2 or more State agencies could investigate an 14 15 allegation, the Inspector General shall not conduct an 16 investigation that would be redundant to, or interfere with, an 17 investigation conducted by another State agency. The rules shall further clarify the method and circumstances under which 18 Inspector General may interact with the 19 the Office of 20 licensing, funding, or certification units of the Department in preventing further occurrences of mental abuse, 21 physical 22 abuse, sexual abuse, neglect, eqregious neglect, and financial 23 exploitation.

(h) Training programs. The Inspector General shall (i)
 establish a comprehensive program to ensure that every person
 authorized to conduct investigations receives ongoing training

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

13 (

(i) Duty to cooperate.

(1) The Inspector General shall at all times be granted 14 15 access to any facility or agency for the purpose of 16 investigating any allegation, conducting unannounced site 17 visits, monitoring compliance with a written response, or completing any other statutorily assigned duty. The 18 Inspector General shall conduct unannounced site visits to 19 20 each facility at least annually for the purpose of reviewing and making recommendations on systemic issues 21 22 relative to preventing, reporting, investigating, and 23 responding to all of the following: mental abuse, physical abuse, sexual abuse, neglect, egregious neglect, or 24 25 financial exploitation.

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(2) Any employee who fails to cooperate with an Office

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of the Inspector General investigation is in violation of 1 2 this Act. Failure to cooperate with an investigation 3 includes, but is not limited to, any one or more of the following: (i) creating and transmitting a false report to 4 5 the Office of the Inspector General hotline, (ii) providing false information to an Office of the Inspector General 6 7 Investigator during an investigation, (iii) colluding with 8 other employees to cover up evidence, (iv) colluding with 9 other employees to provide false information to an Office 10 of the Inspector General investigator, (v) destroying 11 evidence, (vi) withholding evidence, or (vii) otherwise 12 obstructing an Office of the Inspector General 13 investigation. Additionally, any employee who, during an 14 unannounced site visit or written response compliance check, fails to cooperate with requests from the Office of 15 16 the Inspector General is in violation of this Act.

17 (j) Subpoena powers. The Inspector General shall have the power to subpoena witnesses and compel the production of all 18 19 documents and physical evidence relating to his or her 20 investigations and any hearings authorized by this Act. This subpoena power shall not extend to persons or documents of a 21 22 labor organization or its representatives insofar as the 23 persons are acting in a representative capacity to an employee 24 whose conduct is the subject of an investigation or the 25 documents relate to that representation. Any person who 26 otherwise fails to respond to a subpoena or who knowingly

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provides false information to the Office of the Inspector 1 2 General by subpoena during an investigation is guilty of a Class A misdemeanor. 3

4

(k) Reporting allegations and deaths.

5 (1) Allegations. If an employee witnesses, is told of, or has reason to believe an incident of mental abuse, 6 7 physical abuse, sexual abuse, neglect, or financial 8 exploitation has occurred, the employee, agency, or 9 facility shall report the allegation by phone to the Office 10 of the Inspector General hotline according to the agency's 11 or facility's procedures, but in no event later than 4 12 hours after the initial discovery of the incident, 13 allegation, or suspicion of any one or more of the 14 following: mental abuse, physical abuse, sexual abuse, 15 neglect, or financial exploitation. A required reporter as 16 defined in subsection (b) of this Section who knowingly or 17 intentionally fails to comply with these reporting requirements is guilty of a Class A misdemeanor. 18

19 (2) Deaths. Absent an allegation, a required reporter 20 shall, within 24 hours after initial discovery, report by 21 phone to the Office of the Inspector General hotline each 22 of the following:

23 (i) Any death of an individual occurring within 14 24 calendar days after discharge or transfer of the 25 individual from a residential program or facility. 26

(ii) Any death of an individual occurring within 24

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hours after deflection from a residential program or
 facility.

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

5 (3) Retaliation. It is a violation of this Act for any 6 employee or administrator of an agency or facility to take 7 retaliatory action against an employee who acts in good 8 faith in conformance with his or her duties as a required 9 reporter.

10 (1)Reporting criminal acts. Within 24 hours after 11 determining that there is credible evidence indicating that a 12 criminal act may have been committed or that special expertise may be required in an investigation, the Inspector General 13 14 shall notify the Department of State Police or other appropriate law enforcement authority, or ensure that such 15 16 notification is made. The Department of State Police shall 17 any report from a investigate State-operated facility indicating a possible murder, sexual assault, or other felony 18 by an employee. All investigations conducted by the Inspector 19 20 General shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal 21 22 prosecution.

(m) Investigative reports. Upon completion of an investigation, the Office of Inspector General shall issue an investigative report identifying whether the allegations are substantiated, unsubstantiated, or unfounded. Within 10 SB2809 Engrossed - 13 - LRB096 17346 KTG 32697 b

1 after transmittal of а business davs the completed investigative report substantiating an allegation, or if a 2 3 recommendation is made, the Inspector General shall provide the investigative report on the case to the Secretary and to the 4 5 director of the facility or agency where any one or more of the 6 following occurred: mental abuse, physical abuse, sexual 7 abuse, neglect, egregious neglect, or financial exploitation. In a substantiated case, the investigative report shall include 8 9 any mitigating or aggravating circumstances that were 10 identified during the investigation. If the case involves 11 substantiated neglect, the investigative report shall also 12 state whether egregious neglect was found. An investigative 13 report may also set forth recommendations. All investigative reports prepared by the Office of the Inspector General shall 14 15 be considered confidential and shall not be released except as 16 provided by the law of this State or as required under 17 applicable federal law. Unsubstantiated and unfounded reports shall not be disclosed except as allowed under Section 6 of the 18 19 Abused and Neglected Long Term Care Facility Residents Reporting Act. Raw data used to compile the investigative 20 report shall not be subject to release unless required by law 21 22 or a court order. "Raw data used to compile the investigative 23 report" includes, but is not limited to, any one or more of the complaint, witness 24 following: the initial statements, 25 photographs, investigator's notes, police reports, or incident 26 reports. If the allegations are substantiated, the accused SB2809 Engrossed - 14 - LRB096 17346 KTG 32697 b

1 shall be provided with a redacted copy of the investigative 2 report. Death reports where there was no allegation of abuse or 3 neglect shall only be released pursuant to applicable State or 4 federal law or a valid court order.

5

(n) Written responses and reconsideration requests.

6 (1) Written responses. Within 30 calendar days from 7 receipt of a substantiated investigative report or an 8 investigative report which contains recommendations, 9 absent a reconsideration request, the facility or agency 10 shall file a written response that addresses, in a concise 11 and reasoned manner, the actions taken to: (i) protect the 12 individual; (ii) prevent recurrences; and (iii) eliminate 13 the problems identified. The response shall include the implementation and completion dates of such actions. If the 14 15 written response is not filed within the allotted 30 16 calendar day period, the Secretary shall determine the 17 appropriate corrective action to be taken.

18 (2) Reconsideration requests. The facility, agency,
19 victim or guardian, or the subject employee may request
20 that the Office of Inspector General reconsider or clarify
21 its finding based upon additional information.

22 (o) Disclosure of the finding by the Inspector General. The 23 General shall disclose the Inspector finding of an 24 investigation to the following persons: (i) the Governor, (ii) 25 the Secretary, (iii) the director of the facility or agency, 26 (iv) the alleged victims and their guardians, (v) the

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1 complainant, and (vi) the accused. This information shall 2 include whether the allegations were deemed substantiated, 3 unsubstantiated, or unfounded.

Secretary review. Upon review of the Inspector 4 (p) 5 General's investigative report and any agency's or facility's written response, the Secretary shall accept or reject the 6 7 written response and notify the Inspector General of that 8 determination. The Secretary may further direct that other 9 administrative action be taken, including, but not limited to, 10 any one or more of the following: (i) additional site visits, 11 (ii) training, (iii) provision of technical assistance 12 relative to administrative needs, licensure or certification, 13 or (iv) the imposition of appropriate sanctions.

(q) Action by facility or agency. Within 30 days of the 14 15 date the Secretary approves the written response or directs 16 that further administrative action be taken, the facility or 17 agency shall provide an implementation report to the Inspector General that provides the status of the action taken. The 18 facility or agency shall be allowed an additional 30 days to 19 20 send notice of completion of the action or to send an updated implementation report. If the action has not been completed 21 22 within the additional 30 day period, the facility or agency 23 shall send updated implementation reports every 60 days until completion. The Inspector General shall conduct a review of any 24 25 implementation plan that takes more than 120 days after 26 approval to complete, and shall monitor compliance through a

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1 random review of approved written responses, which may include,
2 but are not limited to: (i) site visits, (ii) telephone
3 contact, and (iii) requests for additional documentation
4 evidencing compliance.

5 (r) Sanctions. Sanctions, if imposed by the Secretary under 6 Subdivision (p)(iv) of this Section, shall be designed to 7 prevent further acts of mental abuse, physical abuse, sexual 8 abuse, neglect, egregious neglect, or financial exploitation 9 or some combination of one or more of those acts at a facility 10 or agency, and may include any one or more of the following:

11

(1) Appointment of on-site monitors.

12 (2) Transfer or relocation of an individual or 13 individuals.

14

(3) Closure of units.

(4) Termination of any one or more of the following:
(i) Department licensing, (ii) funding, or (iii)
certification.

18 The Inspector General may seek the assistance of the 19 Illinois Attorney General or the office of any State's Attorney 20 in implementing sanctions.

21

(s) Health care worker registry.

(1) Reporting to the registry. The Inspector General shall report to the Department of Public Health's health care worker registry, a public registry, the identity and finding of each employee of a facility or agency against whom there is a final investigative report containing a SB2809 Engrossed - 17 - LRB096 17346 KTG 32697 b

substantiated allegation of physical or sexual abuse or
 egregious neglect of an individual.

3 (2) Notice to employee. Prior to reporting the name of an employee, the employee shall be notified of the 4 Department's obligation to report and shall be granted an 5 opportunity to request an administrative hearing, the sole 6 7 purpose of which is to determine if the substantiated 8 finding warrants reporting to the registry. Notice to the 9 employee shall contain a clear and concise statement of the 10 grounds on which the report to the registry is based, offer 11 the employee an opportunity for a hearing, and identify the 12 process for requesting such a hearing. Notice is sufficient 13 if provided by certified mail to the employee's last known 14 address. If the employee fails to request a hearing within 15 30 days from the date of the notice, the Inspector General 16 shall report the name of the employee to the registry. 17 Nothing in this subdivision (s) (2) shall diminish or impair the rights of a person who is a member of a collective 18 bargaining unit under the Illinois Public Labor Relations 19 20 Act or under any other federal labor statute.

(3) Registry hearings. If the employee requests an administrative hearing, the employee shall be granted an opportunity to appear before an administrative law judge to present reasons why the employee's name should not be reported to the registry. The Department shall bear the burden of presenting evidence that establishes, by a SB2809 Engrossed - 18 - LRB096 17346 KTG 32697 b

preponderance of the evidence, that the substantiated 1 2 reporting to finding warrants the registry. After 3 considering all the evidence presented, the administrative law judge shall make a recommendation to the Secretary as 4 5 to whether the substantiated finding warrants reporting the name of the employee to the registry. The Secretary 6 7 shall render the final decision. The Department and the 8 employee shall have the right to request that the 9 administrative law judge consider a stipulated disposition 10 of these proceedings.

11 (4) Testimony at registry hearings. A person who makes 12 a report or who investigates a report under this Act shall 13 testify fully in any judicial proceeding resulting from 14 such a report, as to any evidence of abuse or neglect, or 15 the cause thereof. No evidence shall be excluded by reason 16 any common law or statutory privilege relating to of 17 communications between the alleged perpetrator of abuse or neglect, or the individual alleged as the victim in the 18 19 report, and the person making or investigating the report. 20 Testimony at hearings is exempt from the confidentiality requirements of subsection (f) of Section 10 of the Mental 21 22 Health and Developmental Disabilities Confidentiality Act.

(5) Employee's rights to collateral action. No
 reporting to the registry shall occur and no hearing shall
 be set or proceed if an employee notifies the Inspector
 General in writing, including any supporting

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documentation, that he or she is formally contesting an 1 2 adverse employment action resulting from a substantiated 3 finding by complaint filed with the Illinois Civil Service Commission, or which otherwise seeks to enforce the 4 employee's rights pursuant to any applicable collective 5 6 bargaining agreement. If an action taken by an employer 7 against an employee as a result of a finding of physical 8 abuse, sexual abuse, or eqregious neglect is overturned 9 through an action filed with the Illinois Civil Service 10 Commission or under any applicable collective bargaining 11 agreement and if that employee's name has already been sent 12 to the registry, the employee's name shall be removed from 13 the registry.

(6) Removal from registry. At any time after the report 14 15 to the registry, but no more than once in any 12-month 16 period, an employee may petition the Department in writing 17 to remove his or her name from the registry. Upon receiving notice of such request, the Inspector General shall conduct 18 19 an investigation into the petition. Upon receipt of such 20 request, an administrative hearing will be set by the 21 Department. At the hearing, the employee shall bear the 22 burden of presenting evidence that establishes, by a 23 preponderance of the evidence, that removal of the name 24 from the registry is in the public interest. The parties 25 may jointly request that the administrative law judge 26 consider a stipulated disposition of these proceedings.

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1 (t) Review of Administrative Decisions. The Department 2 shall preserve a record of all proceedings at any formal 3 hearing conducted by the Department involving health care 4 worker registry hearings. Final administrative decisions of 5 the Department are subject to judicial review pursuant to 6 provisions of the Administrative Review Law.

(u) Quality Care Board. There is created, within the Office 7 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.

Members appointed by the Governor shall be qualified by 18 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 without compensation, but shall be reimbursed for expenses 24 25 incurred in connection with the performance of their duties as 26 members.

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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 allowing the Board to conduct its business. The Board 4 may adopt rules and regulations it deems necessary to govern 5 its own procedures.

6 The Board shall monitor and oversee the operations, 7 policies, and procedures of the Inspector General to ensure the 8 prompt and thorough investigation of allegations of neglect and 9 abuse. In fulfilling these responsibilities, the Board may do 10 the following:

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

15 (2) Review existing regulations relating to the16 operation of facilities.

17 (3) Advise the Inspector General as to the content of18 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 offices.

(v) Annual report. The Inspector General shall provide to the General Assembly and the Governor, no later than January 1 of each year, a summary of reports and investigations made under this Act for the prior fiscal year with respect to SB2809 Engrossed - 22 - LRB096 17346 KTG 32697 b

1 health individuals receiving mental or developmental 2 disabilities services. The report shall detail the imposition of sanctions, if any, and the final disposition of any 3 corrective or administrative action directed by the Secretary. 4 5 The summaries shall not contain any confidential or identifying 6 information of any individual, but shall include objective data 7 identifying any trends in the number of reported allegations, the timeliness of the Office of the Inspector General's 8 9 investigations, and their disposition, for each facility and 10 Department-wide, for the most recent 3-year time period. The 11 report shall also identify, by facility, the staff-to-patient 12 ratios taking account of direct care staff only. The report 13 shall also include detailed recommended administrative actions 14 and matters for consideration by the General Assembly.

15 (w) Program audit. The Auditor General shall conduct a 16 program audit of the Office of the Inspector General on an 17 as-needed basis, as determined by the Auditor General. The audit shall specifically include the Inspector General's 18 compliance with the Act and effectiveness in investigating 19 20 reports of allegations occurring in any facility or agency. The Auditor General shall conduct the program audit according to 21 22 the provisions of the Illinois State Auditing Act and shall 23 report its findings to the General Assembly no later than January 1 following the audit period. 24

(x) Nothing in this Section shall be construed to mean thata patient is a victim of abuse or neglect because of health

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care services appropriately provided or not provided by health
 care professionals.

3 (y) Nothing in this Section shall require a facility, including its employees, agents, medical staff members, and 4 5 health care professionals, to provide a service to a patient in 6 contravention of that patient's stated or implied objection to 7 the provision of that service on the ground that that service conflicts with the patient's religious beliefs or practices, 8 9 nor shall the failure to provide a service to a patient be 10 considered abuse under this Section if the patient has objected 11 to the provision of that service based on his or her religious 12 beliefs or practices.

13 (Source: P.A. 95-545, eff. 8-28-07; 96-407, eff. 8-13-09; 14 96-555, eff. 8-18-09; revised 9-25-09.)

15 (Text of Section after amendment by P.A. 96-339)

16 Sec. 1-17. Inspector General.

(a) Nature and purpose. It is the express intent of the 17 18 General Assembly to ensure the health, safety, and financial condition of individuals receiving services in this State due 19 20 to mental illness, developmental disability, or both by 21 protecting those persons from acts of abuse, neglect, or both 22 by service providers. To that end, the Office of the Inspector General for the Department of Human Services is created to 23 24 investigate and report upon allegations of the abuse, neglect, 25 or financial exploitation of individuals receiving services SB2809 Engrossed - 24 - LRB096 17346 KTG 32697 b

within mental health facilities, developmental disabilities 1 2 facilities, and community agencies operated, licensed, funded, or certified by the Department of Human Services or , but not 3 licensed or certified by any other State agency. It is also the 4 express intent of the General Assembly to authorize the 5 Inspector General to investigate alleged or suspected cases of 6 abuse, neglect, or financial exploitation of adults with 7 disabilities living in domestic settings in the community under 8 9 the Abuse of Adults with Disabilities Intervention Act.

10 (b) Definitions. The following definitions apply to this 11 Section:

"Agency" or "community agency" means (i) a community agency 12 13 licensed, funded, or certified by the Department or , but not licensed or certified by any other human services agency of the 14 15 State, to provide mental health service or developmental 16 disabilities service, or (ii) a program licensed, funded, or 17 certified by the Department or , but not licensed or certified by any other human services agency of the State, to provide 18 mental health service or developmental disabilities service. 19

20 "Aggravating circumstance" means a factor that is 21 attendant to a finding and that tends to compound or increase 22 the culpability of the accused.

23 "Allegation" means an assertion, complaint, suspicion, or 24 incident involving any of the following conduct by an employee, 25 facility, or agency against an individual or individuals: 26 mental abuse, physical abuse, sexual abuse, neglect, or SB2809 Engrossed - 25 - LRB096 17346 KTG 32697 b

1 financial exploitation.

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3 "Deflection" means a situation in which an individual is
4 presented for admission to a facility or agency, and the
5 facility staff or agency staff do not admit the individual.
6 "Deflection" includes triage, redirection, and denial of
7 admission.

8 "Department" means the Department of Human Services.

9 "Developmentally disabled" means having a developmental10 disability.

11 "Developmental disability" means "developmental 12 disability" as defined in the Mental Health and Developmental 13 Disabilities Code.

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

21 "Employee" means any person who provides services at the 22 facility or agency on-site or off-site. The service 23 relationship can be with the individual or with the facility or agency. Also, "employee" includes any employee or contractual 24 25 agent of the Department of Human Services or the community 26 agency involved in providing or monitoring or administering SB2809 Engrossed - 26 - LRB096 17346 KTG 32697 b

mental health or developmental disability services. This
 includes but is not limited to: owners, operators, payroll
 personnel, contractors, subcontractors, and volunteers.

4 "Facility" or "State-operated facility" means a mental 5 health facility or developmental disabilities facility 6 operated by the Department <u>or certified or licensed by any</u> 7 <u>other State agency.</u>

8 "Financial exploitation" means taking unjust advantage of 9 an individual's assets, property, or financial resources 10 through deception, intimidation, or conversion for the 11 employee's, facility's, or agency's own advantage or benefit.

12 "Finding" means the Office of Inspector General's 13 determination regarding whether an allegation is 14 substantiated, unsubstantiated, or unfounded.

15 "Health care worker registry" or "registry" means the 16 health care worker registry created by the Nursing Home Care 17 Act.

18 "Individual" means any person receiving mental health 19 service, developmental disabilities service, or both from a 20 facility or agency, while either on-site or off-site.

"Mental abuse" means the use of demeaning, intimidating, or threatening words, signs, gestures, or other actions by an employee about an individual and in the presence of an individual or individuals that results in emotional distress or maladaptive behavior, or could have resulted in emotional distress or maladaptive behavior, for any individual present. SB2809 Engrossed - 27 - LRB096 17346 KTG 32697 b

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

3

"Mentally ill" means having a mental illness.

4 "Mitigating circumstance" means a condition that (i) is 5 attendant to a finding, (ii) does not excuse or justify the 6 conduct in question, but (iii) may be considered in evaluating 7 the severity of the conduct, the culpability of the accused, or 8 both the severity of the conduct and the culpability of the 9 accused.

"Neglect" means an employee's, agency's, or facility's 10 11 failure to provide adequate medical care, personal care, or 12 maintenance and that, as a consequence, (i) causes an 13 individual pain, injury, or emotional distress, (ii) results in 14 either an individual's maladaptive behavior or the 15 deterioration of an individual's physical condition or mental 16 condition, or (iii) places the individual's health or safety at 17 substantial risk.

18 "Physical abuse" means an employee's non-accidental and 19 inappropriate contact with an individual that causes bodily 20 harm. "Physical abuse" includes actions that cause bodily harm 21 as a result of an employee directing an individual or person to 22 physically abuse another individual.

23 "Recommendation" means an admonition, separate from a 24 finding, that requires action by the facility, agency, or 25 Department to correct a systemic issue, problem, or deficiency 26 identified during an investigation. SB2809 Engrossed - 28 - LRB096 17346 KTG 32697 b

1 "Required reporter" means any employee who suspects, 2 witnesses, or is informed of an allegation of any one or more 3 of the following: mental abuse, physical abuse, sexual abuse, 4 neglect, or financial exploitation.

5 "Secretary" means the Chief Administrative Officer of the6 Department.

7 "Sexual abuse" means any sexual contact or intimate 8 physical contact between an employee and an individual, 9 including an employee's coercion or encouragement of an 10 individual to engage in sexual behavior that results in sexual 11 contact, intimate physical contact, sexual behavior, or 12 intimate physical behavior.

13 "Substantiated" means there is a preponderance of the 14 evidence to support the allegation.

15 "Unfounded" means there is no credible evidence to support 16 the allegation.

17 "Unsubstantiated" means there is credible evidence, but 18 less than a preponderance of evidence to support the 19 allegation.

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

(d) Operation and appropriation. The Inspector Generalshall function independently within the Department with

1 respect to the operations of the Office, including the 2 performance of investigations and issuance of findings and 3 recommendations. The appropriation for the Office of Inspector 4 General shall be separate from the overall appropriation for 5 the Department.

6 (e) Powers and duties. The Inspector General shall 7 investigate reports of suspected mental abuse, physical abuse, 8 abuse, neglect, or financial exploitation sexual of 9 individuals in any mental health or developmental disabilities 10 facility or agency and shall have authority to take immediate 11 action to prevent any one or more of the following from 12 happening to individuals under its jurisdiction: mental abuse, 13 abuse, neglect, physical abuse, sexual or financial 14 exploitation. Investigations shall be commenced no later than 15 24 hours after the report is received by the Inspector General. 16 Upon written request of an agency of this State, the Inspector 17 General may assist another agency of the State in investigating reports of the abuse, neglect, or abuse and neglect of persons 18 19 with mental illness, persons with developmental disabilities, or persons with both. To comply with the requirements of 20 subsection (k) of this Section, the Inspector General shall 21 22 also review all reportable deaths for which there is no 23 allegation of abuse or neglect. Nothing in this Section shall preempt any duties of the Medical Review Board set forth in the 24 25 Mental Health and Developmental Disabilities Code. The 26 Inspector General shall have no authority to investigate

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alleged violations of the State Officials and Employees Ethics
 Act. Allegations of misconduct under the State Officials and
 Employees Ethics Act shall be referred to the Office of the
 Governor's Executive Inspector General for investigation.

5 (f) Limitations. The Inspector General shall not conduct an investigation within an agency or facility if that 6 investigation would be redundant to or interfere with an 7 investigation conducted by another State agency. The Inspector 8 9 General shall have no supervision over, or involvement in, the 10 routine programmatic, licensing, funding, or certification 11 operations of the Department, or the functions of any other 12 State agency. Nothing in this subsection limits investigations 13 by the Department that may otherwise be required by law or that may be necessary in the Department's capacity as central 14 administrative authority responsible for the operation of the 15 16 State's mental health and developmental disabilities 17 facilities.

(g) Rulemaking authority. The Inspector General shall 18 promulgate rules establishing minimum requirements 19 for 20 reporting allegations as well as for initiating, conducting, and completing investigations based upon the nature of the 21 22 allegation or allegations. The rules shall clearly establish that if 23 2 or more State agencies could investigate an allegation, the Inspector General shall not conduct 24 an investigation that would be redundant to, or interfere with, an 25 26 investigation conducted by another State agency. The rules SB2809 Engrossed - 31 - LRB096 17346 KTG 32697 b

1 shall further clarify the method and circumstances under which 2 the Office of Inspector General may interact with the 3 licensing, funding, or certification units of the Department in 4 preventing further occurrences of mental abuse, physical 5 abuse, sexual abuse, neglect, egregious neglect, and financial 6 exploitation.

(h) Training programs. The Inspector General shall (i) 7 8 establish a comprehensive program to ensure that every person 9 authorized to conduct investigations receives ongoing training 10 relative to investigation techniques, communication skills, 11 and the appropriate means of interacting with persons receiving 12 treatment for mental illness, developmental disability, or 13 both mental illness and developmental disability, and (ii) establish and conduct periodic training programs for facility 14 15 and agency employees concerning the prevention and reporting of 16 any one or more of the following: mental abuse, physical abuse, 17 abuse, neglect, eqregious neglect, or financial sexual exploitation. Nothing in this Section shall be deemed to 18 prevent the Office of Inspector General from conducting any 19 other training as determined by the Inspector General to be 20 21 necessary or helpful.

22

(i) Duty to cooperate.

(1) The Inspector General shall at all times be granted
 access to any facility or agency for the purpose of
 investigating any allegation, conducting unannounced site
 visits, monitoring compliance with a written response, or

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completing any other statutorily assigned duty. 1 The 2 Inspector General shall conduct unannounced site visits to 3 each facility at least annually for the purpose of reviewing and making recommendations on systemic issues 4 5 relative to preventing, reporting, investigating, and responding to all of the following: mental abuse, physical 6 abuse, neglect, egregious neglect, or 7 abuse, sexual 8 financial exploitation.

9 (2) Any employee who fails to cooperate with an Office 10 of the Inspector General investigation is in violation of 11 this Act. Failure to cooperate with an investigation 12 includes, but is not limited to, any one or more of the following: (i) creating and transmitting a false report to 13 14 the Office of the Inspector General hotline, (ii) providing 15 false information to an Office of the Inspector General 16 Investigator during an investigation, (iii) colluding with 17 other employees to cover up evidence, (iv) colluding with other employees to provide false information to an Office 18 19 of the Inspector General investigator, (v) destroying 20 evidence, (vi) withholding evidence, or (vii) otherwise Office 21 obstructing an of the Inspector General investigation. Additionally, any employee who, during an 22 23 unannounced site visit or written response compliance 24 check, fails to cooperate with requests from the Office of 25 the Inspector General is in violation of this Act.

26 (j) Subpoena powers. The Inspector General shall have the

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power to subpoena witnesses and compel the production of all 1 2 documents and physical evidence relating to his or her investigations and any hearings authorized by this Act. This 3 subpoena power shall not extend to persons or documents of a 4 5 labor organization or its representatives insofar as the 6 persons are acting in a representative capacity to an employee whose conduct is the subject of an investigation or the 7 8 documents relate to that representation. Any person who 9 otherwise fails to respond to a subpoena or who knowingly 10 provides false information to the Office of the Inspector 11 General by subpoena during an investigation is guilty of a 12 Class A misdemeanor.

13

(k) Reporting allegations and deaths.

14 (1) Allegations. If an employee witnesses, is told of, 15 or has reason to believe an incident of mental abuse, 16 physical abuse, sexual abuse, neglect, or financial 17 exploitation has occurred, the employee, agency, or facility shall report the allegation by phone to the Office 18 19 of the Inspector General hotline according to the agency's 20 or facility's procedures, but in no event later than 4 21 hours after the initial discovery of the incident, 22 allegation, or suspicion of any one or more of the 23 following: mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation. A required reporter as 24 25 defined in subsection (b) of this Section who knowingly or 26 intentionally fails to comply with these reporting SB2809 Engrossed - 34 - LRB096 17346 KTG 32697 b

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8

requirements is guilty of a Class A misdemeanor.

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

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

9 (ii) Any death of an individual occurring within 24 10 hours after deflection from a residential program or 11 facility.

(iii) Any other death of an individual occurring at an agency or facility or at any Department-funded site. (3) Retaliation. It is a violation of this Act for any employee or administrator of an agency or facility to take retaliatory action against an employee who acts in good faith in conformance with his or her duties as a required reporter.

19 Reporting criminal acts. Within 24 hours after (1)20 determining that there is credible evidence indicating that a criminal act may have been committed or that special expertise 21 22 may be required in an investigation, the Inspector General 23 shall notify the Department of State Police or other appropriate law enforcement authority, or ensure that such 24 25 notification is made. The Department of State Police shall 26 investigate any report from a State-operated facility SB2809 Engrossed - 35 - LRB096 17346 KTG 32697 b

indicating a possible murder, sexual assault, or other felony by an employee. All investigations conducted by the Inspector General shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

6 (m) Investigative reports. Upon completion of an 7 investigation, the Office of Inspector General shall issue an 8 investigative report identifying whether the allegations are 9 substantiated, unsubstantiated, or unfounded. Within 10 10 business davs after the transmittal of a completed 11 investigative report substantiating an allegation, or if a 12 recommendation is made, the Inspector General shall provide the 13 investigative report on the case to the Secretary and to the 14 director of the facility or agency where any one or more of the 15 following occurred: mental abuse, physical abuse, sexual 16 abuse, neglect, egregious neglect, or financial exploitation. 17 In a substantiated case, the investigative report shall include aggravating circumstances 18 any mitigating or that were 19 identified during the investigation. If the case involves substantiated neglect, the investigative report shall also 20 21 state whether egregious neglect was found. An investigative 22 report may also set forth recommendations. All investigative 23 reports prepared by the Office of the Inspector General shall be considered confidential and shall not be released except as 24 25 provided by the law of this State or as required under 26 applicable federal law. Unsubstantiated and unfounded reports SB2809 Engrossed - 36 - LRB096 17346 KTG 32697 b

shall not be disclosed except as allowed under Section 6 of the 1 2 Abused and Neglected Long Term Care Facility Residents 3 Reporting Act. Raw data used to compile the investigative report shall not be subject to release unless required by law 4 5 or a court order. "Raw data used to compile the investigative report" includes, but is not limited to, any one or more of the 6 7 the initial complaint, witness following: statements, 8 photographs, investigator's notes, police reports, or incident 9 reports. If the allegations are substantiated, the accused 10 shall be provided with a redacted copy of the investigative 11 report. Death reports where there was no allegation of abuse or 12 neglect shall only be released pursuant to applicable State or 13 federal law or a valid court order.

14

(n) Written responses and reconsideration requests.

15 (1) Written responses. Within 30 calendar days from 16 receipt of a substantiated investigative report or an 17 report which contains recommendations, investigative absent a reconsideration request, the facility or agency 18 19 shall file a written response that addresses, in a concise 20 and reasoned manner, the actions taken to: (i) protect the 21 individual; (ii) prevent recurrences; and (iii) eliminate 22 the problems identified. The response shall include the 23 implementation and completion dates of such actions. If the 24 written response is not filed within the allotted 30 25 calendar day period, the Secretary shall determine the 26 appropriate corrective action to be taken.

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1 (2) Reconsideration requests. The facility, agency, 2 victim or guardian, or the subject employee may request 3 that the Office of Inspector General reconsider or clarify 4 its finding based upon additional information.

5 (o) Disclosure of the finding by the Inspector General. The shall disclose the 6 Inspector General finding of an 7 investigation to the following persons and entities: (i) the 8 Governor, (ii) the Secretary, (iii) the director of the 9 facility or agency, (iv) the licensing entity of the facility, 10 if any, (v) the alleged victims and their guardians, (vi) the 11 complainant, and (vii) the accused (iv) the alleged victims and 12 their guardians, (v) the complainant, and (vi) the accused. 13 This information shall include whether the allegations were deemed substantiated, unsubstantiated, or unfounded. 14

15 (g) Secretary review. Upon review of the Inspector 16 General's investigative report and any agency's or facility's 17 written response, the Secretary shall accept or reject the written response and notify the Inspector General of that 18 determination. The Secretary may further direct that other 19 20 administrative action be taken, including, but not limited to, any one or more of the following: (i) additional site visits, 21 22 (ii) training, (iii) provision of technical assistance 23 relative to administrative needs, licensure or certification, or (iv) the imposition of appropriate sanctions. 24

(q) Action by facility or agency. Within 30 days of thedate the Secretary approves the written response or directs

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that further administrative action be taken, the facility or 1 2 agency shall provide an implementation report to the Inspector 3 General and the licensing entity of the facility, if any, that provides the status of the action taken. The facility or agency 4 5 shall be allowed an additional 30 days to send notice of 6 completion of the action or to send an updated implementation 7 If the action has not been completed within the report. 8 additional 30 day period, the facility or agency shall send 9 updated implementation reports every 60 days until completion. 10 The Inspector General shall conduct a review of anv 11 implementation plan that takes more than 120 days after 12 approval to complete, and shall monitor compliance through a 13 random review of approved written responses, which may include, but are not limited to: (i) site visits, (ii) telephone 14 15 contact, and (iii) requests for additional documentation 16 evidencing compliance.

(r) Sanctions. Sanctions, if imposed by the Secretary under Subdivision (p)(iv) of this Section, shall be designed to prevent further acts of mental abuse, physical abuse, sexual abuse, neglect, egregious neglect, or financial exploitation or some combination of one or more of those acts at a facility or agency, and may include any one or more of the following:

23

(1) Appointment of on-site monitors.

24 (2) Transfer or relocation of an individual or25 individuals.

26

(3) Closure of units.

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(4) Termination of any one or more of the following: 1 2 (i) Department licensing, (ii) funding, or (iii) 3 certification, or (iv) licensing enforcement by the licensing entity of the facility, if any, up to and 4 5 including revocation of licensure or an administrative order of closure, or both. 6

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

10

(s) Health care worker registry.

11 (1) Reporting to the registry. The Inspector General 12 shall report to the Department of Public Health's health 13 care worker registry, a public registry, MR/DD Community Care Act the identity and finding of each employee of a 14 15 facility or agency against whom there is a final 16 investigative report containing a substantiated allegation 17 of physical or sexual abuse or eqregious neglect of an individual. MR/DD Community Care Act 18

19 (2) Notice to employee. Prior to reporting the name of 20 an employee, the employee shall be notified of the Department's obligation to report and shall be granted an 21 22 opportunity to request an administrative hearing, the sole 23 purpose of which is to determine if the substantiated finding warrants reporting to the registry. Notice to the 24 25 employee shall contain a clear and concise statement of the 26 grounds on which the report to the registry is based, offer

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the employee an opportunity for a hearing, and identify the 1 2 process for requesting such a hearing. Notice is sufficient 3 if provided by certified mail to the employee's last known address. If the employee fails to request a hearing within 4 5 30 days from the date of the notice, the Inspector General shall report the name of the employee to the registry. 6 7 Nothing in this subdivision (s)(2) shall diminish or impair 8 the rights of a person who is a member of a collective 9 bargaining unit under the Illinois Public Labor Relations 10 Act or under any other federal labor statute.

11 (3) Registry hearings. If the employee requests an 12 administrative hearing, the employee shall be granted an 13 opportunity to appear before an administrative law judge to 14 present reasons why the employee's name should not be 15 reported to the registry. The Department shall bear the 16 burden of presenting evidence that establishes, by a 17 preponderance of the evidence, that the substantiated 18 finding warrants reporting to the registry. After 19 considering all the evidence presented, the administrative 20 law judge shall make a recommendation to the Secretary as 21 to whether the substantiated finding warrants reporting 22 the name of the employee to the registry. The Secretary 23 shall render the final decision. The Department and the 24 employee shall have the right to request that the 25 administrative law judge consider a stipulated disposition 26 of these proceedings.

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(4) Testimony at registry hearings. A person who makes 1 2 a report or who investigates a report under this Act shall 3 testify fully in any judicial proceeding resulting from such a report, as to any evidence of abuse or neglect, or 4 5 the cause thereof. No evidence shall be excluded by reason any common law or statutory privilege relating to 6 of 7 communications between the alleged perpetrator of abuse or 8 neglect, or the individual alleged as the victim in the 9 report, and the person making or investigating the report. 10 Testimony at hearings is exempt from the confidentiality requirements of subsection (f) of Section 10 of the Mental 11 12 Health and Developmental Disabilities Confidentiality Act.

13 Employee's rights to collateral action. (5) No 14 reporting to the registry shall occur and no hearing shall 15 be set or proceed if an employee notifies the Inspector 16 General in writing, including any supporting 17 documentation, that he or she is formally contesting an adverse employment action resulting from a substantiated 18 19 finding by complaint filed with the Illinois Civil Service 20 Commission, or which otherwise seeks to enforce the 21 employee's rights pursuant to any applicable collective 22 bargaining agreement. If an action taken by an employer 23 against an employee as a result of a finding of physical 24 abuse, sexual abuse, or egregious neglect is overturned 25 through an action filed with the Illinois Civil Service 26 Commission or under any applicable collective bargaining SB2809 Engrossed - 42 - LRB096 17346 KTG 32697 b

agreement and if that employee's name has already been sent to the registry, the employee's name shall be removed from the registry.

(6) Removal from registry. At any time after the report 4 5 to the registry, but no more than once in any 12-month 6 period, an employee may petition the Department in writing 7 to remove his or her name from the registry. Upon receiving 8 notice of such request, the Inspector General shall conduct 9 an investigation into the petition. Upon receipt of such 10 request, an administrative hearing will be set by the 11 Department. At the hearing, the employee shall bear the 12 burden of presenting evidence that establishes, by a 13 preponderance of the evidence, that removal of the name 14 from the registry is in the public interest. The parties 15 may jointly request that the administrative law judge 16 consider a stipulated disposition of these proceedings.

(t) Review of Administrative Decisions. The Department shall preserve a record of all proceedings at any formal hearing conducted by the Department involving health care worker registry hearings. Final administrative decisions of the Department are subject to judicial review pursuant to provisions of the Administrative Review Law.

(u) Quality Care Board. There is created, within the Office of the Inspector General, a Quality Care Board to be composed of 7 members appointed by the Governor with the advice and consent of the Senate. One of the members shall be designated SB2809 Engrossed - 43 - LRB096 17346 KTG 32697 b

as chairman by the Governor. Of the initial appointments made by the Governor, 4 Board members shall each be appointed for a term of 4 years and 3 members shall each be appointed for a term of 2 years. Upon the expiration of each member's term, a successor shall be appointed for a term of 4 years. In the case of a vacancy in the office of any member, the Governor shall appoint a successor for the remainder of the unexpired term.

8 Members appointed by the Governor shall be qualified by 9 professional knowledge or experience in the area of law, 10 investigatory techniques, or in the area of care of the 11 mentally ill or developmentally disabled. Two members 12 appointed by the Governor shall be persons with a disability or 13 a parent of a person with a disability. Members shall serve 14 without compensation, but shall be reimbursed for expenses 15 incurred in connection with the performance of their duties as 16 members.

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

The Board shall monitor and oversee the operations, policies, and procedures of the Inspector General to ensure the prompt and thorough investigation of allegations of neglect and abuse. In fulfilling these responsibilities, the Board may do the following: SB2809 Engrossed

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1 (1) Provide independent, expert consultation to the 2 Inspector General on policies and protocols for 3 investigations of alleged abuse, neglect, or both abuse and 4 neglect.

5 (2) Review existing regulations relating to the 6 operation of facilities.

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

9 (4) Recommend policies concerning methods for 10 improving the intergovernmental relationships between the 11 Office of the Inspector General and other State or federal 12 offices.

13 (v) Annual report. The Inspector General shall provide to 14 the General Assembly and the Governor, no later than January 1 15 of each year, a summary of reports and investigations made 16 under this Act for the prior fiscal year with respect to 17 receiving mental health or developmental individuals disabilities services. The report shall detail the imposition 18 19 of sanctions, if any, and the final disposition of any 20 corrective or administrative action directed by the Secretary. The summaries shall not contain any confidential or identifying 21 22 information of any individual, but shall include objective data 23 identifying any trends in the number of reported allegations, the timeliness of the Office of the Inspector General's 24 25 investigations, and their disposition, for each facility and 26 Department-wide, for the most recent 3-year time period. The SB2809 Engrossed - 45 - LRB096 17346 KTG 32697 b

1 report shall also identify, by facility, the staff-to-patient 2 ratios taking account of direct care staff only. The report 3 shall also include detailed recommended administrative actions 4 and matters for consideration by the General Assembly.

5 (w) Program audit. The Auditor General shall conduct a program audit of the Office of the Inspector General on an 6 7 as-needed basis, as determined by the Auditor General. The 8 audit shall specifically include the Inspector General's 9 compliance with the Act and effectiveness in investigating 10 reports of allegations occurring in any facility or agency. The 11 Auditor General shall conduct the program audit according to 12 the provisions of the Illinois State Auditing Act and shall 13 report its findings to the General Assembly no later than 14 January 1 following the audit period.

15 (x) Nothing in this Section shall be construed to mean that 16 a patient is a victim of abuse or neglect because of health 17 care services appropriately provided or not provided by health 18 care professionals.

19 (y) Nothing in this Section shall require a facility, 20 including its employees, agents, medical staff members, and health care professionals, to provide a service to a patient in 21 22 contravention of that patient's stated or implied objection to 23 the provision of that service on the ground that that service conflicts with the patient's religious beliefs or practices, 24 25 nor shall the failure to provide a service to a patient be 26 considered abuse under this Section if the patient has objected

- 46 - LRB096 17346 KTG 32697 b SB2809 Engrossed to the provision of that service based on his or her religious 1 2 beliefs or practices. (Source: P.A. 95-545, eff. 8-28-07; 96-339, eff. 7-1-10; 3 4 96-407, eff. 8-13-09; 96-555, eff. 8-18-09; revised 9-25-09.) 5 Section 10. The Abuse of Adults with Disabilities 6 Intervention Act is amended by changing Section 35 as follows: 7 (20 ILCS 2435/35) (from Ch. 23, par. 3395-35) 8 Sec. 35. Assessment of reports. 9 (a) The Adults with Disabilities Abuse Project shall, upon 10 receiving a report of alleged or suspected abuse, neglect, or 11 exploitation obtain the consent of the subject of the report to 12 conduct an assessment with respect to the report. The 13 assessment shall include, but not be limited to, a face-to-face 14 interview with the adult with disabilities who is the subject 15 of the report and may include a visit to the residence of the adult with disabilities, and interviews or consultations with 16 17 service agencies or individuals who may have knowledge of the circumstances of the adult with disabilities. A determination 18 shall be made whether each report is substantiated. If the 19 20 Office of Inspector General determines that there is clear and 21 substantial risk of death or great bodily harm, it shall immediately secure or provide emergency protective services 22 23 purposes of preventing further abuse, neglect, for or

exploitation, and for safeguarding the welfare of the person.

24

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Such services must be provided in the least restrictive
 environment commensurate with the adult with disabilities'
 needs.

4 <u>(a-1) The Adults with Disabilities Abuse Project shall,</u>
5 <u>upon receiving a report of alleged or suspected abuse, neglect,</u>
6 <u>or financial exploitation, initiate the investigation within</u>
7 <u>24 hours of receiving the report.</u>

8 (a-5) The Adults with Disabilities Abuse Project shall 9 initiate an assessment of all reports of alleged or suspected 10 abuse or neglect within 7 days after receipt of the report, 11 except reports of abuse or neglect that indicate that the life 12 or safety of an adult with disabilities is in imminent danger 13 shall be assessed within 24 hours after receipt of the report. Reports of exploitation shall be assessed within 30 days after 14 15 the receipt of the report.

16 (b) (Blank).

17 The Department shall effect written interagency (C) agreements with other State departments and any other public 18 19 and private agencies to coordinate and cooperate in the 20 handling of substantiated cases; to accept and manage 21 substantiated cases on a priority basis; and to waive 22 eligibility requirements for the adult with disabilities in an 23 emergency.

(d) Every effort shall be made by the Adults with
 Disabilities Abuse Project to coordinate and cooperate with
 public and private agencies to ensure the provision of services

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1 necessary to eliminate further abuse, neglect, and 2 exploitation of the adult with disabilities who is the subject 3 of the report.

4 The Office of Inspector General shall promulgate rules and 5 regulations to ensure the effective implementation of the 6 Adults with Disabilities Abuse Project statewide.

7 (e) When the Adults with Disabilities Abuse Project 8 determines that a case is substantiated, it shall refer the 9 case to the appropriate office within the Department of Human 10 Services to develop, with the consent of and in consultation 11 with the adult with disabilities, a service plan for the adult 12 with disabilities.

(f) The Adults with Disabilities Abuse Project shall refer reports of alleged or suspected abuse, neglect, or exploitation to another State agency when that agency has a statutory obligation to investigate such reports.

(g) If the Adults with Disabilities Abuse Project has reason to believe that a crime has been committed, the incident shall be reported to the appropriate law enforcement agency. (Source: P.A. 91-671, eff. 7-1-00.)

21 Section 15. The Abused and Neglected Child Reporting Act is 22 amended by adding Section 4.4a as follows:

23 (325 ILCS 5/4.4a new)
24 Sec. 4.4a. DCFS duty to report to DHS' Office of Inspector

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General. Whenever the Department receives, by means of its 1 2 statewide toll-free telephone number established under Section 3 7.6 for the purpose of reporting suspected child abuse or neglect or by any other means or from any mandated reporter 4 5 under Section 4, a report of suspected abuse, neglect, or 6 financial exploitation of a disabled adult person between the 7 ages of 18 and 59, the Department shall instruct the reporter to contact the Department of Human Services' Office of the 8 9 Inspector General and shall provide the reporter with the 10 statewide, 24-hour toll-free telephone number established and 11 maintained by the Department of Human Services' Office of the 12 Inspector General.

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.