

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD, 62706GEORGE H. RYAN
GOVERNOR

August 2, 2001

To the Honorable Members of the
Illinois House of Representatives
92nd General Assembly

I have today signed into law House Bill 313 entitled "AN ACT concerning health care facilities."

House Bill 313 amends the Nursing Home Care Act to provide that inspectors and employees of the Department of Public Health who intentionally pre-notify a facility, either orally or in writing, of a pending complaint investigation or inspection, shall be guilty of a Class A misdemeanor and subject to disciplinary action. House Bill 313 also provides that superiors of such employees, who knowingly allowed the pre-notification, shall be subject to the same penalty. The bill further provides that the Department of Public Health must file a complaint with the Attorney General or the appropriate State's Attorney within 30 days after discovering information that leads to good faith belief that a person has pre-notified a facility.

I fully believe this is a well-intentioned bill. However, I am concerned that the bill could have been drafted more tightly and in a manner consistent with the similar offense in the current law. I have several concerns that I would like the General Assembly to consider.

The bill states that an inspector or an employee of the Department who intentionally "prenotifies" a facility is guilty of a Class A misdemeanor. The word "prenotifies" is a somewhat ambiguous term for a criminal offense and is different terminology than the similar offense in current law that uses the more direct "gives prior notice". I believe the latter is more artful wording for a criminal offense.

The current law covers prior notice that is directly or indirectly given. House Bill 313 does not. The current law covers prior notice to a facility or to an employee of a facility. House Bill 313 only covers prenotification of a facility, which may require notice to management of the facility.

The current Class A misdemeanor for giving prior notice of an inspection, survey, or evaluation, and House Bill 313's redundant inclusion of inspection in its Class A misdemeanor offense, are lower penalties than the applicable criminal penalty under the Criminal Code. The Criminal Code offense of official misconduct makes it a Class 3 felony for a public officer or employee to knowingly perform an act in violation of law. The Nursing Care Act provides, separate from the misdemeanor provision, that: "An inspection, survey, or evaluation, other than an inspection of financial records shall be conducted without prior notice to the facility." Therefore, prior notice given by an employee would be a violation of law and punishable as the Class 3 felony of official misconduct. Does the General Assembly consider the Class A misdemeanor penalty to be sufficient? Certainly, a felony conviction for official misconduct would clearly cost the employee their State position; whereas it is unclear what type of disciplinary action may result from the misdemeanor penalty. These are issues that the General Assembly may want to address with future legislation.

With these clarifications, I have signed House Bill 313.

Sincerely,
s/GEORGE H. RYAN
Governor