

AN ACT concerning State government.

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

Section 5. The Department of Human Services Act is amended by adding Section 1-17 as follows:

(20 ILCS 1305/1-17 new)

Sec. 1-17. Inspector General.

(a) Appointment; powers and duties. 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 of Human Services and the Governor. The Inspector General shall function independently within the Department of Human Services 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 of Human Services. The Inspector General shall investigate reports of suspected abuse or neglect (as those terms are defined by the Department of Human Services) of patients or residents in any mental health or developmental disabilities facility operated by the Department of Human Services and shall have authority to

investigate and take immediate action on reports of abuse or neglect of recipients, whether patients or residents, in any mental health or developmental disabilities facility or program that is licensed or certified by the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) or that is funded by the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) and is not licensed or certified by any agency of the State. The Inspector General shall also have the authority to investigate alleged or suspected cases of abuse, neglect, and exploitation of adults with disabilities living in domestic settings in the community pursuant to the Abuse of Adults with Disabilities Intervention Act (20 ILCS 2435/). At the specific, written request of an agency of the State other than the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), the Inspector General may cooperate in investigating reports of abuse and neglect of

persons with mental illness or persons with developmental disabilities. The Inspector General shall have no supervision over or involvement in routine, programmatic, licensure, or certification operations of the Department of Human Services or any of its funded agencies.

The Inspector General shall promulgate rules establishing minimum requirements for reporting allegations of abuse and neglect and initiating, conducting, and completing

investigations. The promulgated rules shall clearly set forth that in instances where 2 or more State agencies could investigate an allegation of abuse or neglect, the Inspector General shall not conduct an investigation that is redundant to an investigation conducted by another State agency. The rules shall establish criteria for determining, based upon the nature of the allegation, the appropriate method of investigation, which may include, but need not be limited to, site visits, telephone contacts, or requests for written responses from agencies. The rules shall also clarify how the Office of the Inspector General shall interact with the licensing unit of the Department of Human Services in investigations of allegations of abuse or neglect. Any allegations or investigations of reports made pursuant to this Act shall remain confidential until a final report is completed. The resident or patient who allegedly was abused or neglected and his or her legal guardian shall be informed by the facility or agency of the report of alleged abuse or neglect. Final reports regarding unsubstantiated or unfounded allegations shall remain confidential, except that final reports may be disclosed pursuant to Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act.

For purposes of this Section, "required reporter" means a person who suspects, witnesses, or is informed of an allegation of abuse and neglect at a State-operated facility or a community agency and who is either: (i) a person employed at a

State-operated facility or a community agency on or off site who is providing or monitoring services to an individual or individuals or is providing services to the State-operated facility or the community agency; or (ii) any person or contractual agent of the Department of Human Services involved in providing, monitoring, or administering mental health or developmental services, including, but not limited to, payroll personnel, contractors, subcontractors, and volunteers. A required reporter shall report the allegation of abuse or neglect, or cause a report to be made, to the Office of the Inspector General (OIG) Hotline no later than 4 hours after the initial discovery of the incident of alleged abuse or neglect. A required reporter as defined in this paragraph who willfully

fails to comply with the reporting requirement is guilty of a Class A misdemeanor.

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

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

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

(b) Department of State Police. The Inspector General shall, within 24 hours after determining that a reported allegation of suspected abuse or neglect indicates that any possible criminal act has been committed or that special expertise is required in the investigation, immediately notify the Department of State Police or the appropriate law enforcement entity. The Department of State Police shall investigate any report from a State-operated facility indicating a possible murder, rape, or other felony. 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.

(b-5) Preliminary report of investigation; facility or agency response. The Inspector General shall make a determination to accept or reject a preliminary report of the investigation of alleged abuse or neglect based on established investigative procedures. Notice of the Inspector General's determination must be given to the person who claims to be the

victim of the abuse or neglect, to the person or persons alleged to have been responsible for abuse or neglect, and to the facility or agency. The facility or agency or the person or persons alleged to have been responsible for the abuse or neglect and the person who claims to be the victim of the abuse or neglect may request clarification or reconsideration based on additional information. For cases where the allegation of abuse or neglect is substantiated, the Inspector General shall

require the facility or agency to submit a written response. The written response from a facility or agency shall address in a concise and reasoned manner the actions that the agency or facility will take or has taken to protect the resident or patient from abuse or neglect, prevent reoccurrences, and eliminate problems identified and shall include implementation and completion dates for all such action.

(c) Inspector General's report; facility's or agency's implementation reports. The Inspector General shall, within 10 calendar days after the transmittal date of a completed investigation where abuse or neglect is substantiated or administrative action is recommended, provide a complete report on the case to the Secretary of Human Services and to the agency in which the abuse or neglect is alleged to have happened. The complete report shall include a written response from the agency or facility operated by the State to the Inspector General that addresses in a concise and reasoned manner the actions that the agency or facility will take or has

taken to protect the resident or patient from abuse or neglect, prevent reoccurrences, and eliminate problems identified and shall include implementation and completion dates for all such action. The Secretary of Human Services shall accept or reject the response and establish how the Department will determine whether the facility or program followed the approved response. The Secretary may require Department personnel to visit the facility or agency for training, technical assistance, programmatic, licensure, or certification purposes.

Administrative action, including sanctions, may be applied should the Secretary reject the response or should the facility or agency fail to follow the approved response. Within 30 days after the Secretary has approved a response, the facility or agency making the response shall provide an implementation report to the Inspector General on the status of the corrective action implemented. Within 60 days after the Secretary has approved the response, the facility or agency shall send notice of the completion of the corrective action or shall send an updated implementation report. The facility or agency shall continue sending updated implementation reports every 60 days until the facility or agency sends a notice of the completion of the corrective action. The Inspector General shall review any implementation plan that takes more than 120 days. The Inspector General shall monitor compliance through a random review of completed corrective actions. This monitoring may include, but need not be limited to, site visits, telephone

contacts, or requests for written documentation from the facility or agency to determine whether the facility or agency is in compliance with the approved response. The facility or

agency shall inform the resident or patient and the legal guardian whether the reported allegation was substantiated, unsubstantiated, or unfounded. There shall be an appeals process for any person or agency that is subject to any action based on a recommendation or recommendations.

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

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

(f) Access to facilities. The Inspector General shall at all times be granted access to any mental health or developmental disabilities facility operated by the Department of Human Services, shall establish and conduct unannounced site visits to those facilities at least once annually, and shall be granted access, for the purpose of investigating a report of abuse or neglect, to the records of the Department of Human Services and to any facility or program funded by the Department of Human Services that is subject under the provisions of this Section to investigation by the Inspector General for a report of abuse or neglect.

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

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

Nothing in this subsection shall diminish or impair the rights of a person who is a member of a collective bargaining unit pursuant to the Illinois Public Labor Relations Act or pursuant to any federal labor statute. An individual who is a member of a collective bargaining unit as described above shall not be reported to the Department of Public Health's health care worker registry until the exhaustion of that individual's grievance and arbitration rights, or until 3 months after the initiation of the grievance process, whichever occurs first, provided that the Department of Human Services' hearing under this subsection regarding the reporting of an individual to the Department of Public Health's health care worker registry has concluded. Notwithstanding anything hereinafter or previously provided, if an action taken by an employer against an individual as a result of the circumstances that led to a finding of physical or sexual abuse or egregious neglect is later overturned under a grievance or arbitration procedure provided for in Section 8 of the Illinois Public Labor Relations Act or under a collective bargaining agreement, the report must be removed from the registry.

The Department of Human Services shall promulgate or amend rules as necessary or appropriate to establish procedures for reporting to the registry, including the definition of egregious neglect, procedures for notice to the individual and victim, appeal and hearing procedures, and petition for removal of the report from the registry. The portion of the rules pertaining to hearings shall provide that, at the hearing, both

parties may present written and oral evidence. The Department shall be required to establish by a preponderance of the evidence that the Office of the Inspector General's finding of physical or sexual abuse or egregious neglect warrants reporting to the Department of Public Health's health care worker registry under Section 3-206.01 of the Nursing Home Care Act.

Notice to the individual shall include a clear and concise statement of the grounds on which the report to the registry is based and notice of the opportunity for a hearing to contest the report. The Department of Human Services shall provide the notice by certified mail to the last known address of the individual. The notice shall give the individual an opportunity to contest the report in a hearing before the Department of Human Services or to submit a written response to the findings instead of requesting a hearing. If the individual does not request a hearing or if after notice and a hearing the Department of Human Services finds that the report is valid, the finding shall be included as part of the registry, as well as a brief statement from the reported individual if he or she

chooses to make a statement. The Department of Public Health shall make available to the public information reported to the registry. In a case of inquiries concerning an individual listed in the registry, any information disclosed concerning a finding of abuse or neglect shall also include disclosure of the individual's brief statement in the registry relating to

the reported finding or include a clear and accurate summary of the statement.

At any time after the report of the registry, an individual may petition the Department of Human Services for removal from the registry of the finding against him or her. Upon receipt of such a petition, the Department of Human Services shall conduct an investigation and hearing on the petition. Upon completion of the investigation and hearing, the Department of Human Services shall report the removal of the finding to the registry unless the Department of Human Services determines that removal is not in the public interest.

(h) 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 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.

Members appointed by the Governor shall be qualified by professional knowledge or experience in the area of law, investigatory techniques, or in the area of care of the mentally ill or developmentally disabled. Two members

appointed by the Governor shall be persons with a disability or a parent of a person with a disability. Members shall serve without compensation, but shall be reimbursed for expenses incurred in connection with the performance of their duties as members.

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

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

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

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

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

(4) Recommend policies concerning methods for improving the intergovernmental relationships between the Office of the Inspector General and other State or federal

agencies.

(j) Investigators. The Inspector General shall establish a comprehensive program to ensure that every person employed or newly hired to conduct investigations shall receive training on an on-going basis concerning investigative techniques, communication skills, and the appropriate means of contact with persons admitted or committed to the mental health or developmental disabilities facilities under the jurisdiction of the Department of Human Services.

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

(l) 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 residents of institutions under the jurisdiction of the Department of Human Services. The report shall detail the imposition of sanctions and the final disposition of those recommendations. The summaries shall not contain any confidential or identifying information concerning the

subjects of the reports and investigations. The report shall also include a trend analysis of the number of reported allegations and their disposition, for each facility and Department-wide, for the most recent 3-year time period and a statement, for each facility, of the staffing-to-patient ratios. The ratios shall include only the number of direct care staff. The report shall also include detailed recommended administrative actions and matters for consideration by the General Assembly.

(m) Program audit. The Auditor General shall conduct a biennial program audit of the Office of the Inspector General in relation to the Inspector General's compliance with this Act. The audit shall specifically include the Inspector General's effectiveness in investigating reports of alleged neglect or abuse of residents in any facility operated by the Department of Human Services and in making recommendations for sanctions to the Departments of Human Services and Public

Health. The Auditor General shall conduct the program audit according to the provisions of the Illinois State Auditing Act and shall report its findings to the General Assembly no later than January 1 of each odd-numbered year.

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

(20 ILCS 1705/7.3)

Sec. 7.3. Health care worker ~~nurse aide~~ registry; finding of abuse or neglect. The Department shall require that no facility, service agency, or support agency providing mental health or developmental disability services that is licensed, certified, operated, or funded by the Department shall employ a person, in any capacity, who is identified by the health care worker ~~nurse aide~~ registry as having been subject of a substantiated finding of abuse or neglect of a service recipient. Any owner or operator of a community agency who is identified by the health care worker ~~nurse aide~~ registry as having been the subject of a substantiated finding of abuse or neglect of a service recipient is prohibited from any involvement in any capacity with the provision of Department funded mental health or developmental disability services. The Department shall establish and maintain the rules that are necessary or appropriate to effectuate the intent of this

Section. The provisions of this Section shall not apply to any facility, service agency, or support agency licensed or certified by a State agency other than the Department, unless operated by the Department of Human Services.

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

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

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

Sec. 6. All reports of suspected abuse or neglect made under this Act shall be made immediately by telephone to the Department's central register established under Section 14 on the single, State-wide, toll-free telephone number established under Section 13, or in person or by telephone through the nearest Department office. No long term care facility administrator, agent or employee, or any other person, shall screen reports or otherwise withhold any reports from the Department, and no long term care facility, department of State government, or other agency shall establish any rules, criteria, standards or guidelines to the contrary. Every long term care facility, department of State government and other agency whose employees are required to make or cause to be made reports under Section 4 shall notify its employees of the provisions of that Section and of this Section, and provide to

the Department documentation that such notification has been given. The Department of Human Services shall train all of its mental health and developmental disabilities employees in the detection and reporting of suspected abuse and neglect of residents. Reports made to the central register through the State-wide, toll-free telephone number shall be transmitted to appropriate Department offices and municipal health departments that have responsibility for licensing long term care facilities under the Nursing Home Care Act. All reports received through offices of the Department shall be forwarded to the central register, in a manner and form described by the Department. The Department shall be capable of receiving reports of suspected abuse and neglect 24 hours a day, 7 days a week. Reports shall also be made in writing deposited in the U.S. mail, postage prepaid, within 24 hours after having reasonable cause to believe that the condition of the resident resulted from abuse or neglect. Such reports may in addition be made to the local law enforcement agency in the same manner. However, in the event a report is made to the local law enforcement agency, the reporter also shall immediately so inform the Department. The Department shall initiate an investigation of each report of resident abuse and neglect under this Act, whether oral or written, as provided for in Section 3-702 of the Nursing Home Care Act, except that reports of abuse which indicate that a resident's life or safety is in imminent danger shall be investigated within 24 hours of such

report. The Department may delegate to law enforcement officials or other public agencies the duty to perform such investigation.

With respect to investigations of reports of suspected abuse or neglect of residents of mental health and developmental disabilities institutions under the jurisdiction of the Department of Human Services, the Department shall transmit copies of such reports to the Department of State Police, the Department of Human Services, and the Inspector General appointed under Section 1-17 of the Department of Human Services Act 6-2. If the Department receives a report of suspected abuse or neglect of a recipient of services as defined in Section 1-123 of the Mental Health and Developmental Disabilities Code, the Department shall transmit copies of such report to the Inspector General and the Directors of the Guardianship and Advocacy Commission and the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act. When requested by the Director of the Guardianship and Advocacy Commission, the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act, or the Department of Financial and Professional Regulation, the Department, the Department of Human Services and the Department of State Police shall make available a copy of the final investigative report regarding investigations conducted by their respective agencies on incidents of suspected abuse or

neglect of residents of mental health and developmental disabilities institutions or individuals receiving services at community agencies under the jurisdiction of the Department of Human Services. Such final investigative report shall not contain witness statements, investigation notes, draft summaries, results of lie detector tests, investigative files or other raw data which was used to compile the final investigative report. Specifically, the final investigative report of the Department of State Police shall mean the Director's final transmittal letter. The Department of Human Services shall also make available a copy of the results of disciplinary proceedings of employees involved in incidents of abuse or neglect to the Directors. All identifiable information in reports provided shall not be further disclosed except as provided by the Mental Health and Developmental Disabilities Confidentiality Act. Nothing in this Section is intended to limit or construe the power or authority granted to the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act, pursuant to any other State or federal statute.

With respect to investigations of reported resident abuse

or neglect, the Department shall effect with appropriate law enforcement agencies formal agreements concerning methods and procedures for the conduct of investigations into the criminal histories of any administrator, staff assistant or employee of the nursing home or other person responsible for the residents

care, as well as for other residents in the nursing home who may be in a position to abuse, neglect or exploit the patient. Pursuant to the formal agreements entered into with appropriate law enforcement agencies, the Department may request information with respect to whether the person or persons set forth in this paragraph have ever been charged with a crime and if so, the disposition of those charges. Unless the criminal histories of the subjects involved crimes of violence or resident abuse or neglect, the Department shall be entitled only to information limited in scope to charges and their dispositions. In cases where prior crimes of violence or resident abuse or neglect are involved, a more detailed report can be made available to authorized representatives of the Department, pursuant to the agreements entered into with appropriate law enforcement agencies. Any criminal charges and their disposition information obtained by the Department shall be confidential and may not be transmitted outside the Department, except as required herein, to authorized representatives or delegates of the Department, and may not be transmitted to anyone within the Department who is not duly authorized to handle resident abuse or neglect investigations.

The Department shall effect formal agreements with appropriate law enforcement agencies in the various counties and communities to encourage cooperation and coordination in the handling of resident abuse or neglect cases pursuant to this Act. The Department shall adopt and implement methods and

procedures to promote statewide uniformity in the handling of reports of abuse and neglect under this Act, and those methods and procedures shall be adhered to by personnel of the Department involved in such investigations and reporting. The Department shall also make information required by this Act available to authorized personnel within the Department, as well as its authorized representatives.

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

The Department shall report annually to the General Assembly on the incidence of abuse and neglect of long term care facility residents, with special attention to residents who are mentally disabled. The report shall include but not be limited to data on the number and source of reports of

suspected abuse or neglect filed under this Act, the nature of any injuries to residents, the final determination of investigations, the type and number of cases where abuse or neglect is determined to exist, and the final disposition of cases.

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

(210 ILCS 30/6.2 rep.)

(210 ILCS 30/6.3 rep.)

(210 ILCS 30/6.4 rep.)

(210 ILCS 30/6.5 rep.)

(210 ILCS 30/6.6 rep.)

(210 ILCS 30/6.7 rep.)

(210 ILCS 30/6.8 rep.)

Section 15. The Abused and Neglected Long Term Care Facility Residents Reporting Act is amended by repealing Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8.

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

(210 ILCS 45/3-206.01) (from Ch. 111 1/2, par. 4153-206.01)

Sec. 3-206.01. Health care worker ~~Nurse aide~~ registry.

(a) The Department shall establish and maintain a registry of all individuals who have satisfactorily completed the training required by Section 3-206. The registry shall include the name of the nursing assistant, habilitation aide, or child care aide, his or her current address, Social Security number, and the date and location of the training course completed by the individual, and the date of the individual's last criminal records check. Any individual placed on the registry is required to inform the Department of any change of address within 30 days. A facility shall not employ an individual as a nursing assistant, habilitation aide, or child care aide unless the facility has inquired of the Department as to information in the registry concerning the individual and shall not employ

anyone not on the registry unless the individual is enrolled in a training program under paragraph (5) of subsection (a) of Section 3-206 of this Act.

If the Department finds that a nursing assistant, habilitation aide, or child care aide has abused a resident, neglected a resident, or misappropriated resident property in a facility, the Department shall notify the individual of this finding by certified mail sent to the address contained in the registry. The notice shall give the individual an opportunity to contest the finding in a hearing before the Department or to submit a written response to the findings in lieu of requesting

a hearing. If, after a hearing or if the individual does not request a hearing, the Department finds that the individual abused a resident, neglected a resident, or misappropriated resident property in a facility, the finding shall be included as part of the registry as well as a brief statement from the individual, if he or she chooses to make such a statement. The Department shall make information in the registry available to the public. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any statement in the registry relating to the finding or a clear and accurate summary of the statement.

(b) The Department shall add to the health care worker ~~nurse aide~~ registry records of findings as reported by the Inspector General or remove from the health care worker ~~nurse aide~~ registry records of findings as reported by the Department of Human Services, under subsection (g-5) of Section 1-17 of the Department of Human Services Act ~~Section 6.2 of the Abused and Neglected Long Term Care Facility Residents Reporting Act~~. (Source: P.A. 91-598, eff. 1-1-00; 92-473, eff. 1-1-02; 92-651, eff. 7-11-02.)

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

(225 ILCS 46/30)

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

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

have a disqualifying criminal history record based upon a fingerprint-based records check pursuant to Section 35 or the nurse aide receives a waiver pursuant to Section 40.

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

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

(d) No later than January 1, 1997, a health care employer must initiate or have initiated on his or her behalf a UCIA criminal history record check for all employees other than those enumerated in subsections (a), (b), and (c) of this Section with duties that involve direct care for clients, patients, or residents. A health care employer having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of this Act must initiate a fingerprint-based background check within 10 working days of acquiring that knowledge. The employer may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received.

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

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

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

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

(ii) that the applicant or employee has a right to obtain a copy of the criminal records report from the health care employer, challenge the accuracy and completeness of the report, and request a waiver under Section 40 of this Act;

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

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

(v) that the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in

Section 25 unless the employee's record is cleared based on a fingerprint-based records check pursuant to Section 35.

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

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

(225 ILCS 46/40)

Sec. 40. Waiver.

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

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

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

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

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

- (1) The age of the individual at which the crime was committed;
- (2) The circumstances surrounding the crime;
- (3) The length of time since the conviction;
- (4) The applicant or employee's criminal history since the conviction;
- (5) The applicant or employee's work history;
- (6) The applicant or employee's current employment references;
- (7) The applicant or employee's character references;
- (8) Health care worker ~~Nurse-aide~~ registry records; and
- (9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, patients, or clients.

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

(d) An individual shall not be employed from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with Section 35.

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

(f) A health care employer is not obligated to employ or

offer permanent employment to an applicant, or to retain an employee who is granted a waiver under this Section.
(Source: P.A. 94-665, eff. 1-1-06.)

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

Effective Date: 8/28/2007