



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB6201

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

See Index

Amends the Abuse of Adults with Disabilities Intervention Act. Provides that upon the death of an adult with disabilities, where a complaint or report of alleged abuse, neglect, or exploitation was made prior to the person's death pursuant to the Act, regardless of whether the complaint or report was substantiated or unsubstantiated, and regardless of whether consent was given for an assessment, the Office of Inspector General designated by the Department of Human Services shall immediately report the matter to the appropriate law enforcement agency and coroner or medical examiner. Provides that such reports shall be in writing and, at a minimum, shall contain information regarding (1) the prior complaint or report of alleged abuse, neglect, or exploitation of the deceased adult with disabilities, the deceased adult with disabilities, and the reporter, upon the reporter's consent; (2) actions taken or not taken by the Office of Inspector General or the Department upon receiving the complaint or report of alleged abuse, neglect, or exploitation; (3) the personnel from the Department and the Office of Inspector General who were involved in investigating the complaint or report of alleged abuse, neglect, or exploitation; and (4) as available and applicable, the case numbers for the Department, the Office of Inspector General, law enforcement, and the coroner or medical examiner. Requires the Office of Inspector General to: maintain a copy of the written report; document any subsequent actions; forward the written report, the coroner's report, and the law enforcement agency's final investigative report to the Attorney General; and notify the proper law enforcement agency to investigate if a crime has been committed. Contains provisions concerning service plans. Effective immediately.

LRB097 22043 KTG 70804 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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

4 Section 5. The Abuse of Adults with Disabilities
5 Intervention Act is amended by changing Sections 15, 25, 35,
6 40, and 45 as follows:

7 (20 ILCS 2435/15) (from Ch. 23, par. 3395-15)

8 Sec. 15. Definitions. As used in this Act:

9 "Abuse" means causing any physical, sexual, or mental abuse
10 to an adult with disabilities, including exploitation of the
11 adult's financial resources. Nothing in this Act shall be
12 construed to mean that an adult with disabilities is a victim
13 of abuse or neglect for the sole reason that he or she is being
14 furnished with or relies upon treatment by spiritual means
15 through prayer alone, in accordance with the tenets and
16 practices of a recognized church or religious denomination.
17 Nothing in this Act shall be construed to mean that an adult
18 with disabilities is a victim of abuse because of health care
19 services provided or not provided by licensed health care
20 professionals.

21 "Adult with disabilities" means a person aged 18 through 59
22 who resides in a domestic living situation and whose physical
23 or mental disability impairs his or her ability to seek or

1 obtain protection from abuse, neglect, or exploitation.

2 "Department" means the Department of Human Services.

3 "Adults with Disabilities Abuse Project" or "project"
4 means that program within the Office of Inspector General
5 designated by the Department of Human Services to receive and
6 assess reports of alleged or suspected abuse, neglect, or
7 exploitation of adults with disabilities.

8 "Domestic living situation" means a residence where the
9 adult with disabilities lives alone or with his or her family
10 or household members, a care giver, or others or at a board and
11 care home or other community-based unlicensed facility, but is
12 not:

13 (1) A licensed facility as defined in Section 1-113 of
14 the Nursing Home Care Act or Section 1-113 of the ID/DD
15 Community Care Act or Section 1-113 of the Specialized
16 Mental Health Rehabilitation Act.

17 (2) A life care facility as defined in the Life Care
18 Facilities Act.

19 (3) A home, institution, or other place operated by the
20 federal government, a federal agency, or the State.

21 (4) A hospital, sanitarium, or other institution, the
22 principal activity or business of which is the diagnosis,
23 care, and treatment of human illness through the
24 maintenance and operation of organized facilities and that
25 is required to be licensed under the Hospital Licensing
26 Act.

1 (5) A community living facility as defined in the
2 Community Living Facilities Licensing Act.

3 (6) A community-integrated living arrangement as
4 defined in the Community-Integrated Living Arrangements
5 Licensure and Certification Act or community residential
6 alternative as licensed under that Act.

7 "Emergency" means a situation in which an adult with
8 disabilities is in danger of death or great bodily harm.

9 "Family or household members" means a person who as a
10 family member, volunteer, or paid care provider has assumed
11 responsibility for all or a portion of the care of an adult
12 with disabilities who needs assistance with activities of daily
13 living.

14 "Financial exploitation" means the illegal, including
15 tortious, use of the assets or resources of an adult with
16 disabilities. Exploitation includes, but is not limited to, the
17 misappropriation of assets or resources of an adult with
18 disabilities by undue influence, by breach of a fiduciary
19 relationship, by fraud, deception, or extortion, or by the use
20 of the assets or resources in a manner contrary to law.

21 "Mental abuse" means the infliction of emotional or mental
22 distress by a caregiver, a family member, or any person with
23 ongoing access to a person with disabilities by threat of harm,
24 humiliation, or other verbal or nonverbal conduct.

25 "Neglect" means the failure of another individual to
26 provide an adult with disabilities with or the willful

1 withholding from an adult with disabilities the necessities of
2 life, including, but not limited to, food, clothing, shelter,
3 or medical care.

4 Nothing in the definition of "neglect" shall be construed to
5 impose a requirement that assistance be provided to an adult
6 with disabilities over his or her objection in the absence of a
7 court order, nor to create any new affirmative duty to provide
8 support, assistance, or intervention to an adult with
9 disabilities. Nothing in this Act shall be construed to mean
10 that an adult with disabilities is a victim of neglect because
11 of health care services provided or not provided by licensed
12 health care professionals.

13 "Physical abuse" means any of the following acts:

14 (1) knowing or reckless use of physical force,
15 confinement, or restraint;

16 (2) knowing, repeated, and unnecessary sleep
17 deprivation;

18 (3) knowing or reckless conduct which creates an
19 immediate risk of physical harm; or

20 (4) when committed by a caregiver, a family member, or
21 any person with ongoing access to a person with
22 disabilities, directing another person to physically abuse
23 a person with disabilities.

24 "Secretary" means the Secretary of Human Services.

25 "Service plan" means a temporary plan of the actions
26 developed to address the service or support needs of the adult

1 with a disability.

2 "Sexual abuse" means touching, fondling, sexual threats,
3 sexually inappropriate remarks, or any other sexual activity
4 with an adult with disabilities when the adult with
5 disabilities is unable to understand, unwilling to consent,
6 threatened, or physically forced to engage in sexual behavior.
7 Sexual abuse includes acts of sexual exploitation including,
8 but not limited to, facilitating or compelling an adult with
9 disabilities to become a prostitute, or receiving anything of
10 value from an adult with disabilities knowing it was obtained
11 in whole or in part from the practice of prostitution.

12 "Substantiated case" means a reported case of alleged or
13 suspected abuse, neglect, or exploitation in which the Adults
14 with Disabilities Abuse Project staff, after assessment,
15 determines that there is reason to believe abuse, neglect, or
16 exploitation has occurred.

17 (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11; 97-227,
18 eff. 1-1-12; 97-354, eff. 8-12-11; revised 9-7-11.)

19 (20 ILCS 2435/25) (from Ch. 23, par. 3395-25)

20 Sec. 25. Reports of abuse, neglect, or exploitation of an
21 adult with disabilities.

22 (a) Any person who has reasonable cause to believe abuse,
23 neglect, or exploitation of an adult with disabilities has
24 occurred may report this to the statewide telephone number
25 established under this Act.

1 (b) Any person, institution, or agency making a report or
2 assessment under this Section in good faith, or providing
3 information, participating in an assessment, or taking
4 photographs or x-rays, shall be immune from any civil or
5 criminal liability on account of making the report or
6 assessment, providing information, or participating in an
7 assessment, or on account of submitting or otherwise disclosing
8 the photographs or x-rays to the Adults with Disabilities Abuse
9 Project.

10 (c) The identity of a person making a report of alleged or
11 suspected abuse, neglect, or exploitation under this Section
12 may be disclosed by the Office of Inspector General only with
13 the person's written consent or by court order.

14 (d) The privileged quality of communication between any
15 licensed health care professional or any other person who
16 reports abuse, neglect, or exploitation and his or her patient
17 or client shall not apply to situations involving abused,
18 neglected, or exploited adults with disabilities. Use of a
19 telecommunication device for the deaf constitutes an oral
20 report. Written reports may be taken, but cannot be required.

21 (e) All reports shall, if possible, include the name and
22 address of the adult with disabilities, the name and address of
23 the alleged abuser, if applicable, the nature and extent of the
24 suspected abuse, neglect, or exploitation, the possible extent
25 of the injury or condition as a result of the abuse, neglect,
26 or exploitation, any evidence of previous abuse, neglect, or

1 exploitation, the time, date and location of the incident, the
2 name, address of the reporter, and any other information that
3 the reporter believes may be useful in assessing the suspected
4 abuse, neglect, or exploitation.

5 (f) The Office of Inspector General shall refer evidence of
6 crimes against an adult with disabilities to the appropriate
7 law enforcement agency immediately upon finding evidence of a
8 crime according to Office of Inspector General policies. A
9 referral to law enforcement may be made at any time. Upon the
10 death of an adult with disabilities, where a complaint or
11 report of alleged abuse, neglect, or exploitation was made
12 prior to the person's death pursuant to this Act, regardless of
13 whether the complaint or report was substantiated or
14 unsubstantiated, and regardless of whether consent was given
15 for an assessment, the Office of Inspector General shall
16 immediately report the matter to both the appropriate (i) law
17 enforcement agency and (ii) coroner or medical examiner.

18 Such reports shall be in writing and, at a minimum, shall
19 contain information regarding (1) the prior complaint or report
20 of alleged abuse, neglect, or exploitation of the deceased
21 adult with disabilities, the deceased adult with disabilities,
22 and the reporter, upon the reporter's consent pursuant to this
23 Act; (2) actions taken or not taken by the Office of Inspector
24 General or the Department upon receiving the complaint or
25 report of alleged abuse, neglect, or exploitation; (3) the
26 personnel from the Department and the Office of Inspector

1 General who were involved in investigating the compliant or
2 report of alleged abuse, neglect, or exploitation; and (4) as
3 available and applicable, the case numbers for the Department,
4 the Office of Inspector General, law enforcement, and the
5 coroner or medical examiner. The Office of Inspector General
6 shall also maintain a copy of the written report and shall
7 document subsequent action, if any, by the appropriate law
8 enforcement agency.

9 Upon the completion of the coroner's report and the law
10 enforcement agency's investigation, the Office of Inspector
11 General shall forward its written report, the coroner's report,
12 and the law enforcement agency's final investigative report to
13 the Attorney General.

14 ~~When the Office of Inspector General has reason to believe~~
15 ~~that the death of an adult with disabilities may be the result~~
16 ~~of abuse, neglect, or exploitation, the Office of Inspector~~
17 ~~General shall immediately report the matter to the coroner or~~
18 ~~medical examiner and shall cooperate fully with any subsequent~~
19 ~~investigation.~~

20 (g) Nothing in this Act shall preclude a person from
21 reporting an alleged act of abuse, neglect, or exploitation of
22 an adult with disabilities to a law enforcement agency.

23 (h) Nothing in this Act shall diminish the duty of law
24 enforcement officers to respond to and investigate incidents of
25 alleged abuse, neglect, and exploitation pursuant to the
26 Illinois Domestic Violence Act of 1986, when applicable.

1 (Source: P.A. 91-671, eff. 7-1-00.)

2 (20 ILCS 2435/35) (from Ch. 23, par. 3395-35)

3 Sec. 35. Assessment of reports.

4 (a) The Adults with Disabilities Abuse Project shall, upon
5 receiving a report of alleged or suspected abuse, neglect, or
6 exploitation obtain the consent of the subject of the report to
7 conduct an assessment with respect to the report. The
8 assessment shall include, but not be limited to, a face-to-face
9 interview with the adult with disabilities who is the subject
10 of the report and shall ~~may~~ include a visit to the residence of
11 the adult with disabilities, and interviews or consultations
12 with service agencies or individuals who may have knowledge of
13 the circumstances of the adult with disabilities. A
14 determination shall be made whether each report is
15 substantiated. The Office of Inspector General must notify the
16 proper law enforcement agency to investigate if a crime has
17 been committed. If the Office of Inspector General determines
18 that there is clear and substantial risk of death or great
19 bodily harm, it shall immediately secure or provide emergency
20 protective services for purposes of preventing further abuse,
21 neglect, or exploitation, and for safeguarding the welfare of
22 the person. Such services must be provided in the least
23 restrictive environment commensurate with the adult with
24 disabilities' needs.

25 (a-5) The Adults with Disabilities Abuse Project shall

1 initiate an assessment of all reports of alleged or suspected
2 abuse or neglect within 7 days after receipt of the report,
3 except reports of abuse or neglect that indicate that the life
4 or safety of an adult with disabilities is in imminent danger
5 shall be assessed within 24 hours after receipt of the report.
6 Reports of exploitation shall be assessed within 30 days after
7 the receipt of the report.

8 (b) (Blank).

9 (c) The Department shall effect written interagency
10 agreements with other State departments and any other public
11 and private agencies to coordinate and cooperate in the
12 handling of substantiated cases; to accept and manage
13 substantiated cases on a priority basis; and to waive
14 eligibility requirements for the adult with disabilities in an
15 emergency.

16 (d) Every effort shall be made by the Adults with
17 Disabilities Abuse Project to coordinate and cooperate with
18 public and private agencies to ensure the provision of services
19 necessary to eliminate further abuse, neglect, and
20 exploitation of the adult with disabilities who is the subject
21 of the report.

22 The Office of Inspector General shall promulgate rules and
23 regulations to ensure the effective implementation of the
24 Adults with Disabilities Abuse Project statewide.

25 (e) When the Adults with Disabilities Abuse Project
26 determines that a case is substantiated, it shall refer the

1 case to the appropriate office within the Department of Human
2 Services to develop, with the consent of and in consultation
3 with the adult with disabilities, a service plan for the adult
4 with disabilities.

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

9 (g) If the Adults with Disabilities Abuse Project has
10 reason to believe that a crime has been committed, the incident
11 shall be reported to the appropriate law enforcement agency.

12 (Source: P.A. 91-671, eff. 7-1-00.)

13 (20 ILCS 2435/40) (from Ch. 23, par. 3395-40)

14 Sec. 40. Service plan ~~periods~~. A service plan shall be
15 developed for each adult with disabilities who is in need of
16 services and who accepts the services. When implemented, the
17 service plan shall be in place until the situation causing the
18 abuse, neglect, or exploitation of an adult with disabilities
19 is ameliorated. The Department shall by rule establish the
20 period of time within which a service plan shall be implemented
21 and the duration of the plan. The rules shall provide for an
22 expedited response to emergency situations.

23 The Department shall implement a service plan for
24 substantiated cases within 14 calendar days after the report is
25 substantiated. In emergency situations, the Department shall

1 implement the service plan as soon as possible and in no event
2 later than 2 working days after the case is substantiated. All
3 appropriate emergency services shall remain in place until this
4 service plan is implemented.

5 This Section shall not be interpreted to preclude an
6 investigation into the death of a disabled adult who is the
7 subject of a pending complaint or report of alleged abuse,
8 neglect, or exploitation.

9 (Source: P.A. 91-671, eff. 7-1-00.)

10 (20 ILCS 2435/45) (from Ch. 23, par. 3395-45)

11 Sec. 45. Consent.

12 (a) If the Adults with Disabilities Abuse Project has
13 received a report of alleged or suspected abuse, neglect, or
14 exploitation with regard to an adult with disabilities who
15 lacks the capacity to consent to an assessment or to services,
16 the Adults with Disabilities Abuse Project may seek, directly
17 or through another agency, the appointment of a temporary or
18 permanent guardian for assessment, provision of services, or
19 any other decision-making authority as is appropriate for the
20 individual as provided in Article XIa of the Probate Act of
21 1975 or other relief as provided under the Illinois Domestic
22 Violence Act of 1986.

23 (a-5) If the adult with disabilities consents to the
24 assessment, such assessment shall be conducted. If the adult
25 with disabilities consents to the services included in the

1 service plan, such services shall be provided. If the adult
2 with disabilities refuses or withdraws his or her consent to
3 the completion of the assessment, the assessment shall be
4 terminated. If the adult with disabilities refuses or withdraws
5 his or her consent to the provision of services, the services
6 shall not be provided. When a complaint or report of alleged
7 abuse, neglect, or exploitation is made, but consent is not
8 given or withdrawn, and the adult with disabilities
9 subsequently dies, the Office of the Inspector General shall
10 report the matter to the proper authorities pursuant to Section
11 25 of this Act.

12 (b) A guardian of the person of an adult with disabilities
13 who is abused, neglected, or exploited by another individual in
14 a domestic living situation may consent to an assessment or to
15 services being provided pursuant to the service plan. If the
16 guardian is alleged to be the perpetrator of the abuse,
17 neglect, or exploitation, the Adults with Disabilities Abuse
18 Project shall, when there is an immediate and urgent necessity,
19 seek the appointment of a temporary substitute guardian
20 pursuant to Section 213.3 of the Illinois Domestic Violence Act
21 of 1986 under the provisions of Article XIa of the Probate Act
22 of 1975. If a guardian withdraws his consent or refuses to
23 allow an assessment or services to be provided to the adult
24 with disabilities, the Adults with Disabilities Abuse Project
25 may seek directly or through another agency a court order
26 seeking appropriate remedies, and may in addition request

1 removal of the guardian and appointment of a successor guardian
2 pursuant to Article XIa of the Probate Act of 1975.

3 (c) For the purposes of this Section only, "lacks the
4 capacity to consent" shall mean that the adult with
5 disabilities reasonably appears to be unable by reason of
6 physical or mental condition to receive and evaluate
7 information related to the assessment or services, or to
8 communicate decisions related to the assessment or services.

9 (Source: P.A. 94-418, eff. 8-2-05.)

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

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2

Statutes amended in order of appearance

3

20 ILCS 2435/15

from Ch. 23, par. 3395-15

4

20 ILCS 2435/25

from Ch. 23, par. 3395-25

5

20 ILCS 2435/35

from Ch. 23, par. 3395-35

6

20 ILCS 2435/40

from Ch. 23, par. 3395-40

7

20 ILCS 2435/45

from Ch. 23, par. 3395-45