

**Healthcare
Department**

For further information on the Healthcare group or this update, please contact one of our lawyers:

Thomas M. Fahey, Chair
312.977.4376
tmafahey@uhlaw.com

Edward Clancy, Partner
312.977.4487
eclancy@uhlaw.com

John J. Durso, Partner
312.977.4440
jdurso@uhlaw.com

Anne M. Haule, Partner
312.977.4323
amhaule@uhlaw.com

Julie K. Seymour, Partner
312.977.4353
jkseymour@uhlaw.com

Sam Vinson, Partner
312.977.4388
svinson@uhlaw.com

Valerie Breslin Montague,
Associate
312.977.4485
vbmontague@uhlaw.com

Jennie Jendusa Orrico,
Associate
312.977.4122
jorrico@uhlaw.com

Angela Williams-Walker,
Associate
312.977.4415
aswalker@uhlaw.com

To receive future editions of Healthcare Updates via email, please send your name, company or firm name and email address to Jennifer Morrison at: jcmorrison@uhlaw.com

Healthcare Update

New Law on Sex Offenders and Felons in Nursing Homes

by John Durso, Edward Clancy and Valerie Breslin Montague

Public Act 094-0163 (the "Act") amended the Nursing Home Care Act and prohibits admission of an "Identified Offender" into a nursing home ("Facility") unless the Facility complies with the Emergency Rules recently adopted by the Illinois Department of Public Health ("IDPH"). An Identified Offender means a person who (1) has been convicted of any felony listed in Section 25 of the Health Care Worker Background Check Act, (2) is a registered sex offender, or (3) is serving a term of parole, mandatory supervised release, or probation for a felony.

The Act also amends the Unified Code of Corrections to require the Department of Corrections ("DOC") to provide copies to the Facility of (1) the mittimus and pre-sentence investigation reports, (2) the social evaluation, (3) any pre-release evaluation, (4) reports of disciplinary infractions and dispositions, (5) any parole plan, violation reports and dispositions, and any probation orders and compliance plans, and (6) the name and contact information for the parole agent and supervisor, or the probation officer. The DOC must provide this information to the Facility *within three days* of the date the person becomes a resident therein.

Finally, if a person on parole or mandatory supervised release becomes a resident of a facility licensed or regulated by either IDPH, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services, the DOC shall provide written notification of such residence to both the Prisoner Review Board and to the chief of police and sheriff in the municipality and county where such facility is located. The notification shall be provided *within three days* of the person becoming a resident of such facility. If a resident is an Identified Offender, any law enforcement officer or county probation officer shall be permitted reasonable access to the resident to verify compliance with the Sex Offender Registration Act or the applicable terms of probation, parole, or mandatory supervised release.

Sex Offender And Felon Emergency Rules

In accordance with the Act, IDPH recently released Emergency Rules regarding sex offenders and felons seeking admission into or currently residing in Facilities. The Emergency Rules will be in effect for 150 days, to be replaced by final adopted rules. Some of the Emergency Rule requirements are:

- **No Admission of Any Person Without a State Police Background Check.** The Emergency Rules require a Uniform Conviction Information Act ("UCIA") background check on every person seeking admission to a nursing home. The referral source will presumably request the UCIA check, since no Facility can admit any person before it is run. Until the UCIA check is run, the person will most likely stay wherever he or she is.
- **No Admission of an Identified Offender Without a DOC Social Evaluation.** If the background check determines that the potential resident is an Identified Offender, the person cannot be admitted until the Facility obtains a social evaluation from the DOC, again presumably by the referral source. The DOC should supply the social evaluation within three days.

CHICAGO
3500 Three First National Plaza
70 W. Madison Street
Chicago, IL 60602
312.977.4400
312.977.4405 fax

WASHINGTON
1500 K Street, NW
Suite 250
Washington, DC 20005
202.639.7500
202.639.7505 fax

SPRINGFIELD
400 East Jefferson Street
Suite 1200
Springfield, IL 62701
217.544.7000
217.544.7950 fax

www.uhlaw.com

Page 2

Ungaretti & Harris' Healthcare Department remains devoted to meeting the changing needs of the healthcare industry. Our lawyers have the capabilities for addressing the increasingly varied legal challenges of clients that include, integrated delivery systems and multi-provider networks, hospitals, skilled nursing facilities, individual and group practices, health care associations, clinical laboratories, imaging centers, community-based residential facilities, home health agencies, health care management consultants, health maintenance organizations, managed care networks, medical device manufacturers and health insurance carriers.

This **Healthcare Update** has been prepared by Ungaretti & Harris LLP solely for informational purposes and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.

- **Facility-Developed Treatment Plan Before Admission.** The Facility must review the screenings and supporting documentation to determine whether the recommended placement of an Identified Offender is appropriate. Before admitting the Identified Offender, the Facility is responsible for the development of a treatment plan appropriate to the needs of the Identified Offender. Information compiled concerning Identified Offenders must not be further disseminated except to the resident, law enforcement agencies, the parole office, IDPH, and other facilities licensed by IDPH.
- **Required Facility Policy for Admission, Retention, and Discharge of Identified Offenders.** Each Facility must have a policy concerning the admission and retention of Identified Offenders consistent with the Facility's capabilities to accept and care for these residents. The policy also must include the procedure to be implemented for the retention or discharge of a resident upon notice that a resident is an Identified Offender. A Facility can involuntarily transfer or discharge a resident for the demonstrated inability of the Facility to meet the requirements of the Emergency Rules specific to the particular Identified Offender.
- **Background Checks of Current Residents.** On or before July 21, 2005, a Facility must compare its current residents against the DOC (www.idoc.state.il.us) and the Illinois State Police (www.isp.state.il.us) registered sex offender databases. The Facility shall notify IDPH within 48 hours after determining that a resident is listed on either database. On or before January 1, 2006, facilities must run police background checks on all existing residents, and continue to run such checks at least every six months and again within 90 days before the renewal date of the Facility's license. Note, the Emergency Rules expire before the January 1, 2006 implementation date.
- **Private Rooms for Sex Offenders.** If a resident is a registered sex offender, or if the Facility's risk assessment determines that an Identified Offender who is not a registered sex offender requires isolation, the resident must have his or her own room. The room must be in direct view of the main nurses' station and separate from rooms of residents who are at risk. The Facility must institute monthly care planning for the resident.
- **Required Resident Contract Language.** The resident contract must require a prospective resident to state whether he or she is an Identified Offender. (Presumably, the Facility must ask every resident whether he or she is a sex offender, even after a police background check is performed.) The contract shall alert the prospective resident of the Facility's ability or inability to care for the prospective resident, if he or she is an Identified Offender. Facilities can involuntarily discharge an Identified Offender, if it cannot meet the requirements of the Emergency Rules.
- **Posting and Notifying.** The Facility must conspicuously post or display, in an area accessible to staff, current and prospective residents, family members, and visitors, notification that an Identified Offender is residing at the Facility. The Facility must direct specific inquiries about Identified Offenders to the Illinois Sex Offender Registration Website at www.isp.state.il.us, the DOC database, the Department of State Police, and local law enforcement agencies. The Facility shall notify every resident or resident's guardian in writing that such offenders are residents of the Facility.
- **Additional Requirements.** The Emergency Rules also detail requirements for the risk assessment of Identified Offenders, agencies to be notified if a Facility has an Identified Offender in residence, and requirements for transferring Identified Offenders to another Facility.