



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5152

Introduced 1/29/2010, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

New Act
210 ILCS 30/3

from Ch. 111 1/2, par. 4163

Creates the Developmental Disability Institutional Safety Act ("Brian's Law"). Requires the Illinois Department of Human Services and the Illinois Department of Public Health to develop teams of monitors to ensure the safety and well-being of individuals residing at State-operated developmental disability institutions. Authorizes these teams to conduct site visits at these institutions and to report on their observations. Requires the Departments to develop and implement action plans to respond to these reports. Requires the Departments to develop a team of experts to investigate and report on the deaths of individuals who are under the care of these institutions. Requires the Departments to develop plans of prevention within 90 days after the completion of an investigation into the death of an individual at one of these institutions. Requires the Department of Human Service to provide certain information to individuals with developmental disabilities and their families. Amends the Abused and Neglected Long Term Care Facility Residents Reporting Act. Provides that neglect includes the failure to follow medical and personal care protocols, such as dietary restrictions, regardless of whether that failure causes injury, and that abuse includes inadequate medical care that, regardless of the final cause of death, compromises an individual's health or leads to serious medical consequences followed by the individuals' death.

LRB096 19040 JDS 34431 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 1. Short title. This Act may be cited as the
5 Developmental Disability Institutional Safety Act or Brian's
6 Law.

7 Section 5. Legislative findings. The General Assembly
8 finds all of the following:

9 (a) Despite the national trend toward community
10 integration of people with disabilities, the State of Illinois
11 ranks 51st in the nation in funding for community-based
12 services for people with developmental disabilities in
13 settings of 6 or fewer individuals.

14 (b) Illinois continues to rely heavily upon large,
15 congregate, residential facilities for the long-term care of
16 people with developmental disabilities.

17 (c) There is a large body of evidence documenting that
18 large, congregate settings for people with disabilities create
19 a culture of abuse and neglect that victimizes our society's
20 most vulnerable members, inhibits their integration within
21 society, and fosters dependence.

22 (d) The organization designated by the Governor to
23 implement the federally mandated Protection and Advocacy (P&A)

1 System for people with disabilities in Illinois has
2 investigated the deaths of individuals with developmental
3 disabilities in State-operated developmental disability
4 institutions, including the death of Brian Kent at Ann M. Kiley
5 Center in Waukegan, Illinois on October 30, 2002. A public
6 report has been issued regarding its investigation of the death
7 of Brian Kent and others entitled "Life and Death in
8 State-Operated Developmental Disability Institutions".

9 (e) The substandard medical care and treatment cited in
10 that report necessitate that immediate action be taken to
11 prevent further injuries and deaths to the individuals residing
12 in those institutions.

13 Section 10. Independent interdisciplinary teams of
14 monitors.

15 (a) The Illinois Department of Human Services and the
16 Illinois Department of Public Health shall develop and install
17 independent interdisciplinary teams of monitors to ensure the
18 safety and well-being of the individuals residing at each
19 State-operated developmental disability institution.

20 (b) The interdisciplinary monitoring teams shall be
21 composed of nurses, social workers, psychologists, and quality
22 assurance professionals with expertise in addressing the
23 quality of nursing care and treatment.

24 (c) The interdisciplinary monitoring teams shall conduct a
25 minimum of 2 unannounced site visits to each of the

1 State-operated developmental disability institutions each
2 quarter. However, additional site visits may be made as
3 circumstances warrant. The teams shall monitor and observe
4 conditions within and around the residential units, review
5 relevant records, including injury reports, and conduct random
6 audits of clinical files and reports of abuse and neglect at
7 these institutions.

8 (d) The interdisciplinary monitoring teams shall produce
9 quarterly reports of their observations and provide those
10 reports to the Departments of Human Services and Public Health
11 as well as to the organization designated by the Governor to
12 implement the federally mandated Protection and Advocacy (P&A)
13 System for people with disabilities in Illinois. The
14 Departments of Human Services and Public Health shall develop
15 and implement appropriate action plans in response to those
16 reports to ensure that individuals under the care of these
17 institutions are safe and receive quality services and medical
18 care.

19 Section 15. Independent team of medical experts.

20 (a) The Departments of Human Services and Public Health
21 shall develop an independent team of medical experts from the
22 private sector, including forensic pathologists, doctors, and
23 nurses, to examine all deaths at State-operated developmental
24 disability institutions.

25 (b) The independent team of medical experts shall examine

1 the clinical records of all individuals who have died while
2 under the care of a State-operated developmental disability
3 institution and review all actions taken by the institution or
4 other State agencies to address the cause or causes of death
5 and the adequacy of medical care and treatment.

6 (c) The independent team shall produce written findings and
7 provide those findings to the Departments of Human Services and
8 Public Health as well as to the organization designated by the
9 Governor to implement the federally mandated Protection and
10 Advocacy (P&A) System for people with disabilities in Illinois
11 in order to prevent further injuries and deaths.

12 Section 20. Plans of prevention. Within 90 days after the
13 completion of an investigation into the death of an individual
14 residing at a State-run developmental disability institution
15 by the Office of Inspector General or the Illinois Department
16 of State Police, the Departments of Human Services and Public
17 Health, in conjunction with the State-operated developmental
18 disability institutions' administrators and medical directors,
19 shall develop a plan of prevention to ensure that similar
20 deaths do not occur at State-operated developmental disability
21 institutions.

22 Section 25. Rights information. The Department of Human
23 Services shall ensure that individuals with disabilities and
24 their guardians and families receive sufficient information

1 regarding their rights, including the right to be safe, the
2 right to be free of abuse and neglect, and the right to receive
3 quality services. The Department shall provide this
4 information in order to allow individuals with developmental
5 disabilities and their families to make informed decisions
6 regarding the provision of services that can meet the
7 individual's wants and needs.

8 Section 30. The Abused and Neglected Long Term Care
9 Facility Residents Reporting Act is amended by changing Section
10 3 as follows:

11 (210 ILCS 30/3) (from Ch. 111 1/2, par. 4163)

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

13 Sec. 3. As used in this Act unless the context otherwise
14 requires:

15 a. "Department" means the Department of Public Health of
16 the State of Illinois.

17 b. "Resident" means a person residing in and receiving
18 personal care from a long term care facility, or residing in a
19 mental health facility or developmental disability facility as
20 defined in the Mental Health and Developmental Disabilities
21 Code.

22 c. "Long term care facility" has the same meaning ascribed
23 to such term in the Nursing Home Care Act, except that the term
24 as used in this Act shall include any mental health facility or

1 developmental disability facility as defined in the Mental
2 Health and Developmental Disabilities Code.

3 d. "Abuse" means (i) any physical injury, sexual abuse or
4 mental injury inflicted on a resident other than by accidental
5 means or (ii) inadequate medical care that, regardless of the
6 final cause of death, compromises an individual's health or
7 leads to serious medical consequences followed by the
8 individuals' death.

9 e. "Neglect" means (i) a failure in a long term care
10 facility to provide adequate medical or personal care or
11 maintenance, which failure results in physical or mental injury
12 to a resident or in the deterioration of a resident's physical
13 or mental condition or (ii) the failure to follow medical and
14 personal care protocols, such as dietary restrictions,
15 regardless of whether that failure causes injury.

16 f. "Protective services" means services provided to a
17 resident who has been abused or neglected, which may include,
18 but are not limited to alternative temporary institutional
19 placement, nursing care, counseling, other social services
20 provided at the nursing home where the resident resides or at
21 some other facility, personal care and such protective services
22 of voluntary agencies as are available.

23 g. Unless the context otherwise requires, direct or
24 indirect references in this Act to the programs, personnel,
25 facilities, services, service providers, or service recipients
26 of the Department of Human Services shall be construed to refer

1 only to those programs, personnel, facilities, services,
2 service providers, or service recipients that pertain to the
3 Department of Human Services' mental health and developmental
4 disabilities functions.

5 (Source: P.A. 89-507, eff. 7-1-97.)

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

7 Sec. 3. As used in this Act unless the context otherwise
8 requires:

9 a. "Department" means the Department of Public Health of
10 the State of Illinois.

11 b. "Resident" means a person residing in and receiving
12 personal care from a long term care facility, or residing in a
13 mental health facility or developmental disability facility as
14 defined in the Mental Health and Developmental Disabilities
15 Code.

16 c. "Long term care facility" has the same meaning ascribed
17 to such term in the Nursing Home Care Act, except that the term
18 as used in this Act shall include any mental health facility or
19 developmental disability facility as defined in the Mental
20 Health and Developmental Disabilities Code. The term also
21 includes any facility licensed under the MR/DD Community Care
22 Act.

23 d. "Abuse" means (i) any physical injury, sexual abuse or
24 mental injury inflicted on a resident other than by accidental
25 means or (ii) inadequate medical care that, regardless of the

1 final cause of death, compromises an individual's health or
2 leads to serious medical consequences followed by the
3 individuals' death.

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22 only to those programs, personnel, facilities, services,
23 service providers, or service recipients that pertain to the
24 Department of Human Services' mental health and developmental
25 disabilities functions.

26 (Source: P.A. 96-339, eff. 7-1-10.)

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