

1 AN ACT in relation to mental health.

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

4 Section 5. The Protection and Advocacy for
5 Developmentally Disabled Persons Act is amended by changing
6 Section 1 as follows:

7 (405 ILCS 40/1) (from Ch. 91 1/2, par. 1151)

8 Sec. 1. The Governor may designate a private
9 not-for-profit corporation as the agency to administer a
10 State plan to protect and advocate the rights of persons with
11 developmental disabilities pursuant to the requirements of
12 the federal Developmental Disabilities Assistance and Bill of
13 Rights Act, 42 U.S.C. 6001 to 6081, as now or hereafter
14 amended. The designated agency may pursue legal,
15 administrative, and other appropriate remedies to ensure the
16 protection of the rights of such persons who are receiving
17 treatment, services or habilitation within this State. The
18 agency designated by the Governor shall be independent of any
19 agency that ~~which~~ provides treatment, services, guardianship,
20 or habilitation to persons with developmental disabilities,
21 and the ~~such~~ agency shall not be administered by the
22 Governor's Planning Council on Developmental Disabilities or
23 any successor State Planning Council organized pursuant to
24 federal law.

25 The designated agency may receive and expend funds to
26 protect and advocate the rights of persons with developmental
27 disabilities. In order to properly exercise its powers and
28 duties, such agency shall have access to developmental
29 disability facilities and mental health facilities, as
30 defined under Sections 1-107 and 1-114 of the Mental Health
31 and Developmental Disabilities Code, and facilities as

1 defined in Section 1-113 of the Nursing Home Care Act. Such
2 access shall be granted for the purposes of meeting with
3 residents and staff, informing them of services available
4 from the agency, distributing written information about the
5 agency and the rights of persons with developmental
6 disabilities, conducting scheduled and unscheduled visits,
7 and performing other activities designed to protect the
8 rights of persons with developmental disabilities. The agency
9 also shall have access, for the purpose of inspection and
10 copying, to the records of a person with developmental
11 disabilities who resides in any such facility subject to the
12 limitations of this Act, the Mental Health and Developmental
13 Disabilities Confidentiality Act, and the Nursing Home Care
14 Act. The agency also shall have access, for the purpose of
15 inspection and copying, to the records of a person with
16 developmental disabilities who resides in any such facility
17 if (1) a complaint is received by the agency from or on
18 behalf of the person with a developmental disability, and (2)
19 such person does not have a legal guardian or the State or
20 the designee of the State is the legal guardian of such
21 person. The designated agency shall provide written notice to
22 the person with developmental disabilities and the State
23 guardian of the nature of the complaint based upon which the
24 designated agency has gained access to the records. No record
25 or the contents of any record shall be redisclosed by the
26 designated agency unless the person with developmental
27 disabilities and the State guardian are provided 7 days
28 advance written notice, except in emergency situations, of
29 the designated agency's intent to redisclose such record,
30 during which time the person with developmental disabilities
31 or the State guardian may seek to judicially enjoin the
32 designated agency's redisclosure of such record on the
33 grounds that such redisclosure is contrary to the interests
34 of the person with developmental disabilities. Any person who

1 in good faith complains to the designated agency on behalf of
2 a person with developmental disabilities, or provides
3 information or participates in the investigation of any such
4 complaint shall have immunity from any liability, civil,
5 criminal or otherwise, and shall not be subject to any
6 penalties, sanctions, restrictions or retaliation as a
7 consequence of making such complaint, providing such
8 information or participating in such investigation.

9 Upon request, the designated agency shall be entitled to
10 inspect and copy any records or other materials which may
11 further the agency's investigation of problems affecting
12 numbers of persons with developmental disabilities. When
13 required by law any personally identifiable information of
14 persons with developmental disabilities shall be removed from
15 the records. However, the designated agency may not inspect
16 or copy any records or other materials when the removal of
17 personally identifiable information imposes an unreasonable
18 burden on mental health and developmental disabilities
19 facilities pursuant to the Mental Health and Developmental
20 Disabilities Code or facilities as defined in the Nursing
21 Home Care Act.

22 The Governor shall not redesignate the agency to
23 administer the State plan to protect and advocate the rights
24 of persons with developmental disabilities unless there is
25 good cause for the redesignation and unless notice of the
26 intent to make such redesignation is given to persons with
27 developmental disabilities or their representatives, the
28 federal Secretary of Health and Human Services, and the
29 General Assembly at least 60 days prior thereto.

30 As used in this Act, the term "developmental disability"
31 means a severe, chronic disability of a person which:

32 (A) is attributable to a mental or physical
33 impairment or combination of mental and physical
34 impairments;

1 (B) is manifested before the person attains age 22;

2 (C) is likely to continue indefinitely;

3 (D) results in substantial functional limitations
4 in 3 or more of the following areas of major life
5 activity: (i) self-care, (ii) receptive and expressive
6 language, (iii) learning, (iv) mobility, (v)
7 self-direction, (vi) capacity for independent living, and
8 (vii) economic self-sufficiency; and

9 (E) reflects the person's need for combination and
10 sequence of special, interdisciplinary or generic care,
11 treatment or other services which are of lifelong or
12 extended duration and are individually planned and
13 coordinated.

14 (Source: P.A. 88-380.)