

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