

AN ACT concerning health.

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

Section 5. The Guardianship and Advocacy Act is amended by changing Sections 2, 4, 5, and 26 as follows:

(20 ILCS 3955/2) (from Ch. 91 1/2, par. 702)

Sec. 2. As used in this Act, unless the context requires otherwise:

(a) "Authority" means a Human Rights Authority.

(b) "Commission" means the Guardianship and Advocacy Commission.

(c) "Director" means the Director of the Guardianship and Advocacy Commission.

(d) "Guardian" means a court appointed guardian or conservator.

(e) "Services" includes but is not limited to examination, diagnosis, evaluation, treatment, care, training, psychotherapy, pharmaceuticals, after-care, habilitation, and rehabilitation provided for an eligible person.

(f) "Person" means an individual, corporation, partnership, association, unincorporated organization, or a government or any subdivision, agency, or instrumentality thereof.

(g) "Eligible persons" means individuals who have received, are receiving, have requested, or may be in need of mental health services, or are ~~"persons with a "developmental disability" as defined in the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002(8)), Services and Facilities Construction Act (Public Law 94-103, Title II),~~ as now or as hereafter amended, or "persons ~~"with one or more~~ disabilities" as defined in the Rehabilitation of Persons with Disabilities Act.

(h) "Rights" includes but is not limited to all rights, benefits, and privileges guaranteed by law, the Constitution of the State of Illinois, and the Constitution of the United States.

(i) "Legal Advocacy Service attorney" means an attorney employed by or under contract with the Legal Advocacy Service.

(j) "Service provider" means any public or private facility, center, hospital, clinic, program, or any other person devoted in whole or in part to providing services to eligible persons.

(k) "State Guardian" means the Office of State Guardian.

(l) "Ward" means a ward as defined by the Probate Act of 1975, as now or hereafter amended, who is at least 18 years of age.

(Source: P.A. 99-143, eff. 7-27-15.)

(20 ILCS 3955/4) (from Ch. 91 1/2, par. 704)

Sec. 4. (a) The Commission shall consist of 11 members, one of whom shall be a senior citizen age 60 or over, who shall be appointed by the Governor, taking into account the requirements of State and federal statutes, with the advice and consent of the Senate.

All appointments shall be filed with the Secretary of State by the appointing authority.

(b) The terms of the original members shall be 3 one year terms, 3 two year terms, and 3 three year terms, all terms to continue until a successor is appointed and qualified. The length of the terms of the original members shall be drawn by lot of the first meeting held by the Commission. The members first appointed under this amendatory Act of 1984 shall serve for a term of 3 years. Thereafter all terms shall be for 3 years, with each member serving no more than 2 consecutive terms. Vacancies in the membership are to be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term are for the remainder of the unexpired term. A member of the Commission shall serve for a term ending on June 30 and until his successor is appointed and qualified.

(c) The Commission shall annually elect a Chairman and any other officers it deems necessary. The Commission shall meet at least once every 3 months with the times and places of meetings determined by the Chairman. Additional meetings may be called by the Chairman upon written notice 7 days before the

meeting or by written petition of 5 members to the Chairman. A majority of the ~~Six~~ members of the Commission, excluding vacancies, constitute a quorum.

(d) Members of the Commission are not entitled to compensation but shall receive reimbursement for actual expenses incurred in the performance of their duties.

(Source: P.A. 83-1538.)

(20 ILCS 3955/5) (from Ch. 91 1/2, par. 705)

Sec. 5. (a) The Commission shall establish throughout the State such regions as it considers appropriate to effectuate the purposes of the Authority under this Act, taking into account the requirements of State and federal statutes; population; civic, health and social service boundaries; and other pertinent factors.

(b) The Commission shall act through its divisions as provided in this Act.

(c) The Commission shall establish general policy guidelines for the operation of the Legal Advocacy Service, Human Rights Authority and State Guardian in furtherance of this Act. Any action taken by a regional authority is subject to the review and approval of the Commission. The Commission, acting on a request from the Director, may disapprove any action of a regional authority, in which case the regional authority shall cease such action.

(d) The Commission shall hire a Director and staff to

carry out the powers and duties of the Commission and its divisions pursuant to this Act and the rules and regulations promulgated by the Commission. All staff other than the Director shall be subject to the Personnel Code.

(e) The Commission shall review and evaluate the operations of the divisions.

(f) The Commission shall operate subject to the provisions of the Illinois Procurement Code.

(g) The Commission shall prepare its budget.

(h) The Commission shall prepare an annual report on its operations and submit the report to the Governor and the General Assembly.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act.

(i) The Commission shall establish rules and regulations for the conduct of the work of its divisions, including rules and regulations for the Legal Advocacy Service and the State Guardian in evaluating an eligible person's or ward's financial resources for the purpose of determining whether the eligible person or ward has the ability to pay for legal or guardianship services received. The determination of the eligible person's financial ability to pay for legal services

shall be based upon the number of dependents in the eligible person's family unit and the income, liquid assets and necessary expenses, as prescribed by rule of the Commission of: (1) the eligible person; (2) the eligible person's spouse; and (3) the parents of minor eligible persons. The determination of a ward's ability to pay for guardianship services shall be based upon the ward's estate. An eligible person or ward found to have sufficient financial resources shall be required to pay the Commission in accordance with standards established by the Commission. No fees may be charged for legal services given unless the eligible person is given notice at the start of such services that such fees might be charged. No fees may be charged for guardianship services given unless the ward is given notice of the request for fees filed with the probate court and the court approves the amount of fees to be assessed. All fees collected shall be deposited with the State Treasurer and placed in the Guardianship and Advocacy Fund. The Commission shall establish rules and regulations regarding the procedures of appeal for clients prior to termination or suspension of legal services. Such rules and regulations shall include, but not be limited to, client notification procedures prior to the actual termination, the scope of issues subject to appeal, and procedures specifying when a final administrative decision is made.

(j) The Commission shall take such actions as it deems

necessary and appropriate to receive private, federal and other public funds to help support the divisions and to safeguard the rights of eligible persons. Private funds and property may be accepted, held, maintained, administered and disposed of by the Commission, as trustee, for such purposes for the benefit of the People of the State of Illinois pursuant to the terms of the instrument granting the funds or property to the Commission.

(k) The Commission may expend funds under the State's plan to protect and advocate the rights of persons with a developmental disability established under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 ~~Services and Facilities Construction Act (Public Law 94-103, Title II)~~. If the Governor designates the Commission to be the organization or agency to provide the services called for in the State plan, the Commission shall make these protection and advocacy services available to persons with a developmental disability by referral or by contracting for these services to the extent practicable. If the Commission is unable to so make available such protection and advocacy services, it shall provide them through persons in its own employ.

(l) The Commission shall, to the extent funds are available, monitor issues concerning the rights of eligible persons and the care and treatment provided to those persons, including but not limited to the incidence of abuse or neglect

of eligible persons. For purposes of that monitoring the Commission shall have access to reports of suspected abuse or neglect and information regarding the disposition of such reports, subject to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act.

(Source: P.A. 100-1148, eff. 12-10-18.)

(20 ILCS 3955/26) (from Ch. 91 1/2, par. 726)

Sec. 26. Subject to the provisions of Section 19, a regional authority may make public its findings and recommendations. It shall include in any such public statement any reply made by the State agency, service provider, or other person investigated, if requested by the provider. The provider or person shall have opportunity to review and object to any proposed public findings and recommendations. If the provider requests, the objections shall be included with public findings and recommendations issued by the regional authority in this matter.

(Source: P.A. 80-1416.)

Section 10. The Mental Health and Developmental Disabilities Code is amended by changing Sections 1-110, 1-129, and 3-805 and by adding Section 1-128.5 as follows:

(405 ILCS 5/1-110) (from Ch. 91 1/2, par. 1-110)

Sec. 1-110. "Guardian" means the court-appointed ~~court~~

~~appointed guardian or conservator~~ of the person.

(Source: P.A. 80-1414.)

(405 ILCS 5/1-128.5 new)

Sec. 1-128.5. Under guardianship. "Under guardianship", in reference to a person or recipient, means an individual for whom a guardian has been appointed.

(405 ILCS 5/1-129)

Sec. 1-129. Mental illness. "Mental illness" means a mental, or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, a neurocognitive disorder ~~dementia or Alzheimer's disease~~ absent psychosis, a substance use disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(Source: P.A. 100-759, eff. 1-1-19.)

(405 ILCS 5/3-805) (from Ch. 91 1/2, par. 3-805)

Sec. 3-805. Every respondent alleged to be subject to involuntary admission on an inpatient or outpatient basis shall be represented by counsel. If the respondent is indigent or an appearance has not been entered on his behalf at the time the matter is set for hearing, the court shall appoint counsel

for him. A hearing shall not proceed when a respondent is not represented by counsel unless, after conferring with counsel, the respondent requests to represent himself and the court is satisfied that the respondent has the capacity to make an informed waiver of his right to counsel. Counsel shall be allowed time for adequate preparation and shall not be prevented from conferring with the respondent at reasonable times nor from making an investigation of the matters in issue and presenting such relevant evidence as he believes is necessary.

1. If the court determines that the respondent is unable to obtain counsel, the court shall appoint as counsel an attorney employed by or under contract with the Guardianship and ~~Mental Health~~ Advocacy Commission, if available.

2. If an attorney from the Guardianship and ~~Mental Health~~ Advocacy Commission is not available, the court shall appoint as counsel the public defender or, only if no public defender is available, an attorney licensed to practice law in this State.

3. Upon filing with the court of a verified statement of legal services rendered by the private attorney appointed pursuant to paragraph (2) of this Section, the court shall determine a reasonable fee for such services. If the respondent is unable to pay the fee, the court shall enter an order upon the county to pay the entire fee or such amount as the respondent is unable to pay.

Public Act 104-0698

HB5269 Enrolled

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(Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)