

1 AN ACT concerning health.

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

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

6 (20 ILCS 3955/2) (from Ch. 91 1/2, par. 702)

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

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

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

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

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

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

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

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

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

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

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

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

21 (l) "Ward" means a ward as defined by the Probate Act of
22 1975, as now or hereafter amended, who is at least 18 years of
23 age.

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

25 (20 ILCS 3955/4) (from Ch. 91 1/2, par. 704)

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

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

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

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

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

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

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

8 (20 ILCS 3955/5) (from Ch. 91 1/2, par. 705)

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

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

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

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

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

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

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

9 (g) The Commission shall prepare its budget.

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

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

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

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

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

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

9 (k) The Commission may expend funds under the State's plan
10 to protect and advocate the rights of persons with a
11 developmental disability established under the federal
12 Developmental Disabilities Assistance and Bill of Rights Act
13 of 2000 ~~Services and Facilities Construction Act (Public Law~~
14 ~~94-103, Title II)~~. If the Governor designates the Commission
15 to be the organization or agency to provide the services
16 called for in the State plan, the Commission shall make these
17 protection and advocacy services available to persons with a
18 developmental disability by referral or by contracting for
19 these services to the extent practicable. If the Commission is
20 unable to so make available such protection and advocacy
21 services, it shall provide them through persons in its own
22 employ.

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

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

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

7 (20 ILCS 3955/26) (from Ch. 91 1/2, par. 726)

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

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

19 Section 10. The Mental Health and Developmental
20 Disabilities Code is amended by changing Sections 1-110,
21 1-129, and 3-805 and by adding Section 1-128.5 as follows:

22 (405 ILCS 5/1-110) (from Ch. 91 1/2, par. 1-110)

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

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

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

3 (405 ILCS 5/1-128.5 new)

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

7 (405 ILCS 5/1-129)

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

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

18 (405 ILCS 5/3-805) (from Ch. 91 1/2, par. 3-805)

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

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

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

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

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

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