



## 93RD GENERAL ASSEMBLY

## State of Illinois

## 2003 and 2004

Introduced 2/5/2004, by Kirk W. Dillard

## SYNOPSIS AS INTRODUCED:

See Index

Creates the Loan Repayment Assistance for Physicians Act. Requires that the Department of Public Health establish an educational loan repayment assistance program for physicians who practice in Illinois. Provides that for each year that a qualified applicant practices full-time as a physician, the Department shall, subject to appropriation, award a grant to that person in an amount equal to the amount in educational loans that the person must repay that year. Provides that the total amount in grants that a person may be awarded shall not exceed \$25,000. Amends the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois. Requires the Department of Public Health to award grants to all practicing physicians (instead of only to physicians offering obstetrical medical services in rural areas) for the purpose of reimbursing the costs of obtaining malpractice insurance. Requires the Department to establish reasonable conditions, standards, and duties relating to the grants. Amends the Illinois Public Aid Code. Provides for an increase in the rates paid to every vendor of goods or services under the Medicaid program so that those rates are equal to the rates paid to such vendors under Medicare. Provides for implementation of the rate increase over a 3-year period. Amends the Code of Civil Procedure. Limits attorney's fees in individual actions to \$1,000,000 including expenses. Changes the standards that the court shall apply to determine if a witness qualifies as an expert witness as follows: (i) requires the court to determine whether the witness is board certified or board eligible in the same medical specialties as the defendant and is familiar with the same medical problems or the type of treatment administered in the case (instead of the same relationship of the medical specialties of the witness to the medical problem and the type of treatment in the case); (ii) requires the court to determine whether the witness has devoted 75% (instead of a substantial portion) of his or her working hours to the practice of medicine, teaching, or university based research in relation to the medical care and type of treatment at issue; and (iii) requires the court to determine whether the witness is licensed by any state or the District of Columbia (instead of just licensed). Amends the Illinois Good Samaritan Act. Provides that the immunity for civil damages provided for services performed without compensation at free medical clinics also applies to physicians and other health care professionals that provide medical treatment, diagnosis, or advice at federally qualified health care centers without fee or compensation. Makes various other changes in other Acts concerning health care. Effective immediately.

LRB093 20838 LCB 46766 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT in relation to health care delivery and civil  
2 actions, which may be referred to as the Medical Liability  
3 Crisis and Access to Care Law of 2004.

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

6 ARTICLE 1

7 Section 1-1. Short title. This Act may be cited as the Loan  
8 Repayment Assistance for Physicians Act.

9 Section 1-5. Definitions. The purpose of this Act is to  
10 establish a program in the Department of Public Health to  
11 increase the total number of physicians in this State by  
12 providing educational loan repayment assistance grants to  
13 physicians.

14 Section 1-10. Definitions. In this Act, unless the context  
15 otherwise requires:

16 "Department" means the Department of Public Health.

17 "Educational loans" means higher education student loans  
18 that a person has incurred in attending a registered  
19 professional physician education program.

20 "Physician" means a person licensed under the Medical  
21 Practice Act of 1987 to practice medicine in all of its  
22 branches.

23 "Program" means the educational loan repayment assistance  
24 program for physicians established by the Department under this  
25 Act.

26 Section 1-15. Establishment of program. The Department  
27 shall establish an educational loan repayment assistance  
28 program for physicians who practice in Illinois. The Department  
29 shall administer the program and make all necessary and proper

1 rules not inconsistent with this Act for the program's  
2 effective implementation. The Department may use up to 5% of  
3 the appropriation for this program for administration and  
4 promotion of physician incentive programs.

5 Section 1-20. Application. Beginning July 1, 2004, the  
6 Department shall, each year, consider applications for  
7 assistance under the program. The form of application and  
8 information required to be set forth in the application shall  
9 be determined by the Department, and the Department shall  
10 require applicants to submit with their applications such  
11 supporting documents as the Department deems necessary.

12 Section 1-25. Eligibility. To be eligible for assistance  
13 under the program, an applicant must meet all of the following  
14 qualifications:

15 (1) He or she must be a citizen or permanent resident  
16 of the United States.

17 (2) He or she must be a resident of Illinois.

18 (3) He or she must be practicing full-time in Illinois  
19 as a physician.

20 (4) He or she must currently be repaying educational  
21 loans.

22 (5) He or she must agree to continue to practice  
23 full-time in Illinois for 3 years.

24 Section 1-30. The award of grants. Under the program, for  
25 each year that a qualified applicant practices full-time in  
26 Illinois as a physician, the Department shall, subject to  
27 appropriation, award a grant to that person in an amount equal  
28 to the amount in educational loans that the person must repay  
29 that year. However, the total amount in grants that a person  
30 may be awarded under the program shall not exceed \$25,000. The  
31 Department shall require recipients to use the grants to pay  
32 off their educational loans.

1 Section 1-35. Penalty. Loan repayment recipients who fail  
2 to practice full-time in Illinois for 3 years shall repay the  
3 Department a sum equal to 3 times the amount received under the  
4 program.

5 ARTICLE 5

6 Section 5-1. To comply with House and Senate rules, the  
7 matter that is added to the law by this Public Act is  
8 underscored and the matter that is deleted from the law is  
9 stricken. The amendatory changes made by Public Act 89-7, which  
10 has been declared unconstitutional by the Illinois Supreme  
11 Court, are not included in the text of the provisions that are  
12 amended by this Public Act.

13 Section 5-2. Legislative findings. The General Assembly  
14 finds that:

15 1. Illinois is in the midst of a medical malpractice  
16 insurance crisis of unprecedented magnitude.

17 2. Illinois is among the states with the highest  
18 medical malpractice insurance premiums in the nation.

19 3. Medical Malpractice insurance in Illinois is  
20 unavailable or unaffordable for many hospitals and  
21 physicians.

22 4. The high and increasing cost of medical malpractice  
23 insurance in Illinois is causing health care providers to  
24 eliminate or reduce the provision of medical care  
25 throughout the State.

26 5. The crisis is discouraging medical students from  
27 choosing Illinois as the place they will receive their  
28 medical education and practice medicine.

29 6. The increase in medical malpractice liability  
30 insurance rates is forcing physicians to practice medicine  
31 without professional liability insurance, to leave  
32 Illinois, to not perform high-risk procedures, or to retire  
33 early from the practice of medicine.

1           7. The high and increasing cost of medical malpractice  
2 insurance is due in large part to the inefficiency and  
3 unpredictability of adjudicating claims through the civil  
4 justice system.

5           8. Much of this inefficiency stems from the time and  
6 resources needlessly spent on valuing uncertain and  
7 unpredictable claims of medical negligence.

8           9. The public would benefit by making medical liability  
9 coverage for hospitals and physicians more affordable,  
10 which would make health care more available.

11           Section 5-5. The Illinois Civil Administrative Code is  
12 amended by changing Section 2310-220 as follows:

13           (20 ILCS 2310/2310-220) (was 20 ILCS 2310/55.73)

14           Sec. 2310-220. Findings; medical ~~rural-obstetrical~~ care.  
15 The General Assembly finds that substantial areas of ~~rural~~  
16 Illinois lack adequate access to medical ~~obstetrical~~ care. The  
17 primary cause of this problem is the absence of qualified  
18 practitioners who are willing to offer medical ~~obstetrical~~  
19 services. A significant barrier to recruiting and retaining  
20 those practitioners is the high cost of professional liability  
21 insurance for practitioners offering medical ~~obstetrical~~ care.

22           Therefore, the Department, from funds appropriated for  
23 that purpose, shall award grants to physicians licensed to  
24 practice medicine in all its branches practicing ~~obstetrics~~ in  
25 ~~Illinois rural designated shortage areas, as defined in Section~~  
26 ~~3.04 of the Family Practice Residency Act,~~ for the purpose of  
27 reimbursing those physicians for the costs of obtaining  
28 malpractice insurance relating to medical ~~obstetrical~~  
29 services. The Department shall establish reasonable  
30 conditions, standards, and duties relating to the application  
31 for and receipt of the grants.

32           (Source: P.A. 91-239, eff. 1-1-00.)

33           Section 5-10. The Illinois Insurance Code is changed by

1 adding Section 155.18a as follows:

2 (215 ILCS 5/155.18a new)

3 Sec. 155.18a. Professional Liability Insurance Resource  
4 Center.

5 (a) The Director of Insurance shall establish a  
6 Professional Liability Insurance Resource Center on the World  
7 Wide Web containing the following information:

8 (1) Names, address, and telephone numbers of all  
9 licensed companies providing professional liability  
10 insurance for health care professionals and health care  
11 providers including but not limited to hospitals, nursing  
12 homes, physicians, and dentists. Computer links to company  
13 websites shall be included, if available.

14 (2) Names, addresses and telephone numbers of all  
15 licensed brokers who provide access to professional  
16 liability insurance for health care professionals and  
17 health care providers including but not limited to  
18 hospitals, nursing homes, physicians, and dentists.  
19 Computer links to company websites shall be included, if  
20 available.

21 (b) The Department of Insurance shall conduct and publish  
22 an annual study of the impact of this amendatory Act of the  
23 93rd General Assembly by county on the following:

24 (1) The number of medical malpractice claims filed and  
25 amounts recovered per claim.

26 (2) The amounts of economic and non-economic damages  
27 awarded per case.

28 (3) The amount of plaintiff and defense attorney fees  
29 paid per case.

30 (4) The impact of the provisions of this amendatory Act  
31 of the 93rd General Assembly on the cost and availability  
32 of healing art malpractice coverage for hospitals and  
33 physicians.

34 (5) Every 2 years the Director of Insurance shall make  
35 recommendations to the Governor, the Speaker of the House,

1 and the President of the Senate on changes in the law  
2 necessary to maintain affordable and accessible  
3 professional liability insurance.

4 Section 5-15. The Illinois Public Aid Code is amended by  
5 adding Section 5-5.25 as follows:

6 (305 ILCS 5/5-5.25 new)

7 Sec. 5-5.25. Rate increase to Medicare rate level.  
8 Notwithstanding any other provision of this Code, the  
9 Department of Public Aid shall increase the rates paid to every  
10 vendor of goods or services provided to recipients of medical  
11 assistance under this Article so that the rate paid under this  
12 Article for each such item or service is equal to the rate paid  
13 to a vendor of such goods or services under the Medicare  
14 program. The Department shall implement this rate increase over  
15 a period of 3 years so that one-third of the increase is  
16 applied for State fiscal year 2005, 50% of the remaining  
17 balance is applied for State fiscal year 2006, and the entire  
18 amount of the remaining balance is applied for State fiscal  
19 year 2007. Thereafter, the rates paid under this Article shall  
20 equal the rates paid under the Medicare program.

21 Section 5-20. The Health Care Arbitration Act is amended by  
22 changing Sections 8 and 9 as follows:

23 (710 ILCS 15/8) (from Ch. 10, par. 208)

24 Sec. 8. Conditions. Every health care arbitration  
25 agreement shall be subject to the following conditions:

26 (a) The agreement is not a condition to the rendering of  
27 health care services by any party and the agreement has been  
28 executed by the recipient of health care services at the  
29 inception of or during the term of provision of services for a  
30 specific cause by either a health care provider or a hospital;  
31 and

32 (b) The agreement is a separate instrument complete in

1 itself and not a part of any other contract or instrument; and

2 (c) The agreement may not limit, impair, or waive any  
3 substantive rights or defenses of any party, including the  
4 statute of limitations; and

5 (d) The agreement shall not limit, impair, or waive the  
6 procedural rights to be heard, to present material evidence, to  
7 cross-examine witnesses, and to be represented by an attorney,  
8 or other procedural rights of due process of any party.

9 ~~(e) As a part of the discharge planning process the patient  
10 or, if appropriate, members of his family must be given a copy  
11 of the health care arbitration agreement previously executed by  
12 or for the patient and shall re-affirm it. Failure to comply  
13 with this provision during the discharge planning process shall  
14 void the health care arbitration agreement.~~

15 (Source: P.A. 80-1012.)

16 (710 ILCS 15/9) (from Ch. 10, par. 209)

17 Sec. 9. Mandatory Provisions.

18 (a) Every health care arbitration agreement shall be  
19 clearly captioned "Health Care Arbitration Agreement".

20 (b) Every health care arbitration agreement in relation to  
21 health care services rendered during hospitalization shall  
22 specify the date of commencement of hospitalization. Every  
23 health care arbitration agreement in relation to health care  
24 services not rendered during hospitalization shall state the  
25 specific cause for which the services are provided.

26 (c) Every health care arbitration agreement may be  
27 cancelled by any signatory (1) ~~within 60 days of its execution~~  
28 ~~or~~ within 60 days of the date of the patient's discharge from  
29 the hospital, or last date of treatment, whichever is later, as  
30 to an agreement in relation to health care services rendered  
31 during hospitalization, ~~provided, that if executed other than~~  
32 ~~at the time of discharge of the patient from the hospital, the~~  
33 ~~health care arbitration agreement be reaffirmed at the time of~~  
34 ~~the discharge planning process in the same manner as provided~~  
35 ~~for in the execution of the original agreement;~~ or (2) within



1 60 days of the date of its execution, or the last date of  
2 treatment by the health care provider, whichever is later, as  
3 to an agreement in relation to health care services not  
4 rendered during hospitalization. Provided, that no health care  
5 arbitration agreement shall be valid after 10 ~~2~~ years from the  
6 date of its execution. An employee of a hospital or health care  
7 provider who is not a signatory to an agreement may cancel such  
8 agreement as to himself until 30 days following his  
9 notification that he is a party to a dispute or issue on which  
10 arbitration has been demanded pursuant to such agreement. If  
11 any person executing a health care arbitration agreement dies  
12 before the period of cancellation as outlined above, the  
13 personal representative of the decedent shall have the right to  
14 cancel the health care arbitration agreement within 60 days of  
15 the date of his appointment as the legal representative of the  
16 decedent's estate. ~~Provided, that if no legal representative is~~  
17 ~~appointed within 6 months of the death of said decedent the~~  
18 ~~next of kin of such decedent shall have the right to cancel the~~  
19 ~~health care arbitration agreement within 8 months from the date~~  
20 ~~of death.~~

21 (d) Every health care arbitration agreement shall contain  
22 immediately above the signature lines, in upper case type in  
23 printed letters of at least 3/16 inch height, a caption and  
24 paragraphs as follows:

25 "AGREEMENT TO ARBITRATE HEALTH CARE

26 NEGLIGENCE CLAIMS

27 NOTICE TO PATIENT

28 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO  
29 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO  
30 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO  
31 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM  
32 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE  
33 REPLACED BY AN ARBITRATION PROCEDURE.

34 THIS AGREEMENT MAY BE CANCELLED WITHIN 60 DAYS ~~OF SIGNING~~  
35 ~~OR 60 DAYS~~ AFTER YOUR HOSPITAL DISCHARGE OR 60 DAYS AFTER  
36 YOUR LAST HEALTH CARE SERVICE ~~MEDICAL TREATMENT~~ IN RELATION

1 TO HEALTH CARE SERVICES NOT RENDERED DURING  
2 HOSPITALIZATION.

3 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT  
4 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF  
5 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS  
6 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE  
7 DECISION OF THE ARBITRATION PANEL."

8 (e) an executed copy of the AGREEMENT TO ARBITRATE HEALTH  
9 CARE CLAIMS ~~and any reaffirmation of that agreement as required~~  
10 ~~by this Act~~ shall be given to the patient during the time of  
11 the discharge planning process or at the time of discharge  
12 after last date of treatment.

13 (Source: P.A. 91-156, eff. 1-1-00.)

14 Section 5-25. The Code of Civil Procedure is amended by  
15 changing Sections 2-622, 2-1107.1, 2-1109, 2-1702, 2-1704,  
16 8-802, 8-1901, 8-2501, and 13-217 and by adding Sections 2-625  
17 and 8-2505 as follows:

18 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

19 (Text of Section WITHOUT the changes made by P.A. 89-7,  
20 which has been held unconstitutional)

21 Sec. 2-622. Healing art malpractice.

22 (a) In any action, whether in tort, contract or otherwise,  
23 in which the plaintiff seeks damages for injuries or death by  
24 reason of medical, hospital, or other healing art malpractice,  
25 the plaintiff's attorney or the plaintiff, if the plaintiff is  
26 proceeding pro se, shall file an affidavit, attached to the  
27 original and all copies of the complaint, declaring one of the  
28 following:

29 1. That the affiant has consulted and reviewed the  
30 facts of the case with a health professional who the  
31 affiant reasonably believes: (i) is knowledgeable in the  
32 relevant issues involved in the particular action; (ii)  
33 practices or has practiced within the last 6 years or  
34 teaches or has taught within the last 6 years in the same

1 area of health care or medicine that is at issue in the  
2 particular action; ~~and~~ (iii) meets the minimum  
3 requirements set forth in 8-2501; and (iv) is qualified by  
4 experience or demonstrated competence in the subject of the  
5 case; that the reviewing health professional has  
6 determined in a written report, after a review of the  
7 medical record and other relevant material involved in the  
8 particular action that there is a reasonable and  
9 meritorious cause for the filing of such action; and that  
10 the affiant has concluded on the basis of the reviewing  
11 health professional's review and consultation that there  
12 is a reasonable and meritorious cause for filing of such  
13 action. If the affidavit is filed as to a defendant who is  
14 a physician licensed to treat human ailments without the  
15 use of drugs or medicines and without operative surgery, a  
16 dentist, a podiatrist, a psychologist, or a naprapath, the  
17 written report must be from a health professional licensed  
18 in the same profession, with the same class of license, as  
19 the defendant. For affidavits filed as to all other  
20 defendants, the written report must be from a physician  
21 licensed to practice medicine in all its branches. In  
22 either event, the affidavit must identify the profession of  
23 the reviewing health professional. A copy of the written  
24 report, clearly identifying the plaintiff and the reasons  
25 for the reviewing health professional's determination that  
26 a reasonable and meritorious cause for the filing of the  
27 action exists, must be attached to the affidavit, ~~but~~  
28 ~~information which would identify the reviewing health~~  
29 ~~professional may be deleted from the copy so attached.~~ The  
30 report shall include the name and address of the reviewing  
31 health professional and documentation of compliance with  
32 requirements set forth in 8-2501. Any reviewing health  
33 professional that provides a frivolous or improper review  
34 of a case shall be liable to each of the parties for the  
35 reasonable costs and attorneys' fees the parties expended  
36 in resolving the case. A review shall be found frivolous if

1       it is substantially lacking in factual support, is based  
2       upon a standard of care or practice that lacks substantial  
3       use in the relevant specialty or field of practice, or is  
4       made for an improper purpose, such as to harass or cause  
5       needless increase in the cost of litigation.

6           2. That the plaintiff has not previously voluntarily  
7       dismissed an action based upon the same or substantially  
8       the same acts, omissions, or occurrences and that the  
9       affiant was unable to obtain a consultation required by  
10       paragraph 1 because a statute of limitations would impair  
11       the action and the consultation required could not be  
12       obtained before the expiration of the statute of  
13       limitations. If an affidavit is executed pursuant to this  
14       paragraph, the certificate and written report required by  
15       paragraph 1 shall be filed within 90 days after the filing  
16       of the complaint. No additional 90 day extensions shall be  
17       granted. The defendant shall be excused from answering or  
18       otherwise pleading until 30 days after being served with a  
19       certificate required by paragraph 1.

20           3. That a request has been made by the plaintiff or his  
21       attorney for examination and copying of records pursuant to  
22       Part 20 of Article VIII of this Code and the party required  
23       to comply under those Sections has failed to produce such  
24       records within 60 days of the receipt of the request. If an  
25       affidavit is executed pursuant to this paragraph, the  
26       certificate and written report required by paragraph 1  
27       shall be filed within 90 days following receipt of the  
28       requested records. All defendants except those whose  
29       failure to comply with Part 20 of Article VIII of this Code  
30       is the basis for an affidavit under this paragraph shall be  
31       excused from answering or otherwise pleading until 30 days  
32       after being served with the certificate required by  
33       paragraph 1.

34           (b) Where a certificate and written report are required  
35       pursuant to this Section a separate certificate and written  
36       report shall be filed as to each defendant who has been named

1 in the complaint and shall be filed as to each defendant named  
2 at a later time.

3 (c) Where the plaintiff intends to rely on the doctrine of  
4 "res ipsa loquitur", as defined by Section 2-1113 of this Code,  
5 the certificate and written report must state that, in the  
6 opinion of the reviewing health professional, negligence has  
7 occurred in the course of medical treatment. The affiant shall  
8 certify upon filing of the complaint that he is relying on the  
9 doctrine of "res ipsa loquitur".

10 (d) When the attorney intends to rely on the doctrine of  
11 failure to inform of the consequences of the procedure, the  
12 attorney shall certify upon the filing of the complaint that  
13 the reviewing health professional has, after reviewing the  
14 medical record and other relevant materials involved in the  
15 particular action, concluded that a reasonable health  
16 professional would have informed the patient of the  
17 consequences of the procedure.

18 (e) Allegations and denials in the affidavit, made without  
19 reasonable cause and found to be untrue, shall subject the  
20 party pleading them or his attorney, or both, to the payment of  
21 reasonable expenses, actually incurred by the other party by  
22 reason of the untrue pleading, together with reasonable  
23 attorneys' fees to be summarily taxed by the court upon motion  
24 made within 30 days of the judgment or dismissal. In no event  
25 shall the award for attorneys' fees and expenses exceed those  
26 actually paid by the moving party, including the insurer, if  
27 any. In proceedings under this paragraph (e), the moving party  
28 shall have the right to depose and examine any and all  
29 reviewing health professionals who prepared reports used in  
30 conjunction with an affidavit required by this Section.

31 (f) A reviewing health professional who in good faith  
32 prepares a report used in conjunction with an affidavit  
33 required by this Section shall have civil immunity from  
34 liability which otherwise might result from the preparation of  
35 such report.

36 (g) The failure to file a certificate required by this

1 Section shall be grounds for dismissal under Section 2-619.

2 (h) This Section does not apply to or affect any actions  
3 pending at the time of its effective date, but applies to cases  
4 filed on or after its effective date.

5 (i) This amendatory Act of 1997 does not apply to or affect  
6 any actions pending at the time of its effective date, but  
7 applies to cases filed on or after its effective date.

8 (j) This amendatory Act of 93rd General Assembly does not  
9 apply to or affect any actions pending at the time of its  
10 effective date, but applies to cases filed on or after its  
11 effective date.

12 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

13 (735 ILCS 5/2-625 new)

14 Sec. 2-625. Health care claims based upon apparent or  
15 ostensible agency. In any action against a hospital or hospital  
16 affiliate arising out of the provision of health care in which  
17 the plaintiff seeks damages for any loss, bodily injury, or  
18 death, in a claim based upon apparent or ostensible agency, a  
19 party must allege with specific facts and prove the following:

20 (1) that the alleged principal through its own action  
21 or conduct created the reasonable inference by the  
22 plaintiff that the alleged agent was authorized to act on  
23 behalf of the alleged principal;

24 (2) that the plaintiff reasonably relied upon the  
25 alleged principal's action or conduct suggesting that the  
26 alleged agent was the alleged principal's actual agent; and

27 (3) that a reasonable person would not have sought  
28 goods or services from the alleged principal if that person  
29 knew that the alleged agent was not the alleged principal's  
30 actual agent.

31 A plaintiff basing a claim upon apparent or ostensible  
32 agency must prove these elements by a preponderance of the  
33 evidence.

34 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

1 (Text of Section WITHOUT the changes made by P.A. 89-7,  
2 which has been held unconstitutional)

3 Sec. 2-1107.1. Jury instruction in tort actions. In all  
4 actions on account of bodily injury or death or physical damage  
5 to property based on negligence, or product liability based on  
6 strict tort liability, the court shall instruct the jury in  
7 writing, to the extent that it is true, that any award of  
8 compensatory damages will not be taxable under federal or State  
9 income tax law and that the defendant shall be found not liable  
10 if the jury finds that the contributory fault of the plaintiff  
11 is more than 50% of the proximate cause of the injury or damage  
12 for which recovery is sought.

13 This amendatory Act of the 93rd General Assembly applies to  
14 causes of action filed on or after its effective date.

15 (Source: P.A. 84-1431.)

16 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

17 (Text of Section WITHOUT the changes made by P.A. 89-7,  
18 which has been held unconstitutional)

19 Sec. 2-1109. Itemized verdicts.

20 (a) In every case where damages for bodily injury or death  
21 ~~to the person~~ are assessed by the jury the verdict shall be  
22 itemized so as to reflect the monetary distribution, if any,  
23 among economic loss and non-economic loss, ~~if any,~~ and, in  
24 healing art medical malpractice cases, further itemized so as  
25 to reflect the distribution of economic loss by category, such  
26 itemization of economic loss by category to include: (a)  
27 amounts intended to compensate for reasonable expenses which  
28 have been incurred, or which will be incurred, for necessary  
29 medical, surgical, x-ray, dental, or other health or  
30 rehabilitative services, drugs, and therapy; (b) amounts  
31 intended to compensate for lost wages or loss of earning  
32 capacity; and (c) all other economic losses claimed by the  
33 plaintiff or granted by the jury. Each category of economic  
34 loss shall be further itemized into amounts intended to  
35 compensate for losses which have been incurred prior to the

1 verdict and amounts intended to compensate for future losses  
2 ~~which will be incurred in the future.~~

3 (b) In all actions on account of bodily injury or death  
4 based on negligence, including healing art malpractice  
5 actions, the following terms have the following meanings:

6 (i) "Economic loss" or "economic damages" means all  
7 damages that are tangible, such as damages for past and  
8 future medical expenses, loss of income or earnings and  
9 other property loss.

10 (ii) "Non-economic loss" or "non-economic damages"  
11 means damages that are intangible, including but not  
12 limited to damages for pain and suffering, disability,  
13 disfigurement, loss of consortium, and loss of society.

14 (iii) "Compensatory damages" or "actual damages" are  
15 the sum of economic and non-economic damages.

16 (c) Nothing in this Section shall be construed to create a  
17 cause of action.

18 (d) This amendatory Act of the 93rd General Assembly  
19 applies to causes of action filed on or after its effective  
20 date.

21 (Source: P.A. 84-7.)

22 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

23 (Text of Section WITHOUT the changes made by P.A. 89-7,  
24 which has been held unconstitutional)

25 Sec. 2-1702. Economic/Non-Economic Loss. As used in this  
26 Part, "economic loss" and "non-economic loss" have the same  
27 meanings as in Section 2-1109(b). †

28 ~~(a) "Economic loss" means all pecuniary harm for which~~  
29 ~~damages are recoverable.~~

30 ~~(b) "Non-economic loss" means loss of consortium and all~~  
31 ~~nonpecuniary harm for which damages are recoverable,~~  
32 ~~including, without limitation, damages for pain and suffering,~~  
33 ~~inconvenience, disfigurement, and physical impairment.~~

34 (Source: P.A. 84-7.)



1 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

2 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~  
3 ~~Action~~. As used in this Code Part, "healing art medical  
4 malpractice action" means any action, whether in tort, contract  
5 or otherwise, in which the plaintiff seeks damages for injuries  
6 or death by reason of medical, hospital, or other healing art  
7 malpractice including but not limited to medical, nursing,  
8 dental, or podiatric malpractice. The term "healing art" shall  
9 not include care and treatment by spiritual means through  
10 prayer in accord with the tenets and practices of a recognized  
11 church or religious denomination.

12 (Source: P.A. 84-7.)

13 (735 ILCS 5/8-802) (from Ch. 110, par. 8-802)

14 Sec. 8-802. Healthcare practitioner ~~Physician~~ and patient.  
15 No physician, ~~or~~ surgeon, psychologist, nurse, mental health  
16 worker, therapist, or other healing art practitioner (referred  
17 to in this Section as "healthcare practitioner") shall be  
18 permitted to disclose any information he or she may have  
19 acquired in attending any patient in a professional character,  
20 necessary to enable him or her professionally to serve the  
21 patient, except only (1) in trials for homicide when the  
22 disclosure relates directly to the fact or immediate  
23 circumstances of the homicide, (2) in actions, civil or  
24 criminal, against the healthcare practitioner ~~physician~~ for  
25 malpractice, (3) with the expressed consent of the patient, or  
26 in case of his or her death or disability, of his or her  
27 personal representative or other person authorized to sue for  
28 personal injury or of the beneficiary of an insurance policy on  
29 his or her life, health, or physical condition, (4) in all  
30 actions brought by or against the patient, his or her personal  
31 representative, a beneficiary under a policy of insurance, or  
32 the executor or administrator of his or her estate wherein the  
33 patient's physical or mental condition is an issue, (4.1) in  
34 all actions brought against the patient, his or her personal  
35 representative, a beneficiary under a policy of insurance, or

1 the executor or administrator of his or her estate wherein the  
2 patient's physical or mental condition is an issue, (5) upon an  
3 issue as to the validity of a document as a will of the  
4 patient, (6) in any criminal action where the charge is either  
5 first degree murder by abortion, attempted abortion or  
6 abortion, (7) in actions, civil or criminal, arising from the  
7 filing of a report in compliance with the Abused and Neglected  
8 Child Reporting Act, (8) to any department, agency, institution  
9 or facility which has custody of the patient pursuant to State  
10 statute or any court order of commitment, (9) in prosecutions  
11 where written results of blood alcohol tests are admissible  
12 pursuant to Section 11-501.4 of the Illinois Vehicle Code, (10)  
13 in prosecutions where written results of blood alcohol tests  
14 are admissible under Section 5-11a of the Boat Registration and  
15 Safety Act, or (11) in criminal actions arising from the filing  
16 of a report of suspected terrorist offense in compliance with  
17 Section 29D-10(p) (7) of the Criminal Code of 1961.

18 A health care practitioner shall have the right to: (i)  
19 communicate at any time and in any fashion with his or her own  
20 counsel and professional liability insurer concerning any care  
21 or treatment he or she provided, or assisted in providing, to  
22 any patient; and (ii) communicate at any time and in any  
23 fashion with his or her present or former employer, principal,  
24 partner, professional corporation, professional liability  
25 insurer, or counsel for the same, concerning care or treatment  
26 he or she provided, or assisted in providing, to any patient  
27 during the pendency and within the scope of his or her  
28 employment or affiliation with the employer, principal,  
29 partner, or professional corporation.

30 In the event of a conflict between the application of this  
31 Section and the Mental Health and Developmental Disabilities  
32 Confidentiality Act to a specific situation, the provisions of  
33 the Mental Health and Developmental Disabilities  
34 Confidentiality Act shall control.

35 This amendatory Act of the 93rd General Assembly applies to  
36 causes of action filed on or after its effective date.

1 (Source: P.A. 87-803; 92-854, eff. 12-5-02.)

2 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

3 Sec. 8-1901. Admission of liability - Effect.

4 (a) The providing of, or payment for, medical, surgical,  
5 hospital, or rehabilitation services, facilities, or equipment  
6 by or on behalf of any person, or the offer to provide, or pay  
7 for, any one or more of the foregoing, shall not be construed  
8 as an admission of any liability by such person or persons.  
9 Testimony, writings, records, reports or information with  
10 respect to the foregoing shall not be admissible in evidence as  
11 an admission of any liability in any action of any kind in any  
12 court or before any commission, administrative agency, or other  
13 tribunal in this State, except at the instance of the person or  
14 persons so making any such provision, payment or offer.

15 (b) Any expression of grief, apology, remedial action, or  
16 explanation provided by a health care provider, including, but  
17 not limited to, a statement that the health care provider is  
18 "sorry" for the outcome to a patient, the patient's family, or  
19 the patient's legal representative about an inadequate or  
20 unanticipated treatment or care outcome that is provided within  
21 72 hours of when the provider knew or should have known of the  
22 potential cause of such outcome shall not be admissible as  
23 evidence, nor discoverable in any action of any kind in any  
24 court or before any tribunal, board, agency, or person. The  
25 disclosure of any such information, whether proper, or  
26 improper, shall not waive or have any effect upon its  
27 confidentiality, nondiscoverability, or inadmissibility. The  
28 disclosure of the information for the purpose of bringing a  
29 claim for damages against a provider is unlawful and any person  
30 convicted of violating any of the provisions of this Section is  
31 guilty of a Class A misdemeanor. As used in this Section, a  
32 "health care provider" is any hospital, nursing home or other  
33 facility, or employee or agent thereof, a physician, or other  
34 licensed health care professional. Nothing in this Section  
35 precludes the discovery or admissibility of any other facts

1 regarding the patient's treatment or outcome as otherwise  
2 permitted by law.

3 (Source: P.A. 82-280.)

4 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

5 (Text of Section WITHOUT the changes made by P.A. 89-7,  
6 which has been held unconstitutional)

7 Sec. 8-2501. Expert Witness Standards. In any case in which  
8 the standard of care applicable to ~~given by~~ a medical  
9 professional ~~profession~~ is at issue, the court shall apply the  
10 following standards to determine if a witness qualifies as an  
11 expert witness and can testify on the issue of the appropriate  
12 standard of care.

13 (a) Whether the witness is board certified or board  
14 eligible in the same medical specialties as the defendant and  
15 is familiar with the same ~~Relationship of the medical~~  
16 ~~specialties of the witness to the~~ medical problem or problems,  
17 or and the type of treatment administered in the case;

18 (b) Whether the witness has devoted 75% ~~a substantial~~  
19 ~~portion~~ of his or her working hours ~~time~~ to the practice of  
20 medicine, teaching or University based research in relation to  
21 the medical care and type of treatment at issue which gave rise  
22 to the medical problem of which the plaintiff complains;

23 (c) whether the witness is licensed by a state or the  
24 District of Columbia in the same profession as the defendant;  
25 and

26 (d) whether, in the case against a nonspecialist, the  
27 witness can demonstrate a sufficient familiarity with the  
28 standard of care practiced in this State.

29 An expert shall provide proof of active practice, teaching,  
30 or engaging in university-based research. If retired, an expert  
31 must provide proof of attendance and completion of continuing  
32 education courses for 3 years previous to giving testimony. An  
33 expert who has not actively practiced, taught, or been engaged  
34 in university-based research for 10 years may not be qualified  
35 as an expert witness.

1       This amendatory Act of the 93rd General Assembly applies to  
2       causes of action filed on or after its effective date.

3       (Source: P.A. 84-7.)

4             (735 ILCS 5/8-2505 new)

5       Sec. 8-2505. Preservation of emergency medical care.

6       (a) The General Assembly acknowledges many hospitals and  
7       physicians provide great benefits to the citizens of Illinois  
8       by operating emergency departments and trauma centers and  
9       providing services to individuals in need of emergency care  
10       throughout the State, without regard to their ability to pay  
11       for such care and often without payment for services. The  
12       General Assembly also acknowledges many hospitals and  
13       physicians are discontinuing their status as trauma centers or  
14       reducing the scope of their emergency care due to the fear of  
15       lawsuits based on claims of healing art malpractice. The public  
16       and society in general will suffer if these trauma centers  
17       cease operations or hospital emergency departments reduce  
18       their level of emergency care.

19       (b) Any physician licensed to practice medicine in all its  
20       branches under the Medical Practice Act of 1987, any licensed  
21       hospital and any of the hospital's employees, agents, apparent  
22       agents, and independent contractors, who, in good faith  
23       provides emergency care or services to a person who is in need  
24       of emergency health care services or treatment and has  
25       presented to a hospital for emergency health care services,  
26       shall not be liable for civil damages as a result of his, her,  
27       or its acts or omissions, except for willful or wanton  
28       misconduct on the part of the physician, the hospital, or any  
29       of the hospital's employees, independent contractors, agents,  
30       or apparent agents in providing the care.

31             (735 ILCS 5/13-217) (from Ch. 110, par. 13-217)

32       (Text of Section WITHOUT the changes made by P.A. 89-7,  
33       which has been held unconstitutional)

34       Sec. 13-217. Reversal or dismissal. In the actions

1 specified in Article XIII of this Act or any other act or  
2 contract where the time for commencing an action is limited, if  
3 judgment is entered for the plaintiff but reversed on appeal,  
4 or if there is a verdict in favor of the plaintiff and, upon a  
5 motion in arrest of judgment, the judgment is entered against  
6 the plaintiff, ~~or the action is voluntarily dismissed by the~~  
7 ~~plaintiff, or the action is dismissed for want of prosecution,~~  
8 or the action is dismissed by a United States District Court  
9 for lack of jurisdiction, or the action is dismissed by a  
10 United States District Court for improper venue, then, whether  
11 or not the time limitation for bringing such action expires  
12 during the pendency of such action, the plaintiff, his or her  
13 heirs, executors or administrators may commence a new action  
14 within one year or within the remaining period of limitation,  
15 whichever is greater, after such judgment is reversed or  
16 entered against the plaintiff, ~~or after the action is~~  
17 ~~voluntarily dismissed by the plaintiff, or the action is~~  
18 ~~dismissed for want of prosecution,~~ or the action is dismissed  
19 by a United States District Court for lack of jurisdiction, or  
20 the action is dismissed by a United States District Court for  
21 improper venue. No action that is voluntarily dismissed by the  
22 plaintiff or dismissed for want of prosecution by the court may  
23 be filed where the time for commencing the action has expired.

24 This amendatory Act of the 93rd General Assembly applies to  
25 causes of action accruing on or after its effective date.

26 (Source: P.A. 87-1252.)

27 Section 5-30. The Mental Health and Developmental  
28 Disabilities Confidentiality Act is amended by changing  
29 Sections 9 and 10 as follows:

30 (740 ILCS 110/9) (from Ch. 91 1/2, par. 809)

31 (Text of Section WITHOUT the changes made by P.A. 89-7,  
32 which has been held unconstitutional)

33 Sec. 9. Therapist's disclosure without consent. In the  
34 course of providing services and after the conclusion of the

1 provision of services, a therapist may disclose a record or  
2 communications without consent to:

3 (1) the therapist's supervisor, a consulting  
4 therapist, members of a staff team participating in the  
5 provision of services, a record custodian, or a person  
6 acting under the supervision and control of the therapist;

7 (2) persons conducting a peer review of the services  
8 being provided;

9 (3) the Institute for Juvenile Research and the  
10 Institute for the Study of Developmental Disabilities;

11 (4) an attorney or advocate consulted by a therapist or  
12 agency which provides services concerning the therapist's  
13 or agency's legal rights or duties in relation to the  
14 recipient and the services being provided; and

15 (5) the Inspector General of the Department of Children  
16 and Family Services when such records or communications are  
17 relevant to a pending investigation authorized by Section  
18 35.5 of the Children and Family Services Act where:

19 (A) the recipient was either (i) a parent, foster  
20 parent, or caretaker who is an alleged perpetrator of  
21 abuse or neglect or the subject of a dependency  
22 investigation or (ii) a non-ward victim of alleged  
23 abuse or neglect, and

24 (B) available information demonstrates that the  
25 mental health of the recipient was or should have been  
26 an issue to the safety of the child.

27 In the course of providing services, a therapist may  
28 disclose a record or communications without consent to any  
29 department, agency, institution or facility which has custody  
30 of the recipient pursuant to State statute or any court order  
31 of commitment.

32 Information may be disclosed under this Section only to the  
33 extent that knowledge of the record or communications is  
34 essential to the purpose for which disclosure is made and only  
35 after the recipient is informed that such disclosure may be  
36 made. A person to whom disclosure is made under this Section

1 shall not redisclose any information except as provided in this  
2 Act.

3 Notwithstanding any other provision of this Section, a  
4 therapist has the right to communicate at any time and in any  
5 fashion with his or her counsel or professional liability  
6 insurance carrier, or both, concerning any care or treatment he  
7 or she provided, or assisted in providing, to any recipient. A  
8 therapist has the right to communicate at any time and in any  
9 fashion with his or her present or former employer, principal,  
10 partner, professional corporation, or professional liability  
11 insurance carrier, or counsel for any of those entities,  
12 concerning any care or treatment he or she provided, or  
13 assisted in providing, to the recipient within the scope of his  
14 or her employment, affiliation, or other agency with the  
15 employer, principal, partner, or professional corporation.

16 This amendatory Act of the 93rd General Assembly applies to  
17 causes of action filed on or after its effective date.

18 (Source: P.A. 86-955; 90-512, eff. 8-22-97.)

19 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

20 Sec. 10. Disclosure in civil, criminal, and other  
21 proceedings.

22 (a) Except as provided herein, in any civil, criminal,  
23 administrative, or legislative proceeding, or in any  
24 proceeding preliminary thereto, a recipient, and a therapist on  
25 behalf and in the interest of a recipient, has the privilege to  
26 refuse to disclose and to prevent the disclosure of the  
27 recipient's record or communications.

28 (1) Records and communications may be disclosed in a  
29 civil, criminal or administrative proceeding in which the  
30 recipient introduces his mental condition or any aspect of  
31 his services received for such condition as an element of  
32 his claim or defense, if and only to the extent the court  
33 in which the proceedings have been brought, or, in the case  
34 of an administrative proceeding, the court to which an  
35 appeal or other action for review of an administrative



1 determination may be taken, finds, after in camera  
2 examination of testimony or other evidence, that it is  
3 relevant, probative, not unduly prejudicial or  
4 inflammatory, and otherwise clearly admissible; that other  
5 satisfactory evidence is demonstrably unsatisfactory as  
6 evidence of the facts sought to be established by such  
7 evidence; and that disclosure is more important to the  
8 interests of substantial justice than protection from  
9 injury to the therapist-recipient relationship or to the  
10 recipient or other whom disclosure is likely to harm.  
11 Except in a criminal proceeding in which the recipient, who  
12 is accused in that proceeding, raises the defense of  
13 insanity, no record or communication between a therapist  
14 and a recipient shall be deemed relevant for purposes of  
15 this subsection, except the fact of treatment, the cost of  
16 services and the ultimate diagnosis unless the party  
17 seeking disclosure of the communication clearly  
18 establishes in the trial court a compelling need for its  
19 production. However, for purposes of this Act, in any  
20 action brought or defended under the Illinois Marriage and  
21 Dissolution of Marriage Act, or in any action in which pain  
22 and suffering is an element of the claim, mental condition  
23 shall not be deemed to be introduced merely by making such  
24 claim and shall be deemed to be introduced only if the  
25 recipient or a witness on his behalf first testifies  
26 concerning the record or communication.

27 (2) Records or communications may be disclosed in a  
28 civil proceeding after the recipient's death when the  
29 recipient's physical or mental condition has been  
30 introduced as an element of a claim or defense by any party  
31 claiming or defending through or as a beneficiary of the  
32 recipient, provided the court finds, after in camera  
33 examination of the evidence, that it is relevant,  
34 probative, and otherwise clearly admissible; that other  
35 satisfactory evidence is not available regarding the facts  
36 sought to be established by such evidence; and that

1 disclosure is more important to the interests of  
2 substantial justice than protection from any injury which  
3 disclosure is likely to cause.

4 (3) In the event of a claim made or an action filed by  
5 a recipient, or, following the recipient's death, by any  
6 party claiming as a beneficiary of the recipient for injury  
7 caused in the course of providing services to that ~~such~~  
8 recipient, the therapist ~~and other persons whose actions~~  
9 ~~are alleged to have been the cause of injury may disclose~~  
10 ~~pertinent records and communications to an attorney or~~  
11 ~~attorneys engaged to render advice about and to provide~~  
12 ~~representation in connection with such matter and to~~  
13 ~~persons working under the supervision of such attorney or~~  
14 ~~attorneys, and may testify as to pertinent such records or~~  
15 communications ~~communication~~ in any administrative,  
16 judicial or discovery proceeding for the purpose of  
17 preparing and presenting a defense against the ~~such~~ claim  
18 or action.

19 (3.1) A therapist has the right to communicate at any  
20 time and in any fashion with his or her own counsel or  
21 professional liability insurance carrier, or both,  
22 concerning any care or treatment he or she provided, or  
23 assisted in providing, to any patient.

24 (3.2) A therapist has the right to communicate at any  
25 time and in any fashion with his or her present or former  
26 employer, principal, partner, professional corporation, or  
27 professional liability insurance carrier, or counsel for  
28 any of those entities, concerning any care or treatment he  
29 or she provided, or assisted in providing, to any patient  
30 within the scope of his or her employment, affiliation, or  
31 other agency with the employer, principal, partner, or  
32 professional corporation.

33 (4) Records and communications made to or by a  
34 therapist in the course of examination ordered by a court  
35 for good cause shown may, if otherwise relevant and  
36 admissible, be disclosed in a civil, criminal, or

1 administrative proceeding in which the recipient is a party  
2 or in appropriate pretrial proceedings, provided such  
3 court has found that the recipient has been as adequately  
4 and as effectively as possible informed before submitting  
5 to such examination that such records and communications  
6 would not be considered confidential or privileged. Such  
7 records and communications shall be admissible only as to  
8 issues involving the recipient's physical or mental  
9 condition and only to the extent that these are germane to  
10 such proceedings.

11 (5) Records and communications may be disclosed in a  
12 proceeding under the Probate Act of 1975, to determine a  
13 recipient's competency or need for guardianship, provided  
14 that the disclosure is made only with respect to that  
15 issue.

16 (6) Records and communications may be disclosed when  
17 such are made during treatment which the recipient is  
18 ordered to undergo to render him fit to stand trial on a  
19 criminal charge, provided that the disclosure is made only  
20 with respect to the issue of fitness to stand trial.

21 (7) Records and communications of the recipient may be  
22 disclosed in any civil or administrative proceeding  
23 involving the validity of or benefits under a life,  
24 accident, health or disability insurance policy or  
25 certificate, or Health Care Service Plan Contract,  
26 insuring the recipient, but only if and to the extent that  
27 the recipient's mental condition, or treatment or services  
28 in connection therewith, is a material element of any claim  
29 or defense of any party, provided that information sought  
30 or disclosed shall not be redisclosed except in connection  
31 with the proceeding in which disclosure is made.

32 (8) Records or communications may be disclosed when  
33 such are relevant to a matter in issue in any action  
34 brought under this Act and proceedings preliminary  
35 thereto, provided that any information so disclosed shall  
36 not be utilized for any other purpose nor be redisclosed

1           except in connection with such action or preliminary  
2           proceedings.

3           (9) Records and communications of the recipient may be  
4           disclosed in investigations of and trials for homicide when  
5           the disclosure relates directly to the fact or immediate  
6           circumstances of the homicide.

7           (10) Records and communications of a deceased  
8           recipient may be disclosed to a coroner conducting a  
9           preliminary investigation into the recipient's death under  
10          Section 3-3013 of the Counties Code. However, records and  
11          communications of the deceased recipient disclosed in an  
12          investigation shall be limited solely to the deceased  
13          recipient's records and communications relating to the  
14          factual circumstances of the incident being investigated  
15          in a mental health facility.

16          (11) Records and communications of a recipient shall be  
17          disclosed in a proceeding where a petition or motion is  
18          filed under the Juvenile Court Act of 1987 and the  
19          recipient is named as a parent, guardian, or legal  
20          custodian of a minor who is the subject of a petition for  
21          wardship as described in Section 2-3 of that Act or a minor  
22          who is the subject of a petition for wardship as described  
23          in Section 2-4 of that Act alleging the minor is abused,  
24          neglected, or dependent or the recipient is named as a  
25          parent of a child who is the subject of a petition,  
26          supplemental petition, or motion to appoint a guardian with  
27          the power to consent to adoption under Section 2-29 of the  
28          Juvenile Court Act of 1987.

29          (12) Records and communications of a recipient may be  
30          disclosed when disclosure is necessary to collect sums or  
31          receive third party payment representing charges for  
32          mental health or developmental disabilities services  
33          provided by a therapist or agency to a recipient; however,  
34          disclosure shall be limited to information needed to pursue  
35          collection, and the information so disclosed may not be  
36          used for any other purposes nor may it be redisclosed

1           except in connection with collection activities. Whenever  
2 records are disclosed pursuant to this subdivision (12),  
3 the recipient of the records shall be advised in writing  
4 that any person who discloses mental health records and  
5 communications in violation of this Act may be subject to  
6 civil liability pursuant to Section 15 of this Act or to  
7 criminal penalties pursuant to Section 16 of this Act or  
8 both.

9           (b) Before a disclosure is made under subsection (a), any  
10 party to the proceeding or any other interested person may  
11 request an in camera review of the record or communications to  
12 be disclosed. The court or agency conducting the proceeding may  
13 hold an in camera review on its own motion, except that this  
14 provision does not apply to paragraph (3.1) of subsection (a)  
15 regarding consultations between a therapist and his or her own  
16 counsel or professional liability insurance carrier or  
17 paragraph (3.2) of subsection (a) regarding consultations  
18 between a therapist and his or her employer, principal,  
19 partner, professional corporation, or professional liability  
20 insurance carrier, or counsel for any of those entities. When,  
21 contrary to the express wish of the recipient, the therapist  
22 asserts a privilege on behalf and in the interest of a  
23 recipient, the court may require that the therapist, in an in  
24 camera hearing, establish that disclosure is not in the best  
25 interest of the recipient. The court or agency may prevent  
26 disclosure or limit disclosure to the extent that other  
27 admissible evidence is sufficient to establish the facts in  
28 issue, except that a court may not prevent or limit disclosures  
29 between a therapist and his or her own counsel or between a  
30 therapist and his or her employer, principal, partner,  
31 professional corporation, or professional liability insurance  
32 carrier, or counsel for any of those entities. The court or  
33 agency may enter such orders as may be necessary in order to  
34 protect the confidentiality, privacy, and safety of the  
35 recipient or of other persons. Any order to disclose or to not  
36 disclose shall be considered a final order for purposes of

1 appeal and shall be subject to interlocutory appeal.

2 (c) A recipient's records and communications may be  
3 disclosed to a duly authorized committee, commission or  
4 subcommittee of the General Assembly which possesses subpoena  
5 and hearing powers, upon a written request approved by a  
6 majority vote of the committee, commission or subcommittee  
7 members. The committee, commission or subcommittee may request  
8 records only for the purposes of investigating or studying  
9 possible violations of recipient rights. The request shall  
10 state the purpose for which disclosure is sought.

11 The facility shall notify the recipient, or his guardian,  
12 and therapist in writing of any disclosure request under this  
13 subsection within 5 business days after such request. Such  
14 notification shall also inform the recipient, or guardian, and  
15 therapist of their right to object to the disclosure within 10  
16 business days after receipt of the notification and shall  
17 include the name, address and telephone number of the  
18 committee, commission or subcommittee member or staff person  
19 with whom an objection shall be filed. If no objection has been  
20 filed within 15 business days after the request for disclosure,  
21 the facility shall disclose the records and communications to  
22 the committee, commission or subcommittee. If an objection has  
23 been filed within 15 business days after the request for  
24 disclosure, the facility shall disclose the records and  
25 communications only after the committee, commission or  
26 subcommittee has permitted the recipient, guardian or  
27 therapist to present his objection in person before it and has  
28 renewed its request for disclosure by a majority vote of its  
29 members.

30 Disclosure under this subsection shall not occur until all  
31 personally identifiable data of the recipient and provider are  
32 removed from the records and communications. Disclosure under  
33 this subsection shall not occur in any public proceeding.

34 (d) No party to any proceeding described under paragraphs  
35 (1), (2), (3), (4), (7), or (8) of subsection (a) of this  
36 Section, nor his or her attorney, shall serve a subpoena

1 seeking to obtain access to records or communications under  
2 this Act unless the subpoena is accompanied by a written order  
3 issued by a judge, authorizing the disclosure of the records or  
4 the issuance of the subpoena. No person shall comply with a  
5 subpoena for records or communications under this Act, unless  
6 the subpoena is accompanied by a written order authorizing the  
7 issuance of the subpoena or the disclosure of the records.

8 (e) When a person has been transported by a peace officer  
9 to a mental health facility, then upon the request of a peace  
10 officer, if the person is allowed to leave the mental health  
11 facility within 48 hours of arrival, excluding Saturdays,  
12 Sundays, and holidays, the facility director shall notify the  
13 local law enforcement authority prior to the release of the  
14 person. The local law enforcement authority may re-disclose the  
15 information as necessary to alert the appropriate enforcement  
16 or prosecuting authority.

17 (f) A recipient's records and communications shall be  
18 disclosed to the Inspector General of the Department of Human  
19 Services within 10 business days of a request by the Inspector  
20 General in the course of an investigation authorized by the  
21 Abused and Neglected Long Term Care Facility Residents  
22 Reporting Act and applicable rule. The request shall be in  
23 writing and signed by the Inspector General or his or her  
24 designee. The request shall state the purpose for which  
25 disclosure is sought. Any person who knowingly and willfully  
26 refuses to comply with such a request is guilty of a Class A  
27 misdemeanor.

28 This amendatory Act of the 93rd General Assembly applies to  
29 causes of action filed on or after its effective date.

30 (Source: P.A. 91-726, eff. 6-2-00; 92-358, eff. 8-15-01;  
31 92-708, eff. 7-19-02.)

32 Section 5-35. The Wrongful Death Act is amended by changing  
33 Section 1 as follows:

34 (740 ILCS 180/1) (from Ch. 70, par. 1)

1 (Text of Section WITHOUT the changes made by P.A. 89-7,  
2 which has been held unconstitutional)

3 Sec. 1. Whenever the death of a person shall be caused by  
4 wrongful act, neglect or default, and the act, neglect or  
5 default is such as would, if death had not ensued, have  
6 entitled the party injured to maintain an action and recover  
7 damages in respect thereof, then and in every such case the  
8 person who or company or corporation which would have been  
9 liable if death had not ensued, shall be liable to an action  
10 for damages, notwithstanding the death of the person injured,  
11 and although the death shall have been caused under such  
12 circumstances as amount in law to felony. No action may be  
13 brought under this Act if the decedent had brought a cause of  
14 action with respect to the same underlying incident or  
15 occurrence that was settled or on which judgment was rendered.

16 This amendatory Act of the 93rd General Assembly applies  
17 only to causes of action accruing on or after its effective  
18 date.

19 (Source: Laws 1853, p. 97.)

20 Section 5-40. The Good Samaritan Act is amended by changing  
21 Section 30 as follows:

22 (745 ILCS 49/30)

23 Sec. 30. Free medical clinic; exemption from civil  
24 liability for services performed without compensation.

25 (a) A person licensed under the Medical Practice Act of  
26 1987, a person licensed to practice the treatment of human  
27 ailments in any other state or territory of the United States,  
28 or a health care professional, including but not limited to an  
29 advanced practice nurse, physician assistant, nurse,  
30 pharmacist, physical therapist, podiatrist, or social worker  
31 licensed in this State or any other state or territory of the  
32 United States, who, in good faith, provides medical treatment,  
33 diagnosis, or advice as a part of the services of an  
34 established free medical clinic providing care to medically



1 indigent patients which is limited to care that does not  
2 require the services of a licensed hospital or ambulatory  
3 surgical treatment center and who receives no fee or  
4 compensation from that source shall not be liable for civil  
5 damages as a result of his or her acts or omissions in  
6 providing that medical treatment, except for willful or wanton  
7 misconduct.

8 (b) For purposes of this Section, a "free medical clinic"  
9 is an organized community based program providing medical care  
10 without charge to individuals unable to pay for it, at which  
11 the care provided does not include ~~the use of general~~  
12 ~~anesthesia or require~~ an overnight stay in a health-care  
13 facility.

14 (c) The provisions of subsection (a) of this Section do not  
15 apply to a particular case unless the free medical clinic has  
16 posted in a conspicuous place on its premises an explanation of  
17 the exemption from civil liability provided herein.

18 (d) The immunity from civil damages provided under  
19 subsection (a) also applies to physicians, hospitals, and other  
20 health care providers that provide further medical treatment,  
21 diagnosis, or advice to a patient upon referral from an  
22 established free medical clinic without fee or compensation.  
23 The immunity for civil damages provided under subsection (a)  
24 also applies to physicians and other health care professionals  
25 that provide medical treatment, diagnosis, or advice at  
26 federally qualified health care centers without fee or  
27 compensation.

28 (e) Nothing in this Section prohibits a free medical clinic  
29 from accepting voluntary contributions for medical services  
30 provided to a patient who has acknowledged his or her ability  
31 and willingness to pay a portion of the value of the medical  
32 services provided.

33 (f) Any voluntary contribution collected for providing  
34 care at a free medical clinic shall be used only to pay  
35 overhead expenses of operating the clinic. No portion of any  
36 moneys collected shall be used to provide a fee or other

1 compensation to any person licensed under Medical Practice Act  
2 of 1987.

3 (Source: P.A. 89-607, eff. 1-1-97; 90-742, eff. 8-13-98.)

4 ARTICLE 90

5 Section 90-90. Severability. If any provision of this Act,  
6 including both the new and the amendatory provisions, or its  
7 application to any person or circumstance is held invalid, the  
8 invalidity of that provision or application does not affect  
9 other provisions or applications of this Act that can be given  
10 effect without the invalid provision or application.

11 ARTICLE 99

12 Section 99-99. Effective date. This Act takes effect upon  
13 becoming law.

1	INDEX	
2	Statutes amended in order of appearance	
3	New Act	
4	20 ILCS 2310/2310-220	was 20 ILCS 2310/55.73
5	215 ILCS 5/155.18a new	
6	305 ILCS 5/5-5.25 new	
7	710 ILCS 15/8	from Ch. 10, par. 208
8	710 ILCS 15/9	from Ch. 10, par. 209
9	735 ILCS 5/2-622	from Ch. 110, par. 2-622
10	735 ILCS 5/2-625 new	
11	735 ILCS 5/2-1107.1	from Ch. 110, par. 2-1107.1
12	735 ILCS 5/2-1109	from Ch. 110, par. 2-1109
13	735 ILCS 5/2-1702	from Ch. 110, par. 2-1702
14	735 ILCS 5/2-1704	from Ch. 110, par. 2-1704
15	735 ILCS 5/8-802	from Ch. 110, par. 8-802
16	735 ILCS 5/8-1901	from Ch. 110, par. 8-1901
17	735 ILCS 5/8-2501	from Ch. 110, par. 8-2501
18	735 ILCS 5/8-2505 new	
19	735 ILCS 5/13-217	from Ch. 110, par. 13-217
20	740 ILCS 110/9	from Ch. 91 1/2, par. 809
21	740 ILCS 110/10	from Ch. 91 1/2, par. 810
22	740 ILCS 180/1	from Ch. 70, par. 1
23	745 ILCS 49/30	