



LEGISLATIVE SUMMARY & ANALYSIS

92nd General Assembly

2001 Session

**Public Policy
Program**

EQUIP FOR EQUALITY

MISSION

Established in 1985, the mission of Equip for Equality is to advance the human and civil rights of people with disabilities in Illinois. Equip for Equality is a private not-for-profit legal advocacy organization designated by the Governor to operate the federally mandated protection and advocacy system (P&A) to safeguard the rights of people with physical and mental disabilities, including developmental disabilities and mental illnesses.

SERVICES, PROGRAMS & PROJECTS

Equip for Equality is the only comprehensive statewide advocacy organization for people with disabilities and their families. All individuals with a disability in Illinois (as defined by the ADA) are eligible for services, including children, senior citizens, and individuals in state-operated facilities, nursing homes, and community-based programs.

- **Self-Advocacy Assistance** – offers free, one-on-one technical assistance to inform individuals about their rights, alternative options and strategies, and steps they may take to advocate on their own behalf or on behalf of a family member.
- **Legal Services** – provides free legal advice and representation in administrative proceedings and federal and state court. Also engages in systems and impact litigation.
- **Training Institute on Disability Rights** – provides education through substantive seminars for people with disabilities and their families. Seminar topics include rights and responsibilities under the Americans with Disabilities Act, protections against employment discrimination, guardianship and advance directives and special education rights.
- **Public Policy Advocacy** – achieves changes in state legislation, public policies and programs to safeguard individual rights and personal safety, enhance choice and self-determination, and promote independence, productivity, and community integration. Drafts and secures passage of state legislation and participates in state regulatory and policymaking processes.
- **Special Projects** – undertakes research and in-depth monitoring projects of specific systems that have a major impact on people with disabilities in Illinois. Findings and recommendations for reform are then released to the public. Recent initiatives include examination of the state’s guardianship system (Guardianship Reform Project) and original research on use of physical restraints in state-operated mental health facilities.

Last year, over 5,600 individuals benefited from the many programs and services of Equip for Equality. In addition, thousands of individuals benefited from its public policy and other systems change initiatives.

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Prepared by Murray Manus,
Legislative Policy Manager

Equip for Equality would like to acknowledge the assistance of Michelle Yokoyama, Hillina Tamrat, Josh Cook, and Meredith Casper in preparing this Legislative Summary & Analysis.

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January, 2002

EQUIP FOR EQUALITY

Pamela A. Hansen, *Chairperson of the Board of Directors*
Zena Naiditch, *President and Chief Executive Officer*

ILLINOIS REGIONAL OFFICES

Northeastern Region (Chicago)

11 E. Adams, Suite 1200, Chicago, Illinois 60603
312/341-0022 800/537-2632 Fax 312/341-0295
TTY 800/610-2779 Se habla Español

Northwestern Region (Rock Island)

1612 Second Ave., P.O. Box 3753, Rock Island, IL 61204
309/786-6868 800/758-6869 (Voice/TTY) Fax 309/786-2393

Central/Southern Region (Springfield)

427 E. Monroe, P.O. Box 276, Springfield, Illinois 62705
217/544-0464 800/758-0464 (Voice/TTY) Fax 217/523-0720

Website: <http://www.equipforequality.org>

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LEGISLATIVE SUMMARY AND ANALYSIS
92nd GENERAL ASSEMBLY, YEAR 2001 SESSION

Overview

The inaugural session of the 92nd General Assembly commencing in January, 2000 was perhaps most noteworthy for the volume of proposed legislation that was filed. Our legislators introduced more than 5,000 bills, the highest number of bills of any legislative session on record.

This *Legislative Summary and Analysis* reports on legislation which had a direct impact on people with disabilities. All the bills listed have been passed by both houses of the General Assembly and have been signed into law by the Governor. Each bill summary will show the bill number, the name(s) of the primary sponsor(s) in the House and Senate, the public act number, the effective date of the new law, and the statutory reference in the Illinois Compiled Statutes.

Guardianship Legislation

One of the biggest disappointments during the legislative session was the inability to pass the legislation that Equip for Equality (EFE) proposed to implement some of the recommendations of its Guardianship Reform Project's Task Force. Among other things, that bill would have amended the adult guardianship section of the Probate Act to delete the reference to all diagnostic categories (mental retardation, cerebral palsy, etc.) contained in the current standard for appointing a guardian. The proposed legal standard would just focus upon a person's decisional capacity and permit guardianship only when the individual was incapable of making decisions affecting the major areas of his or her life.

Also, the current law uses the term "disabled person" to refer to someone who has been determined to meet the legal standard to have a guardian appointed. Equip for Equality believes that this is offensive to people with disabilities because it implies that anyone with a disability should have a guardian. It is also confusing to people with disabilities because it just restates the obvious fact that they are disabled. The use of this term in the law perpetuates the negative stereotypes about people with disabilities that they are not fully capable adults, which contributes to the discrimination against them and creates additional barriers they must overcome to become fully participating members of society. For all of these reasons, the proposed legislation would have changed this term to a purely descriptive one - "person in need of a guardian."

Sen. Kathleen Parker (R-29) was lead sponsor of Equip for Equality's bill in the Senate (SB 112) with co-sponsors Sen. Lisa Madigan (D-17) and Sen. Barack Obama (D-13). Rep. Kevin McCarthy (D-37) was the lead sponsor of the companion bill in the House (HB 3173) that was co-sponsored by Rep. Barbara Flynn Currie (D-25) and Rep. Patricia Reid Lindner (R-65). Despite the strong backing of 21 disability-related organizations and service providers, the legislation was not acted upon during this legislative session. An important factor in the bill's failure to move was the opposition by the Chicago and Illinois State Bar Associations and the judges of the Probate Division of the Circuit Court of Cook County, Illinois.

Equip for Equality intends to continue working to implement the recommendations of the Guardianship Reform Project Task Force.

Legislative Action on Olmstead Decision

The U.S. Supreme Court issued its decision in the *Olmstead* case in June 1999. Briefly, this case held that continuing to maintain persons with disabilities in institutional settings when they could live in the community with appropriate support services was discrimination prohibited by the Americans with Disabilities Act, provided that placing them in the community could be reasonably accommodated with the resources available to the state and the needs of others receiving state supported services.

Several *Olmstead* bills were introduced in this year's legislative session that could have initiated the process of regularly moving people with disabilities out of institutions when they neither need to be in an institutional setting nor desire to live in one. Two examples are House Bill 3216, which would have created a program to move 1,000 people with mental illness out of institutional settings over the next four years, and House Bill 2437, which required the Governor to appoint an advisory committee to develop a statewide implementation plan to comply with the *Olmstead* decision. Unfortunately, none of these bills was adopted.

The only *Olmstead* related bill that was passed by the legislature was Senate Bill 816, the "Prevention of Unnecessary Institutionalization Act", which would only affect people who reside in the community but are at risk for becoming institutionalized. However, the bill's programs to assist people with disabilities to remain in their homes cannot be implemented until the legislature provides funding for that purpose, which has not yet occurred.

Legislative Victories

Some important legislation that EFE strongly supported did pass the General Assembly and was signed into law by the Governor:

- Senate Bill 1341 enacts a limited form of mental health parity in Illinois, a goal that mental health advocates had sought for several years. The bill generally requires group health policies for companies with more than 50 employees to cover treatment for serious mental illness under the same terms and conditions as for other illnesses and diseases.
- Senate Bill 1504 establishes a registry of employees of state facilities and community agencies who commit abuse or egregious neglect against people with mental illness or developmental disabilities. Once a person's name is placed on the registry, he or she cannot obtain employment anywhere in the state with an employer providing services to people with mental illness or developmental disabilities. Equip for Equality is a member of a committee working with several state departments to develop regulations to implement this law, including defining the term "egregious neglect."
- Senator Parker's Mental Health Task Force, which included EFE, addressed the issue of mental health treatment of people in jails and other pre-trial detention facilities. The task

force developed and supported passage of three bills (SB 434, 435, 437) that became law. These bills are intended to improve mental health services during the time that people are in these facilities and upon their release, and also seek to deflect people with mental illness from the criminal justice system to treatment programs.

Budgetary Issues

Mental Health Summit

Equip for Equality is part of the Mental Health Summit, a group comprised of advocacy organizations, provider groups, people with mental illness and their families, and several legislators. The Summit worked diligently to secure a \$171 million increase in Illinois' mental health budget over the next three years. An appropriations bill was introduced in the House (HB 1928) by Rep. Patti Bellock (R-81) with 103 co-sponsors requesting \$18 million in additional state appropriations to increase community-based mental health services for children and adolescents.

Despite all the efforts of members of the Mental Health Summit and this strong showing of legislative support, HB 1928 never moved out of committee and the final budget approved by the General Assembly contained only a \$2 million increase for mental health services. While EFE and the other Summit members are extremely disappointed, we are prepared to advocate over the long term to obtain the sorely needed resources to improve the mental health system in Illinois.

Early Intervention Program

The Department of Human Services' Early Intervention Program provides treatment for children from birth to age 3 who have been diagnosed with a developmental disability or are developmentally delayed. For budgetary reasons, DHS proposed significant cutbacks in the program by creating a two tier system of services available to these children under a program called Early Start. DHS planned to implement Early Start without giving parents or other interested parties the opportunity to provide input into the design of this new program and without exploring other means to address the financial problems of the early intervention system.

A coalition of several disability and children's groups, including EFE, was successful in preventing DHS from making its planned cutbacks in early intervention services. Senate Bill 461, which was supported by early intervention advocates, made significant changes in the early intervention program that are designed to make the program financially solvent without reducing needed services.

Other Budgetary Matters

Overall, people with disabilities did not fare well in the budget adopted by the legislature and signed by the Governor for the fiscal year that started on July 1, 2001. In addition to the insignificant increase for mental health services, the final state budget included the smallest expansion of new residential services for people with disabilities in many years.

The budget included a 2% annual cost of doing business increase for human services providers. However, since this increase only becomes effective on April 1, 2002, the net result was only a .5% increase for the current fiscal year. The entire 2% increase will take effect in the next fiscal year starting on July 1, 2002. However, this increase is not sufficient to relieve the financial difficulties being experienced by providers, which have resulted in the inability to attract and retain qualified staff, program cutbacks, and staff reductions.

The current budget failed to increase funding for the Family Assistance and Home-Based Support Services Programs, which provide financial assistance so that children and adults with developmental disabilities or serious mental illness can remain in a home environment. As a result of budget increases over the last few years, enrollment in these programs has increased from approximately 1,200 to over 3,000 today. However, several thousand adults and families who could qualify for these programs cannot enroll in them because of budgetary constraints.

On the positive side, the budget contained a \$1.00 per hour raise, strongly supported by EFE, for employees of community agencies who provide services to people with developmental disabilities, retroactive to March 1, 2001. Equip for Equality will also support any future efforts to obtain wage increases for community based employees who work with people who have mental illness.

ANALYSIS OF LEGISLATION

ABUSE AND NEGLECT

Inspector General Investigations

House Bill 3003, P.A. 92-358

Representatives Brady, Berns, Bellock

Summary/Highlights

This bill is designed to facilitate investigations by the DHS Office of the Inspector General (OIG) into allegations of abuse or neglect against recipients of services in any mental health or developmental facility operated by the Department, and in any mental health or developmental disability community based program that is licensed, certified or funded by the Department. Prior to this bill the OIG had been experiencing difficulty obtaining the records of recipients from some community agencies who objected on confidentiality grounds. This bill requires that the recipient's records be disclosed to the OIG within 10 business days of a request made in the course of an investigation into abuse or neglect. Any person who knowingly and willfully refuses to turn over these records is guilty of a Class A Misdemeanor.

Additionally, the bill extends the life of the OIG for another two years, from January 1, 2002 to January 1, 2004.

Effective Date: August 15, 2001

Statutes Affected: 210 ILCS 30/6.2(h); 30/6.3-30/6.8; 740 ILCS 110/10(f) (new)

Employee Registry

Senate Bill 1504; P.A. 92-473

Senator Syverson

Summary

Senate Bill 1504 requires for the first time that individuals who have physically or sexually abused or egregiously neglected a service recipient in a mental health or developmental disabilities facility or program operated, licensed, certified or funded by the Department of Human Services be reported to the Department of Public Health's nurse aide registry. Persons reported to the registry cannot be employed by a state facility or a community agency that provides mental health or developmental disability services. Senate Bill 1504 also grants additional rights during the investigative process to the victim of the abuse or neglect and to the employee who is the alleged perpetrator.

Highlights

The Department of Public Health (DPH) currently maintains a nurse aide registry that contains information about nursing assistants, habilitation aides, and child care aides in long term care facilities who are eligible for hire based on completing all required training. Under current Illinois law, when one of these employees of a long term care facility (such as a nursing home) is found to have abused or neglected a resident or misappropriated a resident's property, DPH must report this finding to the registry. That individual is barred from employment in any long term care facility in the state. However, prior to Senate Bill 1504, there was no similar bar to employment for employees of state mental health or developmental disabilities facilities, or employees of community programs under the authority of the Department of Human Services (DHS), who abuse or neglect service recipients. Senate Bill 1504 establishes a system for reporting these employees to the DPH registry under the following framework:

- Under the Abused and Neglected Long Term Care Facility Residents Reporting Act, the Office of the Inspector General (OIG) within DHS is responsible for investigating all allegations of abuse or neglect of people with mental illness or developmental disabilities at state facilities or in community based programs. Upon receiving such an allegation, the OIG first conducts a preliminary investigation. The Inspector General himself determines whether to accept or reject this preliminary report.
- Under current law, the OIG is not required to provide notice of this determination to any third party and only the state facility or community agency which employs the alleged perpetrator has the right to request clarification or reconsideration of that decision based upon additional information. Senate Bill 1504 mandates that notice of the Inspector General's determination to accept or reject the preliminary report be given to the person who claims to be the victim of abuse or neglect, to the person or persons alleged to be responsible for the abuse or neglect, and to the facility or agency where the abuse or neglect occurred. Additionally, the alleged victim and the person alleged to have caused the abuse or neglect will now have the right to request clarification or reconsideration of this determination based on additional information.
- After providing any requested reconsideration or clarification as necessary, the OIG then determines whether the claim of abuse or neglect is substantiated. If so, the Inspector General must include in its final report to the Secretary of DHS any mitigating or aggravating circumstances discovered during that investigation. Furthermore, in a substantiated case involving neglect, the Inspector General must also determine whether the neglect rises to the level of egregious neglect.
- In these cases, prior to being reported to the registry, the employee must be given notice of the basis for the OIG's final report and notice of the opportunity for a hearing conducted by DHS to contest the report. This hearing is separate and distinct from an internal OIG appeals process that currently also exists. If the person does not request a hearing or after the hearing DHS establishes by a preponderance of the evidence that the OIG's finding of physical or sexual abuse or egregious neglect warrants a report to the registry, the finding becomes part of the DPH registry. A brief

statement from the reported individual if he or she chooses to make one becomes part of the registry as well.

- Senate Bill 1504 contains a special provision for those individuals who are part of a collective bargaining unit pursuant to the Illinois Public Labor Relations Act or to any federal labor law. An employee who is a member of a collective bargaining unit will not be reported to the registry until that person's grievance and arbitration rights are exhausted or until three months after the initiation of the grievance process, whichever occurs first, provided that the DHS hearing has concluded. If an employer takes action against a union member because of the finding of sexual or physical abuse or egregious neglect that is later overturned under a grievance or arbitration procedure, any information reported to the registry about that employee must be removed.

No state facility or community agency providing mental health or developmental disability services that is licensed, certified, operated, or funded by the Department of Human Services can employ an individual who is identified in the registry as having committed abuse or egregious neglect against a recipient of services.

At any time an individual may petition the Department to remove the finding of abuse or neglect against him or her from the registry. DHS will conduct an investigation and hearing on the petition. Upon completion of this process, the Department of Human Services will report the removal of the finding to the registry unless it is determined that removal is not in the public interest.

The information on the registry is available to the public. Upon inquiry about an individual listed on the registry, any information disclosed concerning a finding of abuse or neglect must be coupled with the individual's statement relating to the reported finding or a clear and accurate summary of that statement.

Finally, Senate Bill 1504 mandates that the Department of Human Services promulgate or amend rules as necessary or appropriate to establish procedures for reporting to the registry, including the definition of egregious neglect, procedures for notice to the employee and victim, appeal and hearing procedures, and petition for removal of the report from the registry.

Effective Date: January 1, 2002

Statutes Affected: 20 ILCS 1705/7.3 (new); 210 ILCS 30/6.2; 210 ILCS 45/3-206.01

ASSISTANCE ANIMALS

Service Dog Program

House Bill 41, P.A. 92-0236

Representatives Meyer, Stephens, Mautino, Richard Myers, Holbrook

Summary/ Highlights

This bill authorizes the Department of Corrections to establish the Helping Paws Service Dog Program within the Department of Corrections. The Helping Paws program permits individuals committed to the custody of the Department to be trained as service dog trainers for dogs used by people with disabilities, and as animal care professionals, who perform a variety of animal care services. The bill requires the Department to give committed persons who have either a high school diploma or a GED priority for participation in the program. Under the bill, the Department may contract with service dog professionals to train committed persons for certification as service dog trainers. Upon successful completion of the training, a committed person shall receive certification by a Department approved organization, agency or school.

The bill also provides that the Department may designate a non-profit organization to select animals from humane societies or shelters to be trained as service dogs in the Helping Paws Program. After the animal is successfully trained by one of the program participants, it will be donated free of charge to an individual with a disability who has been mutually selected by the Department and the non-profit organization. The bill requires Department employees to follow-up with the recipients of these dogs to ensure that their needs are being met by the service animals. The bill also provides for periodic visits by Department employees to committed persons who have been certified as service dog trainers or animal care professionals to determine whether they are using their animal training skills after they have been paroled or placed on mandatory supervised release.

Effective Date: August 3, 2001

Statutes Affected: 730 ILCS 5/3-12-16 (new)

Trainers of Guide Dogs

House Bill 447, P.A. 92-187

Representatives Feigenholtz, Erwin, Black

Highlights

This bill provides that trainers of dogs (and their dogs) that are used to assist people who are blind, hearing impaired or physically disabled will have the same access rights to any public place of accommodation, streets, sidewalks, etc., that individuals with disabilities who are accompanied by guide dogs currently have under the law.

Effective Date: January 1, 2002

Statutes Affected: 720 ILCS 630/1; 775 ILCS 30/3

COMMUNITY LIVING

Prevention of Unnecessary Institutionalization

Senate Bill 816, P.A. 92-0122

Senators Sullivan, Geo-Karis

Summary

The Department of Human Services and the Department on Aging will establish and administer a Prevention of Unnecessary Institutionalization Grant and Loan Program. Subject to appropriation, persons age 60 or over and persons with disabilities who qualify for the program may be eligible for grants or loans for dwelling modifications or assistive technology devices.

Highlights

The aim of the bill is to support community-based living for older persons and adults and children with disabilities. Subject to the legislature providing the necessary funding, the bill authorizes the Department of Human Services and the Department on Aging to jointly establish a program to provide funding, through grants and loans, that would allow older persons and adults and children with disabilities to make the necessary modifications to their homes or to obtain assistive technology devices that would enable them to live as independently as possible for as long as possible.

An applicant for a grant or loan must have at least one verifiable impairment that substantially limits one or more of life's major activities for which a modification of his or her home or an assistive technology device is required but which the individual is unable to afford because of limited resources. Preference will be given to applicants who:

- Are at imminent risk of institutionalization or are already in an institutional setting but are ready to return to the community and would be able to live in the community if the modifications to their residence are made or they had the needed assistive technology devices;
- Have inadequate resources or no current access to resources as a result of: (1) the geographic location of their dwelling, (2) the lack of other state or federal funds (e.g., the Community Development Block Grant or rural housing assistance programs), or (3) income limitations (such as the inability to qualify for a low-interest loan); or
- Have access to other resources, but those resources are insufficient to complete the necessary modifications or acquire the needed assistive technology devices.

In addition, the bill creates an 11 person Advisory Committee to advise the Secretary of Human Services and the Director on Aging on rulemaking, policies, and procedures for the Program.

Effective Date: July 20, 2001

CRIMINAL LAW

Orders of Protection

Senate Bill 938: P.A. 92-253

Senators Lisa Madigan, Munoz, Ronen, Obama

Summary/Highlights

Senate Bill 938 increases the protections available to adults with disabilities against abuse, neglect, exploitation and other types of ill treatment from family or household members. It expands the scope of orders of protection that can be obtained under the Code of Criminal Procedure and the Domestic Violence Act of 1986. The bill accomplishes this result by adding the term “caregivers” to the existing list of individuals who are considered to be family or household members and who can be the subject of an order of protection.

The Domestic Violence Act was previously amended in 1990 to provide certain protections to persons with disabilities from abuse by those who care for them in their home. However, the addition of the term “caregivers” to the statute greatly expands that level of protection. This term, taken directly from Section 12-21 of the Criminal Code, means a person who has a duty to provide for the health and personal care of a person with disabilities at that person’s place of residence, including food and nutrition, personal hygiene, and medical care. It includes three specific categories of individuals:

- Parents, spouses, adult children and other blood relatives who reside with or reside in the same building as the person with a disability, who know or reasonably should know of the person’s physical or mental impairment, and who know or reasonably should know that the person is unable to adequately provide for his or her own health and personal care;
- Other persons employed by the disabled person, or who receive some other form of consideration, and agree to reside with or regularly visit the individual and provide for his or her health or personal care; and
- Any person appointed by a public or private agency or court to provide for the health and personal care of a person with disabilities.

Effective Date: January 1, 2002

Statutes Affected: 725 ILCS 5/112A-3; 750 ILCS 60/103

Criminal Abuse or Neglect

Senate Bill 940; P.A. 92-328

Senators Lisa Madigan, Munoz, Ronen, Obama

Summary/Highlights

This bill, a companion to Senate Bill 938, provides people with disabilities greater protection under the criminal law from the injurious acts of others. Currently, the law only prohibits criminal neglect of a person with disabilities (or elderly person); this bill also makes it a criminal offense to physically abuse, harass, or intimidate a person with disabilities, interfere with his or her personal liberty, or expose the person to willful deprivation. The term “willful deprivation” means willfully denying a person required medication, food, shelter, etc., thereby exposing that person to the risk of physical, mental or emotional harm.

Effective Date: January 1, 2002

Statutes Affected: 720 ILCS 5/12-21

People With Mental Retardation

Senate Bill 401, P.A. 92-434

Senators O’Malley and Thomas Walsh

Summary

Senate Bill 401 amends the Criminal Code to increase the protections afforded to people with mental retardation by deleting the requirement that they be institutionalized in order to be considered a crime victim under several violent crime statutes. The bill also permits crime victims who are mentally retarded to testify via closed circuit television rather than in court. In addition, Senate Bill 401 changes the current Code of Criminal Procedure to permit greater use of out of court statements made prior to trial by crime victims with mental retardation.

Highlights

Under current law, several criminal statutes protect people with mental retardation only if they are institutionalized in a developmental disability facility, nursing home facility, or long term care facility. This bill eliminates the institutionalization requirement so that these criminal laws will now cover any person who is severely or profoundly mentally retarded. A person is considered to be “severely or profoundly mentally retarded” if his or her intelligence quotient does not exceed 40, or if the person’s intelligence quotient does not exceed 55 and he or she suffers from significant mental illness to the extent that the person’s ability to exercise rational judgment is impaired.

These changes in the criminal law apply to the following crimes:

- aggravated kidnapping;
- child abduction;
- soliciting for a juvenile prostitute;

- juvenile pimping;
- exploitation of a child;
- child pornography;
- aggravated battery of a child;
- aggravated criminal sexual assault; and
- aggravated criminal sexual abuse.

Even though some of these refer to a child or juvenile in their title, they do include people with severe or profound mental retardation of any age as members of the protected class.

The bill also amends the Code of Criminal Procedure by allowing crime victims who are “moderately, severely or profoundly” mentally retarded to testify out of court by closed circuit television in certain circumstances. The term “moderately mentally retarded person” is new. The bill defines the term as “a person whose intelligence quotient is between 41 and 55 and who does not suffer from significant mental illness to the extent that the person’s ability to exercise rational judgment is impaired.”

This out of court testimony is permitted only in prosecutions for the following crimes (again, the one which refers to a child applies to a person who is mentally retarded of any age):

- criminal sexual assault;
- predatory criminal sexual assault of a child;
- criminal sexual abuse;
- aggravated criminal sexual assault; and
- aggravated criminal sexual abuse.

Juvenile crime victims under the age of 18 already have the right to testify in this manner, subject to certain conditions. Senate Bill 401 applies the same standards to people who are retarded, i.e., that testifying in court will cause serious emotional distress such that the witness cannot reasonably communicate or the emotional distress will cause him or her to suffer severe adverse effects. As with witnesses who are under 18, a person who is retarded who testifies by closed circuit television is permitted to have in attendance a parent or guardian or any person whose presence, in the opinion of the judge, contributes to the witness’ well-being.

Another part of the Code of Criminal Procedure permits certain out of court statements made prior to trial by a child under the age of 13, or made by a person with mental retardation who is institutionalized, to be admitted in evidence in many criminal prosecutions as exceptions to the hearsay rule. Senate Bill 401 again deletes the requirement that the individual with mental retardation must be institutionalized before these statements can be admitted. It also expands this rule to apply to people who are moderately retarded in addition to those who are severely or profoundly retarded. This will result in more admissible testimony in criminal proceedings where the victim is someone with mental retardation.

Effective Date: January 1, 2002

Statutes Affected: 720 ILCS 5/2-10.1; 720 ILCS 5/10-2; 720 ILCS 5/10-5; 720 ILCS 5/11-15.1; 720 ILCS 5/11-19.1 and 19.2; 720 ILCS 11/20.1; 720 ILCS 5/12-4.3; 720 ILCS 5/12-14; 720 ILCS 5/12-16; 725 ILCS 5/106B-5; 725 ILCS 5/115-10

DEVELOPMENTAL DELAYS

Early Intervention Services (I)

Senate Bill 461, P.A. 92-307

Senators Rauschenberger, Ronen, Lightford, Parker

Summary

Senate Bill 461 makes substantial changes in the Illinois early intervention program that provides a variety of therapeutic services to infants and toddlers under 36 months of age who have developmental delays. The most important changes affect the method of payment for those services. The bill provides that public early intervention funds are to be used for this purpose only as a last resort. Families are required to use their private insurance, if any, to pay for their child's treatment and are required to directly pay for services under a sliding fee schedule based upon income. The bill also seeks to ensure that families apply for public insurance programs which can be used to pay for early intervention treatment, such as Medicaid, if they can meet the eligibility requirements. Senate Bill 461 establishes an Early Intervention Legislative Advisory Committee to give programmatic and fiscal management guidance to the Department of Human Services (DHS), which is the lead agency responsible for administering the early intervention program.

Highlights

The early intervention program provides a wide variety of services designed to meet the developmental needs of very young children, including occupational therapy, social work services, speech pathology, and psychological services. Senate Bill 461 broadens the definition of children eligible for this program. The existing definition included infants and toddlers less than 36 months of age with:

- Developmental delays (as defined by DHS by rule);
- A physical or mental condition typically resulting in developmental delays; or
- A risk of having a substantial developmental delay based on clinical judgment.

The new definition adds children who either:

- A. Entered the program under one of the above 3 criteria, currently do not fulfill any of those criteria, but still continue to have any measurable delay; or
- B. Have not attained a level of development in each area, including cognitive, physical (including vision and hearing), language, speech and communication, psycho-social, or self-help skills, at least at the mean of the child's age equivalent peers;

and in addition to A or B:

C. Have been determined to require the continuation of early intervention services for continuing developmental progress.

As mentioned earlier, DHS is the lead agency responsible for administering the early intervention program. But DHS is not the only one providing these services. One of DHS' duties under existing law was to develop and implement formal interagency agreements between itself and other relevant state agencies. Senate Bill 461 goes further and specifies that, in addition to the other state agencies, DHS must enter into interagency agreements with the Department of Public Aid and the University of Illinois Division of Specialized Care for Children. The bill adds the requirement that these agreements provide that early intervention funds are to be used as a payor of last resort. The interagency agreements are also to establish a hierarchical order of payment among the agencies and procedures for direct billing and resolving payment disputes. Existing interagency agreements must be reviewed and revised in line with the purposes of Senate Bill 461 within 60 days after the effective date of this Act.

To facilitate administration of the revamped early intervention program, the bill requires DHS to establish "regional intake entities", which are the entities responsible for implementing the early intervention system within their geographic area; this is where the families must go to apply for services under the program. The bill requires these regional offices to inform families of the following at the time of initial application:

- That the early intervention program will pay for all early intervention services contained in the child's Individualized Family Service Plan that are not covered by private or public insurance or other means;
- That services will not be delayed due to any rules or restrictions in the family's insurance policy;
- That the family may request an exemption from the requirement of using their private insurance policies under certain conditions (discussed in detail below);
- That responsibility for co-payments or co-insurance under a family's private insurance will be transferred to DHS' central billing office; and
- That families are responsible for paying family fees based on the sliding fee schedule established by DHS but that they may be exempted from payment if they provide proof of inability to pay due to extraordinary expenses or catastrophic circumstances (defined elsewhere in the bill and discussed below).

Existing law provides that early intervention services are to be provided for each eligible child in accordance with an Individualized Family Service Plan (IFSP), a written plan developed by a multidisciplinary team including the child's parent or guardian. Senate Bill 461 requires that the IFSP be based on the multidisciplinary team's assessment of the resources, priorities, and concerns of the family, and on the team's identification of the services needed to increase the family's capacity to meet the developmental needs of the child, including the frequency, intensity,

and method of delivering services. When the IFSP is initially developed and during any reviews, the bill requires the multidisciplinary team to consult DHS' therapy guidelines and experts in determining appropriate services for an eligible child. At periodic reviews, the team has to determine the need for modification or revision of the outcomes or services described in the IFSP.

Persons qualified under current law to provide early intervention services include, among others, occupational and physical therapists, child development specialists, psychologists and nurses. But the law contains no specific requirements regarding their expertise in working in an early intervention program. Senate Bill 461 changes that by adding two new terms to describe the qualifications that any provider of services must have. An "early intervention provider" is an individual who is qualified to provide early intervention services under DHS definitions and who is enrolled as a provider in the early intervention program. A "fully credentialed early intervention provider" is an individual who has met the state standards for the relevant profession in addition to the qualifications set by DHS for providers of early intervention services, including pediatric experience, education, and continuing education. DHS is required by Senate Bill 461 to establish provider qualifications by rule within 180 days of the effective date of the Act.

As stated above, under Senate Bill 461 families for the first time will be required to use their private health insurance to pay for early intervention services. If a family has such insurance, the bill provides that the application for early intervention services will operate as an assignment to DHS of the right of recovery against the private insurance plan for services that may be covered by the policy. Early intervention providers will be required to bill the family's insurance carrier for the treatment services they provide. DHS may exempt from this requirement early intervention services that it deems not covered by insurance plans.

If the insurance carrier denies the claim in full or has only paid an amount that is less than the current state rate for early intervention services, the bill states that DHS will pay the provider the difference between what the insurance carrier has paid and the current state rate. In addition, the state will also pay the family's co-payment or co-insurance, provided that these payments plus the balance of the claim do not exceed the current state rate for the services provided. The provider is prohibited from billing the family for the difference between its charge and what the insurance carrier or state has paid. Senate Bill 461 expressly states that families of children with insurance coverage, whether under a public insurance program or a private policy, cannot incur either greater or lesser direct out-of-pocket expenses for early intervention services than families who are not insured.

The requirement of using private insurance is not absolute, however. DHS is required to establish procedures to allow families to apply for an exemption based on material risk of loss of coverage. Under this standard, exemptions are to be granted only if the family produces documentation that:

- The insurance policy covering the child is an individually purchased policy paid for by a household head who is not eligible for a group medical insurance plan;
- The policy has a lifetime cap, which applies to early intervention services listed in the IFSP, and coverage could be exhausted during the period of the IFSP; or

- There is another risk which DHS in its discretion has established as a ground for exemption.

Under the bill, DHS has to make a final determination on a request for an exemption within 10 business days after its receipt of the written request. The bill prohibits claims from being filed against the insurance policy during the 10-day period. The bill further provides that an exemption may apply to all early intervention services and all policies insuring the child, or may be limited to one or more insurance policies or one or more of the early intervention services in the child's IFSP.

Senate Bill 461 also addresses issues that pertain to families' insurance coverage through a managed care plan. Where the plan's network of approved providers includes early intervention specialists, the bill requires the family to use the network providers, but only to the extent that:

- The network provider is immediately available to provide the services to the child;
- The provider is enrolled in the Illinois early intervention system and fully credentialed under applicable DHS rules;
- The network provider can provide the services as required by the IFSP;
- The family does not have to travel more than an additional 15 miles or 30 minutes than it would to a non-network provider providing the same service; and
- The family's managed care plan does not allow for billing for early intervention services provided by non-network providers.

Under certain circumstances DHS can compel a family to transfer to a network provider where the child has previously been receiving early intervention services from a non-network provider. This can occur where the child is less than 26 months of age, the family is in a managed care plan at the time of application into the early intervention program or at any time thereafter, and all 5 requirements listed above have been met. The transfer must occur within 45 days after the regional intake entity determines that all these conditions apply, but no later than 60 days after the effective date of Senate Bill 461.

The bill grants DHS the discretion to waive, fully or partially, these network enrollment and transfer requirements under a managed care plan as to particular regions or areas of the state if:

- DHS finds that the managed care plans in the area are not allowing further enrollment of early intervention providers, and
- Referrals or transfers to network providers could cause a shortage of early intervention providers in that region or cause delays in families obtaining the early intervention services described in their child's IFSP.

As mentioned earlier, under Senate Bill 461 another means of covering the cost of early intervention services using private funds is through the payment of family fees. Existing law provides that DHS may create a system of payments by families. Senate Bill 461 makes it mandatory for DHS to create by rule a system of family payments structured on a sliding scale based on family income. The fee to be paid by each family is established annually and paid to the DHS central billing office in installments. The family's coverage by private or public insurance will not affect the amount of these fees.

There are certain circumstances under which the obligation to pay family fees will be waived. The bill expressly provides that the family's inability to pay its fees due to "extraordinary expenses or catastrophic circumstances" should not deprive the child of necessary early intervention services. Extraordinary expenses or catastrophic circumstances occur when:

- The family has out-of-pocket medical expenses in excess of 15% of gross income;
- A fire, flood, or other calamity results in direct out-of-pocket losses in excess of 15% of gross income; or
- Other catastrophic situations cause out-of-pocket losses in excess of 15% of gross income.

Senate Bill 461 also requires DHS to take specific steps to ensure that all public funding sources are used for early intervention services before any state or federal early intervention funds are used. To implement this legislative mandate the bill requires families, at the time of application for early intervention services or at any review of eligibility, to identify whether they are enrolled in Medicaid, KidCare (the Illinois health insurance program for poor children of families financially ineligible for Medicaid), or the early intervention program administered by the University of Illinois Division of Specialized Care for Children for maternal and child health services. When a family meets the threshold income requirement for Medicaid or KidCare, the bill requires the regional intake entity to collaborate with the family to fill out an application for Medicaid/KidCare and send it to the Illinois Department of Public Aid's KidCare Unit for a determination of eligibility.

In addition to these financial changes made in the early intervention system, Senate Bill 461 creates a new entity known as the Early Intervention Legislative Advisory Committee, to be convened no later than 60 days after the effective date of the bill. The Committee will have 4 members, with 2 members each appointed by the majority and minority leaders of the General Assembly. The Committee's major responsibility is to provide guidance to DHS in programmatic and fiscal management, provider development and accountability, and program outcome measures. The committee's term is for 2 years, during which time it must meet at least 4 times a year. DHS must provide the Committee (and the public) with quarterly reports containing monthly data and any other early intervention program information that the Committee requests. DHS was required to submit the first data report no later than September 21, 2001 and include the previous 2 quarters of data. (More details concerning the duties and responsibilities of this Legislative Advisory Committee are contained in House Joint Resolution 46, a summary of which follows).

Finally, Senate Bill 461 permits DHS for the first time to enter into contracts for some or all of its responsibilities under the early intervention program, including its newly added responsibility to provide a system of training of early intervention providers. The bill also requires DHS to maintain an early intervention website, which will contain reports on the early intervention program that are required by law, DHS' proposed and final early intervention rules, and other items related to the early intervention program.

Effective Date: August 9, 2001

Statutes Affected: 325 ILCS 20/3, 20/4, 20/5, 20/11, 20/13; 325 ILCS 20/13.5 (new); 325 ILCS 20/13.10 (new); 325 ILCS 20/13.15 (new); 325 ILCS 20/13.20 (new); 325 ILCS 20/13.25 (new); 325 ILCS 20/13.30 (new); 325 ILCS 20/13.32 (new); 325 ILCS 20/13.50 (new); 325 ILCS 20/15

Early Intervention Services (II)

House Joint Resolution 46

Representatives Coulson, Winkle, Jerry Mitchell, and Kosel

Summary/Highlights

House Joint Resolution 46 was adopted to specifically address the risk to Illinois' early intervention program produced by an unanticipated increase in enrollment that resulted in a substantial deficit in funding in the most recent fiscal year. The resolution provides more detail concerning the role of the Early Intervention Legislative Advisory Committee. Under this resolution, the Committee will consist of eight members, with two legislative members appointed by each Majority and Minority Leader in the House and Senate, plus representatives from DHS, the Department of Insurance, the Department of Public Aid, and the University of Illinois Division of Specialized Care for Children. However, Senate Bill 461 provided that the Committee will only consist of the 4 members appointed by the legislative leaders. The terms of the bill should prevail over the terms of this resolution since a resolution is advisory only.

The Early Intervention Legislative Advisory Committee will perform the following specific duties:

- It will monitor DHS' ability to maintain fiscal control without jeopardizing early intervention services to all eligible infants and toddlers;
- The Committee will assist DHS in the development of an early intervention long-term strategic plan that outlines outcome-based goals;
- The Committee will serve as the body to which DHS reports on the progress of cost-containment strategies and it will monitor the ongoing implementation of these recommended strategies; and
- Finally, the Legislative Advisory Committee will communicate with the Bureau of the Budget and the Office of the Governor about the status of the early intervention program.

House Joint Resolution 46 requires DHS to report a great deal of information about the early intervention program to the Committee on a monthly basis, including the following subjects:

- Enrollment in the program;
- Children covered by private or public insurance programs;
- Provider caseloads; and
- Implementation of programmatic rules and procedures.

The resolution also required DHS to submit an official interim report in November, 2001 and a final report in June, 2002 to the Committee, which must include the following non-exhaustive list of items:

- All data provided in update reports;
- Enrollment and cost projections for fiscal year 2003;
- The status of the program's budget, including a breakdown of funds collected through private insurance, family fees, and Medicaid; and
- Identification of programmatic concerns, including strategies that DHS is considering to address these concerns.

Early Intervention Services (III)

3491, P.A. 92-10

Madigan, Daniels, Hannig, Ryder, Monique Davis

House Bill
Representatives Michael

Summary/Highlights

House Bill 3491 addresses many budget implementation issues that have nothing to do with early intervention services. However, one section of the bill contains a provision that requires DHS to create a quality review process regarding the development and changes to Individualized Family Service Plans approved for each child in the system, in order to assure that resources are being used to provide appropriate early intervention services.

Effective Date: June 11, 2001

Affected: 325 ILCS 20/11

Statutes

EMPLOYMENT

Disability Workforce Task Force

House Bill 3392, P.A. 92-0303

Representatives Daniels, Wojcik, Krause, Eileen Lyons, Bellock

Summary

House Bill 3392 creates a 16 member workforce task force to review, assess and develop recommendations and an implementation plan to address obstacles to employment facing persons with disabilities. As part of its duties, the task force will conduct a longitudinal study of the outcomes that secondary education programs have for students with disabilities after exiting the secondary school environment.

Highlights

This bill amends the Developmental Disability and Mental Disability Services Act by adding Article 10 that creates a workforce task force to examine obstacles to employment for people with disabilities. The task force will be made up of 16 members: four members of the General Assembly, one each appointed by the four legislative leaders; three members appointed by the Secretary of Human Services; one member representing the Illinois Council on Developmental Disabilities; one member each from the Departments of Aging, Employment Security, and Commerce and Community Affairs; two members representing private businesses; one member representing the Illinois Network of Centers for Independent Living; one member representing the Coalition of Citizens with Disabilities in Illinois, and one member representing People First of Illinois.

The task force is required to review, assess and develop recommendations and an implementation plan to address the following:

- State-specific barriers to employment for persons with disabilities;
- Parity between the unemployment rates of people who have a disability versus non-disabled persons; and
- Issues that impede the training, hiring and retention of personal care assistants to help persons with disabilities obtain employment and remain in their own homes.

The task force shall also seek to identify models and strategies to promote shared housing and personal assistance arrangements for persons with disabilities.

Additionally, the task force will conduct a longitudinal study of the outcomes of secondary education programs for students with disabilities. The bill also requires the task force

to identify possible gaps in services for persons with disabilities that may occur during the transition out of the secondary school environment. In addition, the task force will be responsible for developing strategies by which to narrow any gaps in services detected and shall report all of its findings to the Governor and the General Assembly six months after the date that the task force is formed.

Effective Date: August 9, 2001

Statutes Affected: 405 ILCS 80/10-5; 80/10-10; 80/10-15.

MEDICAL TREATMENT

CHIP Program

Senate Bill 962, P.A. 92-02

Senators Syverson, Sieben

Summary/Highlights

Senate Bill 962 makes one change to the Illinois Comprehensive Health Insurance Plan (CHIP), which provides health insurance coverage for Illinois residents who, because of a pre-existing medical condition, cannot obtain coverage through private insurance, an HMO, or an employer sponsored group health plan. This can be an important source of insurance coverage for people with disabilities whose pre-existing conditions could prevent them from obtaining any other type of health insurance.

The CHIP program, with some exceptions, currently does not cover charges or expenses related to any pre-existing condition where those charges were incurred during the first 6 months of coverage under CHIP and for which medical advice or treatment was given during the 6 months immediately preceding the effective date of coverage. Senate Bill 962 waives this limitation on coverage to the extent that the individual meets the following two criteria:

- He or she has satisfied similar exclusions under a prior individual health insurance policy that was involuntarily terminated because of the insolvency of the insurance company, and
- The person applies for coverage under CHIP within 63 days following involuntary termination of the prior policy.

Effective Date: May 1, 2001

Statutes Affected: 215 ILCS 105/8

Medicaid Buy-In

Senate Bill 817; P.A. 92-163

Senators Sullivan, Obama, Ronen

Summary/Highlights

Senate Bill 817 is a followup to action taken by the previous year's General Assembly to make it easier for people with disabilities, among others, to keep working while retaining their Medicaid benefits. The legislature at that time allocated \$10 million to a buy-in program whereby people who were employed and earning income that would ordinarily exceed Medicaid eligibility limits would nevertheless be permitted to purchase Medicaid coverage under terms and conditions set by Department of Public Aid rules (see 25 Ill. Reg. 16098). Senate Bill 817 also creates a special fund within the state treasury consisting of all payments made by individuals to purchase Medicaid coverage, plus all income earned on those monies. The contents of the fund will be appropriated to the Department to cover administering the program, including payments for medical assistance benefits to program participants.

Effective Date: July 25, 2001

Statutes Affected: 305 ILCS 5/12-10.5 (new)

Surrogate Decision Making

Senate Bill 390, P.A. 92-364

Senators Cullerton, Obama, Lisa Madigan, Molaro

Summary/Highlights

This bill amends one section of the Health Care Surrogate Act, which permits various individuals listed in order of priority (e.g., guardian of the person, spouse, adult children) to make any kind of medical decision, except for mental health services, for an individual determined by 2 physicians to lack decisional capacity.

The law currently requires the health care provider to make a reasonable inquiry as to the availability of a health care agent under a health care power of attorney to make medical decisions. If no agent is available or if an existing agent does not have appropriate authority, the provider is then required to make a reasonable inquiry as to the availability of the first four individuals named in the statute's priority listing. Senate Bill 390 adds language providing that a reasonable inquiry includes identifying a member of the patient's family or other health care agent by examining the patient's personal effects or medical records. If the agent or family member is identified, an attempt must be made to contact that person within 24 hours after the provider determines that the patient lacks decisional capacity. The bill absolves the health care provider from any potential liability for violating a patient's right to confidentiality by complying with this requirement, except for willful or wanton misconduct.

Effective Date: August 15, 2001

Statutes Affected: 755 ILCS 40/25

MENTAL HEALTH

Insurance Coverage for Serious Mental Illness (I)

Senate Bill 1341; P.A. 92-0185

Senators Radogno, Thomas Walsh, Klemm, Sullivan, Parker

Summary

This bill amends the Illinois Insurance Code by requiring, insurance companies that offer group health insurance coverage for serious mental illnesses to do so under the same terms and conditions as coverage provided for physical disorders and illnesses, subject to several exceptions. Senate Bill 1341 is in effect until December 31, 2005 and directs the Department of Insurance to conduct a study analyzing the costs and benefits of additional coverage for mental health treatment during the period from 2002 through 2004.

Highlights

Senate Bill 1341 creates a limited form of mental health parity under group health insurance plans. This means that for those individuals and companies covered under the bill, group health insurance policies will be required to cover medically necessary treatment for serious mental illness subject to the same durational and amount limits, deductibles, co-payments and co-insurance requirements as those provided for other illnesses and diseases.

The term “serious mental illness” is defined under the bill to mean the following:

- schizophrenia;
- paranoia and other psychotic disorders;
- bipolar disorders;
- major depressive disorders;
- schizoaffective disorders;
- pervasive developmental disorders;
- obsessive-compulsive disorders;
- depression in childhood or adolescence; and
- panic disorder,

as those terms are defined in the most current edition of the Diagnostic and Statistical Manual published by the American Psychiatric Association.

The bill specifically excludes from its coverage requirements group health insurance provided by employers who have 50 or fewer employees and treatment of addiction to a controlled substance or mental illness resulting from the use of a controlled substance.

Additionally, Senate Bill 1341 does not apply to:

- Health insurance policies purchased by an individual.
- Group health insurance provided under an HMO. Senate Bill 1341 only changed the coverage requirements for policies covered by the Insurance Code; coverage provided by HMO's is governed by a separate law.
- Companies that self-insure. The federal ERISA law exclusively governs the terms and conditions of the health insurance they offer to employees.

Group health plans that are covered by Senate Bill 1341 are required to provide coverage for 45 days of inpatient treatment and 35 visits for outpatient treatment per year. Visits for the purpose of medication management are not counted as "outpatient treatments" under the bill. In addition, there can be no lifetime limit placed on the number of days of inpatient treatment or the number of visits for outpatient treatment. An issuer of a group health plan may provide or offer the required coverage through a managed care plan.

Coverage for treatment of serious mental illnesses is required only if it is a medical necessity. The determination as to the medical necessity of treatment must be made in a manner consistent with the manner used to determine the medical necessity of treatment for other illnesses or conditions covered under the policy. In the event of a dispute between the insurer and the patient's treatment provider as to the medical necessity of treatment, the insurer must provide a mechanism for the timely review of the dispute. The review is to be conducted by a licensed professional in the same area as the treatment provider for the insured, who must be unaffiliated with the insurer. This person is to be jointly selected by the insurance company, the insured (or his legal representative), and the insured's current mental health provider. (The bill does not address the situation where these parties cannot agree on the reviewer). If the reviewing provider finds that the recommended treatment is medically necessary, the insurer must provide reimbursement for that treatment.

Senate Bill 1341 remains in effect only until December 31, 2005. It requires the Department of Insurance to conduct a study of the costs and benefits of implementing the additional mental health coverage required by the bill for the years 2002-2004. The study must include an analysis of the effect of the coverage requirements on the cost of insurance and health care, and of the improvements in the quality of care being provided to the patients as well as in their quality of life. The results of the study are to be reported to the General Assembly and the Governor by March 1, 2005.

Senate Bill 1341 applies to policies of group health insurance that are amended, delivered, issued or renewed after the effective date of the bill.

Effective Date: January 1, 2002

Statutes Affected: 20 ILCS 1405/1405-30; 215 ILCS 5/370c

Insurance Coverage for Serious Mental Illness (II)

Senate Bill 319; P.A. 92-182

Senators Tom Walsh, Parker, Peterson, Emil Jones

Summary/Highlights

Under prior law, Section 370c(1) of the Insurance Code required insurance companies that issue group health insurance policies to offer coverage for the treatment of mental, emotional or nervous disorders up to the limits provided for other disorders or conditions, with two exceptions: (i) the insured could be required to pay up to 50% of the cost of mental health treatment, and (ii) the annual benefit limit could be limited to the lesser of \$10,000 or 25% of the lifetime policy limit. This mandatory offer of mental health coverage applied to treatment provided by any licensed physician, licensed clinical psychologist, or licensed clinical social worker. Senate Bill 319 adds “licensed clinical professional counselor” to this list of providers whose services must be covered.

However, the applicability of this part of the Insurance Code has been substantially limited by the passage of Senate Bill 1341, which states that the requirement of a mandatory offer of mental health coverage under Section 370c(1) does not apply to “serious mental illnesses”, as that term is defined in Senate Bill 1341. As a result, former Section 370c(1) of the Code (renumbered as 370c(a)(1)) now applies only to “mental, emotional or nervous” disorders other than serious mental illnesses defined in Senate Bill 1341. Mandatory insurance coverage for serious mental illnesses is governed exclusively by Senate Bill 1341.

Effective Date: July 27, 2001

Statutes Affected: 215 ILCS 5/370c(1)

Mental Health Records

House Bill 2088; P.A. 92-415

Representative John Turner

Summary/Highlights

Among other things, House Bill 2088 expands one of the existing exceptions to the Mental Health and Developmental Disabilities Confidentiality Act. Section 9.3 of the Act currently permits the disclosure of treatment records, without the consent of the recipient, by any therapist who provided mental health or developmental disability services to an individual pursuant to the provisions of the Sexually Violent Persons Commitment Act (SVP). The SVP provides a mechanism whereby people who commit sexually violent offenses can be kept in custody for mental health treatment after their jail sentence ends.

House Bill 2088 changes this exception to the Confidentiality Act in two ways:

- The law previously permitted disclosure of a therapist's records who provided mental health or developmental disability treatment (“therapist” means a psychiatrist, physician,

psychologist, social worker, or nurse providing mental health or developmental disabilities services, or any other person not prohibited by law from providing such services or from holding himself or herself out as a therapist if the recipient reasonably believes that such person is permitted to do so). Under the bill, the exception now applies to any treatment provider; and

- The records that can be disclosed now include prior treatment of any kind provided to an individual, whether or not related to the Sexually Violent Persons Commitment Act, who is currently subject to an evaluation, investigation or prosecution of a petition under the SVP.

The bill also adds the proviso that any records that are disclosed in this manner can be used only in sexually violent persons commitment hearings.

Effective Date: August 17, 2001

Statutes Affected: 740 ILCS 110/9.3

Mental Health Task Force

Senator Kathleen Parker chaired the Mental Health Treatment and Evaluation Task Force for the second year in a row. Equip for Equality was again one of the members of the task force. The issue that was addressed by the task force this year was mental health services for people in jails. Each of the following 3 bills (Senate Bills 434, 435, and 437) resulted from the work of that task force.

Treatment After Release

Senate Bill 434; P.A. 92-159

Senators Parker, Trotter, Tom Walsh, Shadid, Obama

Summary/Highlights

This bill provides that from funds appropriated by the General Assembly to the Department of Human Services for that purpose, the Secretary of Human Services shall establish three pilot programs in certain specified areas of the state to provide persons who have been released from jail and pretrial detention facilities with access to providers of mental health services.

Effective Date: January 1, 2002

Statutes Affected: 405 ILCS 20/8.5 (new)

Treatment Standards in Jails

Senate Bill 435, P.A. 92-469

Senators Parker, Trotter, Tom Walsh, Lightford, Shadid

Summary

This bill addresses the issue of standards governing the provision of mental health and developmental disability services to persons confined in a local jail or juvenile detention facility. It also requires the Department of Corrections to convene a special task force to develop model standards for the delivery of mental health services and prevention of suicide in municipal jails and lockups.

Highlights

Under prior law, the Department of Corrections was permitted but not required to establish standards for providing inmates of local jails and juvenile detention facilities with mental health and developmental disability services. As a result of Senate Bill 435, the Department has a duty to establish these standards.

The standards must address screening and classification of detainees, the use of psychotropic medications, suicide prevention, qualifications of staff, staffing levels, staff training, discharge, linkage and aftercare, the confidentiality of mental health records, and any other matters that will ensure adequate and humane treatment and services for inmates with mental illness.

Senate Bill 435 also requires the Department to inspect each local jail and juvenile detention facility at least once a year to determine if there has been compliance with these standards. The Department must make the results of each inspection available to the public. In case of noncompliance by a jail or juvenile detention facility, the Director of Corrections must notify the county board and the sheriff in the county where the jail or facility is located, specifying the standards that have not been met. If the jail or detention facility still fails to comply within six months of notification, the Director of Corrections may petition a court for an order requiring compliance with the relevant standards or for other relief.

The bill additionally requires the Department of Corrections to convene a special task force to develop and propose model standards for the delivery of mental health services and the prevention of suicides in municipal jails and lockups. The task force is to be composed of a maximum of 22 members to be appointed by the Director of Corrections as follows:

- Not more than 8 members representing municipalities;
- Not more than 8 members representing community mental health service providers and state operated and private psychiatric hospitals, including no more than three representatives from the Office of Mental Health, Department of Human Services;

- Three members of the general public, including at least one primary consumer of mental health services; and
- Not more than three representatives in total from the following groups: National Commission on Correctional Health Care, the American Correctional Association, the Joint Commission on the Accreditation of Health Care Organizations, the American Association of Correctional Psychology, and the John Howard Association.

The Director of Corrections is required to try to make the membership of the task force reflect the geographic diversity of the state.

In carrying out its duties, the task force may, without limitation:

- Determine the services and screening to be provided in municipal pretrial detention facilities and the training and resources needed to provide those services; and
- Recommend changes in the Department's standards for municipal jails and lockups.

Prior to acting upon the recommendations of the task force, the Department must hold a public hearing to enable persons with mental illnesses and their families, advocacy organizations and the public to suggest changes to the proposed standards. The task force was required to submit its recommendations to the General Assembly by January 15, 2002.

Effective Date: August 22, 2001

Statutes Affected: 730 ILCS 5/3-15-3; 730 ILCS 5/3-15-4 (new)

Mental Health Courts

Senate Bill 437; P.A. 92-120

Senators Parker, Trotter, Tom Walsh, Obama

Summary/Highlights

This bill provides that, subject to appropriation by the legislature, the Department of Human Services shall establish pilot programs to provide the necessary clinical services to serve participants in mental health courts that have been established in any Illinois Judicial circuit. The purpose of these courts is to prevent people with mental illness who commit non-violent offenses from being sent to jail and to instead divert them to treatment programs. This bill is intended to make sure that there are sufficient clinical programs available to serve this population. Illinois does not have any mental health courts yet but the federal government previously announced that it will be making funds available to the states to establish specialized courts of this nature.

Effective Date: January 1, 2002

Statutes Affected: 405 ILCS 5/2-115 (new)

Continuation of Mental Health Task Force

Senate Resolution 140

Senator Parker

Summary/Highlights

This Senate resolution continued the Mental Health Evaluation and Treatment Task Force for another year under the chairmanship of Senator Parker. The purpose of this task force was to examine ways to improve the treatment of persons with mental illness in the juvenile justice system. The resolution added several additional parties to the newly constituted task force, which included representatives from the:

- Illinois Department of Corrections;
- State Appellate Defender;
- Illinois Sheriffs' Association;
- John Howard Association;
- Juvenile Justice Initiative;
- Juvenile Justice Project of the University of Chicago Law School;
- Illinois Public Defender's Association; and
- Clinical Evaluation Services Initiative.

The task force was required to report its findings to the Senate by January 1, 2002.

Restraint and Seclusion

House Bill 2276; P.A. 92-356

Representatives Ryder, Miller, Coulson, Klingler, Osmond

Summary/Highlights

One section of this bill amends the Hospital Licensing Act to provide that only a physician, or a registered nurse with supervisory responsibility as authorized by a hospital's medical staff, can order the use of restraints or seclusion on a patient in a hospital. The medical staff may adopt a policy setting forth the requirements for the use of restraints or seclusion, including whether a supervisory nurse can order their use when the patient's treating physician is not available. If he or she does order the patient to be put in restraints or seclusion, then the treating physician must be notified as soon as possible. Any nurse with the authority to order restraints or seclusion must have proper training and experience.

The bill also requires hospitals themselves to adopt written policies governing the use of restraints and seclusion, which must include periodic review of their use in the hospital. The Department of Public Health is additionally required to develop rules regarding other provisions

that hospital policies must have, which should be consistent with the requirements for participation in the federal Medicare program.

Effective Date: October 10, 2001

Statutes Affected: 210 ILCS 85/6.20 (new)

MISCELLANEOUS

Human Rights Commission

Senate Bill 1175; P.A. 92-472

Senators Walsh, Link

Summary/Highlights

Senate Bill 1175 addresses one aspect of the procedure followed at hearings on complaints filed by the Department of Human Rights with the Human Rights Commission. Among other things, the Department of Human Rights is responsible for investigating claims of civil rights violations against individuals in areas such as employment, real estate transactions, and availability of public accommodations. If it finds substantial evidence to support the claim of discrimination, the Department attempts to resolve the issue by conciliation. If this effort fails, however, it files a complaint with the Human Rights Commission, which holds a hearing. At the conclusion of the hearing the hearing officer issues written findings of fact and a recommended order. The findings and recommended order are reviewed by the Commission, which can accept, modify or reject the hearing officer's recommendations.

Senate Bill 1175 changes the circumstances under which the findings and recommended order can be prepared by a different hearing officer than the one who presided at the hearing on the complaint. This is permitted under current law if the parties at the hearing agree to the procedure, the presiding hearing officer transmits his or her impressions of witness credibility to the person writing the order and findings, and there were no questions of witness credibility presented by the record of the hearing as found by the presiding hearing officer. Under Senate Bill 1175, however, a different hearing officer can prepare the findings of fact and recommended order only if:

- the hearing officer who presided at the public hearing is unable to prepare the findings and recommended order by reason of death, disability, or separation from employment, and
- all parties to the proceedings file a joint motion agreeing to have another hearing officer prepare the findings and recommended order.

Effective Date: January 1, 2002

Statutes Affected: 775 ILCS 5/8A-102, 5/8B-102

Hunting

Senate Bill 874; P.A. 92-325
Senators Sieben, Woolard, Noland

Summary/Highlights

The bill changes the current law with regard to the rights of people with disabilities to hunt from a vehicle. Previously, the Wildlife Code authorized the Director of the Department of Natural Resources to issue hunting permits to paraplegics or other persons unable to walk to permit them to shoot or hunt from a standing vehicle. As amended by Senate Bill 874, the Code now states that the Director may issue hunting permits to paraplegics and to any other person with a disability to hunt from any vehicle, whether it is standing or not, under the requirements set forth in administrative rule.

Effective Date: August 9, 2001

Statutes Affected: 520 ILCS 5/2.33

Day Care Centers

Senate Bill 1081; P.A. 92-164
Senator Claybourne

Summary/Highlights

This bill amends the Child Care Act of 1969 to require that an owner or operator of a licensed day care home or group day care home, or the onsite executive director of a licensed day care center, must complete a basic training course in providing care to children with disabilities. The training course is also to be made available on a voluntary basis to other providers who are exempt from the licensure requirements of the Act. The Department of Children and Family Services will issue rules to establish the training requirements.

Effective Date: January 1, 2002

Statutes Affected: 225 ILCS 10/4.5 (new)

MOTOR VEHICLES

Restricted Vision Licenses

House Bill 3065; P.A. 92-274
Representatives Crotty, Saviano, Bill Mitchell, Poe, John Turner

Summary/Highlights

Under this bill, the Secretary of State is authorized to issue restricted licenses for 12 month periods that will permit operation of motor vehicles at night by people using vision aid arrangements other than standard eyeglasses or contact lenses. The Secretary of State is required

to issue rules to define the terms and conditions under which individuals with these vision aids can obtain restricted vision licenses. The bill requires that all such drivers must meet the following minimum requirements:

- The individual must possess a valid driver’s license and have operated a vehicle for 12 months during daylight hours using special vision aid arrangements;
- Also during the prior 12 months, the individual must not have been at fault for any traffic accident that occurred during evening hours; and
- Every applicant must complete a road test administered in evening hours.

To renew a restricted vision license, the license holder must meet the last 2 of these requirements.

The holder of a restricted vision license is entitled to contest any suspension of his or her license resulting from being involved in an accident during nighttime hours. That license may be reinstated, even though the individual was at fault for causing the accident, if it is determined that the accident was not influenced by the driver’s use of vision aid arrangements other than eyeglasses or contact lenses.

Effective Date: January 1, 2002

Statutes Affected: 625 ILCS 5/6-113(g) and (h) (new); 625 ILCS 5/6-115(h) (new)

License Plates, Decals and Devices for Persons with Disabilities

House Bill 846; P.A. 92-0411

Representatives Brosnahan, Bellock, Eileen Lyons, McCarthy, Kosel

Summary

This bill makes changes in the eligibility standards for the issuance of disabilities license plates, devices and decals. It sets forth the procedures for the issuance of additional or replacement disabilities parking decals or devices and adds new limitations on parking adjacent to vehicles displaying disabilities plates. House Bill 846 also grants additional authority to the police to impose various penalties for possessing or obtaining fictitious or other improper disabilities plates, decals or devices.

Highlights

Under current law the term “person with disabilities” defines who is eligible for disabilities license plates, decals or devices. To be considered a person with disabilities, an individual must meet any one of 6 conditions specified in the law, one of which is being unable to walk 200 feet without stopping to rest. The bill amends this particular provision of the current

law by stating that only persons who cannot walk 200 feet without stopping to rest *because of one of the other five conditions* may qualify as a person with a disability. These other conditions are as follows:

- The person is unable to walk without the use of some assistive device, such as a cane or crutch, or uses a wheelchair;
- The person's breathing is significantly restricted by lung disease;
- The person uses portable oxygen;
- The person has a cardiac condition of such severity that it is classified as Class III or IV by the American Heart Association; or
- The person is severely limited in his or her ability to walk due to an arthritic, orthopedic or neurological condition.

Existing law allows disabilities plates to be issued to any member of the immediate family of a person with disabilities provided that the person with disabilities does not own a vehicle and frequently relies on that family member for transportation. House Bill 846 restricts issuance of disabilities plates under these circumstances to parents or legal guardians who provide transportation to the individual with disabilities. The bill also limits the number of vehicles that may be issued disabilities plates for this reason to one per family, instead of two as allowed under the current law, unless the applicant justifies, in writing, the need for disabilities plates on one additional vehicle.

The bill provides that replacements for lost, stolen, or destroyed decals are to be issued upon application and payment of a \$10 replacement fee. But the replacement fee may be waived if the individual applying has received a grant under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act.

It is currently illegal to park in any parking place specifically reserved for vehicles with disability license plates or decals, provided that an official sign is posted (defined elsewhere in the Vehicle Code). House Bill 846 also prohibits parking of any motor vehicle in a designated access aisle adjacent to a parking space reserved for people with disabilities.

The bill proposes additional penalties for improperly obtaining, possessing, transferring, or altering disabilities plates, decals or devices. In addition to all other sanctions available, House Bill 846 authorizes the police to seize the parking decals or devices of any person who violates the prohibitions contained in the law, and, with authorization from the Secretary of State, to seize the license plate of that individual as well. The police may request the Secretary of State to revoke the disabilities license plate, parking decal or device of any person who violates the law.

Effective Date: January 1, 2002

Statutes Affected: 625 ILCS 5/1-159.1; 625 ILCS 5/3-616; 625 ILCS 5/11-1301.2; 625 ILCS 5/11-1301.3; 625 ILCS 5/11-1301.5; 625 ILCS 5/11-1301.6

PHARMACEUTICAL ASSISTANCE

House Bill 2438; P.A. 92-131

Representatives Coulson, O'Brien, McGuire, Tenhouse, Lang

Senate Bill 1493; P.A. 92-519

Senators Radogno, Mahar, Bowles, Geo-Karis, Parker

Summary/Highlights

These bills make identical changes to the state program to provide property tax relief and financial assistance for the purchase of prescription medications for lower income people with disabilities (and senior citizens). The law currently contains an income limit to be eligible for this program - the term "income" is defined to mean (i) adjusted gross income that is reported for federal income tax purposes plus (ii) various amounts which might have been deducted from the calculation of adjusted gross income, such as Illinois income tax paid and Social Security benefits. Under these bills, in calculating income for claim years beginning January 1, 2002, an individual must also add the amount of any deductions taken for benefits received under the Workers' Compensation Act or Workers' Occupational Diseases Act.

To obtain prescription discounts under the law, the individual must purchase an identification card from the state. The current one-time fee is \$5.00 for people under the federal poverty line and \$25.00 for all others. Under these bills the fee is to be charged annually. The bills also require all insurance programs in the state to report any information requested by the Department of Revenue, which administers the pharmaceutical assistance program, about their policyholders, subscribers or beneficiaries who participate in this program, such as names, social security numbers, dates of birth, etc.

These bills also change the benefit period from a calendar year basis to the state fiscal year, which starts on July 1 of each year. Under the current law identification cards were valid for one year. However, to facilitate this change in benefit years, these cards will be valid for longer or shorter than one year depending on the date a claim is filed and as determined by the Department of Revenue.

Effective Date: House Bill 2438 on July 23, 2001; Senate Bill 1493 on January 1, 2002

Statutes Affected: 320 ILCS 25/3.07; 320 ILCS 25/4; 320 ILCS 25/4.1 (new); 320 ILCS 25/5

SPECIAL EDUCATION

Transition Planning

House Bill 3192; P.A. 92-452

Representatives Coulson, Eileen Lyons, Mulligan, Mathias

Summary

House Bill 3192 makes several changes in the law to improve the quality of transition planning for students with disabilities who are leaving secondary school. Among other things, the bill requires obtaining thorough information regarding the availability of supportive services for these students once they leave the school environment and a more detailed analysis of the actual outcomes of transition planning upon the students' lives. It also makes the Secretary of the Department of Human Services and the State Superintendent of Education specifically responsible for ensuring that the Interagency Coordinating Council fulfills its statutory functions regarding transition planning for students with disabilities.

Highlights

Currently, Transition Planning Committees established throughout the state are responsible for overseeing and coordinating the transition planning process at the local level for secondary students with disabilities. Those Committees are composed of representatives from special, vocational, and regular education, persons with disabilities, parents with children who have disabilities, service providers, local businesses, and a representative of the Department, among others.

One of the duties of every Committee is to prepare an annual summary that assesses the level of transition services in the community and the level of unmet needs of secondary students with disabilities. House Bill 3192 broadens this requirement so that each annual Committee report also makes recommendations to address the unmet needs of students and summarizes the steps taken to address the needs identified in its prior year's annual report. The bill also provides that the name and affiliation of each local Transition Planning Committee member and all Committee annual reports must be filed with the administrative office of each school district served by the Committee, sent to each member of the General Assembly whose district includes the area served by a local Committee, and be made available to the public upon request.

House Bill 3192 changes the composition and functions of the Interagency Coordinating Council, whose overall purpose is to gather information about the availability of transition services in the state and to assist local school districts in delivering services to graduating secondary school students with disabilities.

Currently, the Council is composed of representatives from several state departments (Human Services, Corrections, and Children and Family Services, to name a few), the State Superintendent of Education, and the University of Illinois - Division of Specialized Care for Children. House Bill 3192 adds the Board of Higher Education as a member of the Council. It

also provides that the designees of the Secretary of DHS and the State Superintendent of Education are to be co-chairs of the Council and will be jointly responsible for ensuring that the Council carries out all of its duties required by law.

The bill enlarges the scope of the annual report made by the Council evaluating student transition outcomes and needs throughout the state. In evaluating student transition outcomes, the Council must consider the following specific elements:

- High school graduation or passing the Test of General Educational Development (GED);
- Participation in post-secondary education, including continuing and adult education;
- Involvement in integrated or supported employment and work-based learning activities, including vocational training; and
- Post-secondary activities including community participation, independent living and adult services.

The bill also makes some changes in the transition planning process at the school district level. It clarifies that the school district must begin the planning process no later than the school year in which the student reaches age 14½. The transition plan is already required to be a part of the student's individualized education plan (IEP). The bill additionally requires that transition goals in the IEP must be based on appropriate

evaluation procedures and information, take into account the preferences of the student (and his or her parent or guardian), and be outcome-oriented.

Effective Date: August 21, 2001

Statutes Affected: 20 ILCS 2405/13a; 20 ILCS 3970/2 and 3970/3; 105 ILCS 5/14-8.03

Alternative Learning Opportunities

House Bill 1096; P.A. 92-42

Representatives Winkel, Novak, Cowlshaw, Art Turner, Hoeft

Summary/Highlights

This bill is known as the Alternative Learning Opportunities Law. It specifies the requirements for the operation of alternative learning opportunities programs by school districts in providing individualized services for students up to age 21 at risk of academic failure to enable them to successfully complete their education. The available services include alcohol and drug rehabilitation, psychological counseling, tutoring, classroom aides, and career counseling. To be eligible for the program, a student must be in grades 4-12 and be, "at risk of not meeting the Illinois Learning Standards or not graduating from elementary or high school and who demonstrates a need for educational support or social services beyond that provided by the regular school program."

The bill goes into great detail regarding all facets of these programs, including school districts' eligibility for receiving state funding, evaluation and monitoring of programs, enrollment procedures, and administrative requirements. Only Section 13B-60.20 of the bill specifically addresses students with disabilities. It states that enrollment of a special education student in an alternative learning opportunity program can occur only if it is included in that student's individualized education plan and that the IEP must be implemented in the program by appropriately certified personnel.

Effective Date: January 1, 2002

Statutes Affected: 105 ILCS 5/13B-1 through 5/13B-85 (new); 105 ILCS 5/26-2

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