

1 AN ACT in relation to health.

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

4 Section 1. Short title. This Act may be cited as the
5 Developmental Disabilities Services Act of 2002.

6 Section 5. Purpose. It is the purpose of this Act to
7 create an advisory committee to develop and implement a
8 disabilities services implementation plan as provided in
9 Section 20 to ensure compliance by the State of Illinois with
10 the Americans with Disabilities Act and the decision in
11 *Olmstead v. L.C.*, 119 S.Ct. 2176 (1999).

12 Section 10. Application of Act; definitions. This Act
13 applies to persons with disabilities. The disabilities
14 included are defined for purposes of this Act as follows:

15 "Disability" means a disability as defined by the
16 Americans with Disabilities Act of 1990 that is attributable
17 to a developmental disability, a mental illness, or a
18 physical disability, or combination of those.

19 "Developmental disability" means a disability that is
20 attributable to mental retardation or a related condition. A
21 related condition must meet all of the following conditions:

22 (1) It must be attributable to cerebral palsy,
23 epilepsy, or autism, or any other condition (other than
24 mental illness) found to be closely related to mental
25 retardation because that condition results in impairment
26 of general intellectual functioning or adaptive behavior
27 similar to that of individuals with mental retardation,
28 and requires treatment or services similar to those
29 required for those individuals.

30 (2) It must be manifested before the individual

1 reaches age 22.

2 (3) It must be likely to continue indefinitely.

3 (4) It must result in substantial functional
4 limitations in 3 or more of the following areas of major
5 life activity: self-care, language, learning, mobility,
6 self-direction, and capacity for independent living.

7 "Mental Illness" means a mental or emotional disorder
8 verified by a diagnosis contained in the Diagnostic and
9 Statistical Manual of Mental Disorders-Fourth Edition,
10 published by the American Psychiatric Association (DSM-IV) or
11 International Classification of Diseases, 9th Revision,
12 Clinical Modification (ICD-9-CM) that substantially impairs a
13 person's cognitive, emotional, or behavioral functioning, or
14 any combination of those, excluding (i) conditions that may
15 be the focus of clinical attention but are not of sufficient
16 duration or severity to be categorized as a mental illness,
17 such as parent-child relational problems, partner-relational
18 problems, sexual abuse of a child, bereavement, academic
19 problems, phase-of-life problems, and occupational problems
20 (collectively, "V codes"), (ii) organic disorders such as
21 substance intoxication dementia, substance withdrawal
22 dementia, Alzheimer's disease, vascular dementia, dementia
23 due to HIV infection, and dementia due to Creutzfeld-Jakob
24 disease and disorders associated with known or unknown
25 physical conditions such as hallucinosis, amnesic disorders
26 and delirium, psychoactive substance-induced organic
27 disorders, and (iii) mental retardation or psychoactive
28 substance use disorders.

29 "Mental retardation" means significantly sub-average
30 general intellectual functioning existing concurrently with
31 deficits in adaptive behavior and manifested before the age
32 of 22 years. "Significantly sub-average" means an
33 intelligence quotient (IQ) of 70 or below on standardized
34 measures of intelligence. This upper limit could be extended

1 upward depending on the reliability of the intelligence test
2 used.

3 "Physical disability" means a disability as defined by
4 the Americans with Disabilities Act of 1990 that meets the
5 following criteria:

6 (1) It is attributable to a physical impairment.

7 (2) It results in a substantial functional
8 limitation in 3 or more of the following areas of major
9 life activity: (i) self-care, (ii) receptive and
10 expressive language, (iii) learning, (iv) mobility, (v)
11 self-direction, (vi) capacity for independent living, and
12 (vii) economic sufficiency.

13 (3) It reflects the person's need for a combination
14 and sequence of special, interdisciplinary, or general
15 care, treatment, or other services that are of lifelong
16 or of extended duration and must be individually planned
17 and coordinated.

18 "Department" means the Department on Aging, the
19 Department of Human Services, the Department of Public
20 Health, the Department of Public Aid, the University of
21 Illinois Division of Specialized Care for Children, the
22 Department of Children and Family Services, and the Illinois
23 State Board of Education, where appropriate, as designated in
24 the implementation plan developed under Section 20.

25 "Independent service coordination" means a social service
26 that enables persons with disabilities and their families to
27 locate, use, and coordinate resources and opportunities in
28 their communities on the basis of individual need.
29 Independent service coordination is independent of providers
30 of services and funding sources and is designed to ensure
31 accessibility, continuity of care, and accountability and to
32 maximize the potential of persons with disabilities for
33 independence, productivity, and integration into the
34 community. Independent service coordination includes, at a

1 minimum: (i) outreach to identify eligible individuals; (ii)
2 assessment and periodic reassessment to determine each
3 individual's strengths, functional limitations, and need for
4 specific services; (iii) participation in the development of
5 a comprehensive individual service or treatment plan; (iv)
6 referral to and linkage with needed services and supports;
7 (v) monitoring to ensure the delivery of appropriate services
8 and to determine individual progress in meeting goals and
9 objectives; and (vi) advocacy to assist the person in
10 obtaining all services for which he or she is eligible or
11 entitled.

12 "Chronological age-appropriate services" means services,
13 activities, and strategies for persons with disabilities that
14 are representative of the lifestyle activities of nondisabled
15 peers of similar age in the community.

16 "Comprehensive evaluation" means procedures used by
17 qualified professionals selectively with an individual to
18 determine whether a person has a disability and the nature
19 and extent of the services that the person with a disability
20 needs.

21 "Family" means a natural, adoptive, or foster parent or
22 parents or other person or persons responsible for the care
23 of an individual with a disability in a family setting.

24 "Family or individual support" means those resources and
25 services that are necessary to maintain an individual with a
26 disability within the family home or his or her own home.
27 These services may include, but are not limited to, cash
28 subsidy, respite care, and counseling services.

29 "Individual service or treatment plan" means a recorded
30 assessment of the needs of a person with a disability, a
31 description of the services recommended, the goals of each
32 type of element of service, an anticipated timetable for the
33 accomplishment of the goals, and a designation of the
34 qualified professionals responsible for the implementation of

1 the plan.

2 "Least restrictive environment" means an environment that
3 represents the least departure from the normal patterns of
4 living and that effectively meets the needs of the person
5 receiving the service.

6 Section 15. Services. In accordance with this Section
7 and the individual service or treatment plan based on a
8 comprehensive evaluation, persons with disabilities shall be
9 provided the following services under the Disabilities
10 Services Implementation Plan developed under Section 20:

11 (1) Comprehensive evaluation and diagnosis. A
12 person with a suspected disability who is applying for
13 Department-authorized disability services must receive a
14 comprehensive diagnosis and evaluation, including an
15 assessment of skills, abilities, and potential for
16 residential and work placement, adapted to his or her
17 primary language, cultural background, and ethnic origin.
18 All components of a comprehensive evaluation must be
19 administered by a qualified examiner.

20 (2) Individual service or treatment plan. A person
21 with a disability shall receive services in accordance
22 with a current individual service or treatment plan. A
23 person with a disability who is receiving services shall
24 be provided periodic reevaluation and review of the
25 individual service or treatment plan, at least annually,
26 in order to measure progress, to modify or change
27 objectives if necessary, and to provide guidance and
28 remediation techniques.

29 A person with a disability and his or her guardian
30 have the right to participate in the planning and
31 decision-making process regarding the person's individual
32 service or treatment plan and to be informed in writing,
33 or in that person's mode of communication, of progress at

1 reasonable time intervals. Each person must be given the
2 opportunity to make decisions and exercise options
3 regarding the plan, consistent with the person's
4 capabilities. Family members and other representatives of
5 the person with a disability must be allowed, encouraged,
6 and supported to participate as well, if the person with
7 a disability consents to that participation.

8 (3) Nondiscriminatory access to services. A person
9 with a disability may not be denied program services
10 because of sex, ethnic origin, marital status, ability to
11 pay (except where contrary to law), or criminal record.
12 Specific program eligibility requirements with regard to
13 disability, level of need, age, and other matters may be
14 established by the Department by rule. The Department
15 may set priorities for the provision of services and for
16 determining the need and eligibility for services in
17 accordance with available funding.

18 (4) Family or individual support. A person with a
19 disability must be provided family or individual support
20 services, or both, whenever possible and appropriate, to
21 prevent unnecessary out-of-home placement and to foster
22 independent living skills when authorized for such
23 services.

24 (5) Residential choices and options. A person with
25 a disability who requires residential placement in a
26 supervised or supported setting must be provided choices
27 among various residential options when authorized for
28 those services. The placement must be offered in the
29 most integrated setting appropriate.

30 (6) Education. A person with a disability has the
31 right to a free, appropriate public education as provided
32 in both State and federal law. Each local educational
33 agency must prepare persons with disabilities for adult
34 living. In anticipation of adulthood, each person with a

1 disability has the right to a transition plan developed
2 and ready for implementation before the person's exit by
3 no later than the school year in which the person reaches
4 age 14, consistent with the requirements of the federal
5 Individuals with Disabilities Education Act and Article
6 XIV of the School Code.

7 (7) Vocational training. A person with a
8 disability must be provided vocational training, when
9 appropriate, that contributes to the person's
10 independence and employment potential. This training
11 should include strategies and activities in programs that
12 lead to employment and reemployment in the most
13 integrated setting appropriate to the individual.

14 (8) Employment. A person with a disability has the
15 right to be employed free from discrimination, pursuant
16 to the Constitution and laws of this State.

17 (9) Independent service coordination. A person with
18 a disability who is receiving direct services from the
19 Department must be provided independent service
20 coordination when needed.

21 (10) Due process. A person with a disability
22 retains the rights of citizenship. Any person aggrieved
23 by a decision of a department regarding services
24 provided under this Act must be given an opportunity to
25 present complaints at a due process hearing before an
26 impartial hearing officer designated by the director of
27 that department. Any person aggrieved by a final
28 administrative decision rendered following the due
29 process hearing may seek judicial review of that decision
30 pursuant to the Administrative Review Law. The term
31 "administrative decision" is defined as in Section 3-101
32 of the Code of Civil Procedure. Prevailing attorney's
33 fees and costs may be awarded to the successful plaintiff
34 in any formal administrative or judicial action under

1 this Act.

2 The right to a hearing under this item (10) is in
3 addition to any other rights under federal, State, or
4 local laws.

5 Section 20. Implementation.

6 (a) The Governor, with the assistance of the Secretary
7 of Human Services, shall appoint an advisory committee to
8 develop a Disabilities Services Implementation Plan that will
9 ensure compliance by the State of Illinois with the Americans
10 with Disabilities Act and the decision in *Olmstead v. L.C.*,
11 119 S.Ct. 2176 (1999). The advisory committee shall be
12 composed of persons with disabilities, family
13 representatives, and individuals who represent each principal
14 State agency, local government agencies, and nongovernmental
15 organizations concerned with services for persons with
16 disabilities.

17 (b) The implementation plan must include, but need not
18 be limited to, the following:

19 (1) Establishing procedures for completing
20 comprehensive evaluations, including provisions for
21 Department review and approval of need determinations.
22 The Department may utilize independent evaluators and
23 targeted or sample reviews during this review and
24 approval process, as it deems appropriate.

25 (2) Establishing procedures for the development of
26 an individual service or treatment plan for each person
27 with a disability, including provisions for Department
28 review and authorization.

29 (3) Identifying core services to be provided by
30 agencies of the State of Illinois or other agencies.

31 (4) Establishing minimum standards for
32 individualized services.

33 (5) Establishing minimum standards for residential

1 services in the least restrictive environment.

2 (6) Establishing minimum standards for vocational
3 services.

4 (7) Establishing due process hearing procedures.

5 (8) Establishing minimum standards for family
6 support services.

7 (9) Securing financial resources necessary to
8 fulfill the purposes and requirements of this Act,
9 including but not limited to obtaining approval and
10 implementing waivers or demonstrations authorized under
11 federal law.

12 (c) The Governor, with the assistance of the Secretary
13 of Human Services, is responsible for the completion of the
14 implementation plan. The Governor must submit a report to the
15 General Assembly by July 1, 2003, which must include the
16 following:

17 (1) The implementation plan.

18 (2) A description of current and planned programs
19 and services necessary to meet the requirements of the
20 individual service or treatment plans required by this
21 Act, together with the actions to be taken by the State
22 of Illinois to ensure that those plans will be
23 implemented. This description shall include a report of
24 related program and service improvements or expansions
25 implemented by the Department since the effective date of
26 this Act.

27 (3) The estimated costs of current and planned
28 programs and services to be provided under the
29 implementation plan.

30 (4) A report on the number of persons with
31 disabilities who may be eligible to receive services
32 under this Act, together with a report on the number of
33 persons who are currently receiving those services.

34 (5) Any proposed changes in State policies, laws,

1 or regulations necessary to fulfill the purposes and
2 requirements of this Act.

3 (d) The Governor, with the assistance of the Secretary
4 of Human Services, shall annually update the implementation
5 plan and report changes to the General Assembly by July 1 of
6 each year. Initial implementation of the plan is required by
7 July 1, 2004. The requirement of annual updates and reports
8 expires in 2008, unless otherwise extended by the General
9 Assembly.

10 Section 25. Appropriations. Services shall be provided
11 under this Act to the extent that appropriations are made
12 available by the General Assembly for the programs and
13 services indicated in the implementation plan.

14 (405 ILCS 80/1-1 rep.)

15 (405 ILCS 80/1-2 rep.)

16 (405 ILCS 80/1-3 rep.)

17 (405 ILCS 80/1-4 rep.)

18 (405 ILCS 80/1-5 rep.)

19 Section 90. The Developmental Disability and Mental
20 Disability Services Act is amended by repealing Sections 1-1,
21 1-2, 1-3, 1-4, and 1-5 (the Developmental Disabilities
22 Services Law).

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.