



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1982

Introduced 2/10/2011, by Sen. Heather A. Steans

#### SYNOPSIS AS INTRODUCED:

210 ILCS 45/1-114.2 new

210 ILCS 45/2-106.1

210 ILCS 45/2-106.2 new

210 ILCS 45/2-202

from Ch. 111 1/2, par. 4152-202

405 ILCS 5/2-107

from Ch. 91 1/2, par. 2-107

Amends the Nursing Home Care Act. Sets forth a definition for "institution for mental diseases". Provides that electroconvulsive therapy may only be administered to a resident who has provided informed consent pursuant the Mental Health and Developmental Disabilities Code or under a Court order pursuant to the Mental Health and Developmental Disabilities Code. Provides that no adult may be admitted to institutions for mental diseases or to certain sections of nursing homes except as provided for in certain provisions of the Mental Health and Developmental Disabilities Code. Makes other changes. Amends the Mental Health and Developmental Disabilities Code to make changes in provisions concerning emergency administration of psychotropic medication. Effective immediately.

LRB097 07037 RPM 47130 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning health facilities.

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

4 Section 5. The Nursing Home Care Act is amended by changing  
5 Sections 2-106.1 and 2-202 and by adding Sections 1-114.2 and  
6 2-106.2 as follows:

7 (210 ILCS 45/1-114.2 new)

8 Sec. 1-114.2. Institution for mental diseases.

9 "Institution for mental diseases" means a nursing facility that  
10 is primarily engaged in providing diagnosis, treatment, or care  
11 of persons with mental diseases, including medical attention,  
12 nursing care, and related services.

13 (210 ILCS 45/2-106.1)

14 Sec. 2-106.1. Drug treatment.

15 (a) A resident shall not be given unnecessary drugs. An  
16 unnecessary drug is any drug used in an excessive dose,  
17 including in duplicative therapy; for excessive duration;  
18 without adequate monitoring; without adequate indications for  
19 its use; or in the presence of adverse consequences that  
20 indicate the drugs should be reduced or discontinued. The  
21 Department shall adopt, by rule, the standards for unnecessary  
22 drugs contained in interpretive guidelines issued by the United

1 States Department of Health and Human Services for the purposes  
2 of administering Titles XVIII and XIX of the Social Security  
3 Act.

4 (b) Psychotropic medication shall not be prescribed  
5 without the informed consent of the resident except as provided  
6 in subsection (d) of this Section ~~, the resident's guardian, or~~  
7 ~~other authorized representative.~~ "Psychotropic medication"  
8 means medication that is used for or listed as used for  
9 antipsychotic, antidepressant, antimanic, or antianxiety  
10 behavior modification or behavior management purposes in the  
11 latest editions of the AMA Drug Evaluations or the Physician's  
12 Desk Reference. The Department shall adopt, by rule, a protocol  
13 specifying how informed consent for psychotropic medication  
14 may be obtained or refused. The protocol shall require, at a  
15 minimum, a discussion between (i) the resident or the  
16 resident's authorized representative and (ii) the resident's  
17 physician, a registered pharmacist (who is not a dispensing  
18 pharmacist for the facility where the resident lives), or a  
19 licensed nurse about the possible risks and benefits of a  
20 recommended medication and the use of standardized consent  
21 forms designated by the Department. Each form developed by the  
22 Department (i) shall be written in plain language, (ii) shall  
23 be able to be downloaded from the Department's official  
24 website, (iii) shall include information specific to the  
25 psychotropic medication for which consent is being sought, and  
26 (iv) shall be used for every resident for whom psychotropic

1 drugs are prescribed. In addition to creating those forms, the  
2 Department shall approve the use of any other informed consent  
3 forms that meet criteria developed by the Department.

4 In addition to any other penalty prescribed by law, a  
5 facility that is found to have violated this subsection, or the  
6 federal certification requirement that informed consent be  
7 obtained before administering a psychotropic medication, shall  
8 thereafter be required to obtain the signatures of 2 licensed  
9 health care professionals on every form purporting to give  
10 informed consent for the administration of a psychotropic  
11 medication, certifying the personal knowledge of each health  
12 care professional that the consent was obtained in compliance  
13 with the requirements of this subsection.

14 (c) The requirements of this Section are intended to  
15 control in a conflict with the requirements of Sections 2-102  
16 and 2-107.2 of the Mental Health and Developmental Disabilities  
17 Code with respect to the administration of psychotropic  
18 medication.

19 (d) If the resident is unable to give informed consent to  
20 psychotropic medication pursuant to subsection (b) of this  
21 Section, then such medications may only be administered  
22 pursuant to Sections 2-107 or 2-107.1 of the Mental Health and  
23 Developmental Disabilities Code.

24 (Source: P.A. 95-331, eff. 8-21-07; 96-1372, eff. 7-29-10.)

25 (210 ILCS 45/2-106.2 new)

1       Sec. 2-106.2. Electroconvulsive therapy. Electroconvulsive  
2       therapy may only be administered to a resident who has provided  
3       informed consent pursuant to Section 2-102 of the Mental Health  
4       and Developmental Disabilities Code or under a court order  
5       pursuant to Section 2-107.1 of the Mental Health and  
6       Developmental Disabilities Code.

7           (210 ILCS 45/2-202) (from Ch. 111 1/2, par. 4152-202)

8       Sec. 2-202. (a) Before a person is admitted to a facility,  
9       or at the expiration of the period of previous contract, or  
10       when the source of payment for the resident's care changes from  
11       private to public funds or from public to private funds, a  
12       written contract shall be executed between a licensee and the  
13       following in order of priority:

14           (1) the person, or if the person is a minor, his parent  
15           or guardian; or

16           (2) the person's guardian, if any, or agent, if any, as  
17           defined in Section 2-3 of the Illinois Power of Attorney  
18           Act; or

19           (3) a member of the person's immediate family.

20       An adult person shall be presumed to have the capacity to  
21       contract for admission to a long term care facility unless he  
22       has been adjudicated a "disabled person" within the meaning of  
23       Section 11a-2 of the Probate Act of 1975, or unless a petition  
24       for such an adjudication is pending in a circuit court of  
25       Illinois.

1           If there is no guardian, agent or member of the person's  
2 immediate family available, able or willing to execute the  
3 contract required by this Section and a physician determines  
4 that a person is so disabled as to be unable to consent to  
5 placement in a facility, or if a person has already been found  
6 to be a "disabled person", but no order has been entered  
7 allowing residential placement of the person, that person may  
8 be admitted to a facility before the execution of a contract  
9 required by this Section; provided that a petition for  
10 guardianship or for modification of guardianship is filed  
11 within 15 days of the person's admission to a facility, and  
12 provided further that such a contract is executed within 10  
13 days of the disposition of the petition.

14           No adult shall be admitted to a facility if he objects,  
15 orally or in writing, to such admission, except as otherwise  
16 provided in ~~Chapters III and IV of the Mental Health and~~  
17 ~~Developmental Disabilities Code~~ or Section 11a-14.1 of the  
18 Probate Act of 1975. Notwithstanding any other provision in  
19 this Act, no adult may be admitted to institutions for mental  
20 diseases or to those sections of nursing homes that are  
21 primarily engaged in providing diagnosis, treatment, or care of  
22 persons with mental diseases, except as provided for in  
23 Chapters III and IV of the Mental Health and Developmental  
24 Disabilities Code.

25           If a person has not executed a contract as required by this  
26 Section, then such a contract shall be executed on or before

1 July 1, 1981, or within 10 days after the disposition of a  
2 petition for guardianship or modification of guardianship that  
3 was filed prior to July 1, 1981, whichever is later.

4 Before a licensee enters a contract under this Section, it  
5 shall provide the prospective resident and his guardian, if  
6 any, with written notice of the licensee's policy regarding  
7 discharge of a resident whose private funds for payment of care  
8 are exhausted.

9 (b) A resident shall not be discharged or transferred at  
10 the expiration of the term of a contract, except as provided in  
11 Sections 3-401 through 3-423.

12 (c) At the time of the resident's admission to the  
13 facility, a copy of the contract shall be given to the  
14 resident, his guardian, if any, and any other person who  
15 executed the contract.

16 (d) A copy of the contract for a resident who is supported  
17 by nonpublic funds other than the resident's own funds shall be  
18 made available to the person providing the funds for the  
19 resident's support.

20 (e) The original or a copy of the contract shall be  
21 maintained in the facility and be made available upon request  
22 to representatives of the Department and the Department of  
23 Healthcare and Family Services.

24 (f) The contract shall be written in clear and unambiguous  
25 language and shall be printed in not less than 12-point type.  
26 The general form of the contract shall be prescribed by the

1 Department.

2 (g) The contract shall specify:

3 (1) the term of the contract;

4 (2) the services to be provided under the contract and  
5 the charges for the services;

6 (3) the services that may be provided to supplement the  
7 contract and the charges for the services;

8 (4) the sources liable for payments due under the  
9 contract;

10 (5) the amount of deposit paid; and

11 (6) the rights, duties and obligations of the resident,  
12 except that the specification of a resident's rights may be  
13 furnished on a separate document which complies with the  
14 requirements of Section 2-211.

15 (h) The contract shall designate the name of the resident's  
16 representative, if any. The resident shall provide the facility  
17 with a copy of the written agreement between the resident and  
18 the resident's representative which authorizes the resident's  
19 representative to inspect and copy the resident's records and  
20 authorizes the resident's representative to execute the  
21 contract on behalf of the resident required by this Section.

22 (i) The contract shall provide that if the resident is  
23 compelled by a change in physical or mental health to leave the  
24 facility, the contract and all obligations under it shall  
25 terminate on 7 days notice. No prior notice of termination of  
26 the contract shall be required, however, in the case of a



1 resident's death. The contract shall also provide that in all  
2 other situations, a resident may terminate the contract and all  
3 obligations under it with 30 days notice. All charges shall be  
4 prorated as of the date on which the contract terminates, and,  
5 if any payments have been made in advance, the excess shall be  
6 refunded to the resident. This provision shall not apply to  
7 life-care contracts through which a facility agrees to provide  
8 maintenance and care for a resident throughout the remainder of  
9 his life nor to continuing-care contracts through which a  
10 facility agrees to supplement all available forms of financial  
11 support in providing maintenance and care for a resident  
12 throughout the remainder of his life.

13 (j) In addition to all other contract specifications  
14 contained in this Section admission contracts shall also  
15 specify:

16 (1) whether the facility accepts Medicaid clients;

17 (2) whether the facility requires a deposit of the  
18 resident or his family prior to the establishment of  
19 Medicaid eligibility;

20 (3) in the event that a deposit is required, a clear  
21 and concise statement of the procedure to be followed for  
22 the return of such deposit to the resident or the  
23 appropriate family member or guardian of the person;

24 (4) that all deposits made to a facility by a resident,  
25 or on behalf of a resident, shall be returned by the  
26 facility within 30 days of the establishment of Medicaid

1 eligibility, unless such deposits must be drawn upon or  
2 encumbered in accordance with Medicaid eligibility  
3 requirements established by the Department of Healthcare  
4 and Family Services.

5 (k) It shall be a business offense for a facility to  
6 knowingly and intentionally both retain a resident's deposit  
7 and accept Medicaid payments on behalf of that resident.

8 (Source: P.A. 95-331, eff. 8-21-07.)

9 Section 10. The Mental Health and Developmental  
10 Disabilities Code is amended by changing Section 2-107 as  
11 follows:

12 (405 ILCS 5/2-107) (from Ch. 91 1/2, par. 2-107)

13 Sec. 2-107. Refusal of services; informing of risks.

14 (a) An adult recipient of services or the recipient's  
15 guardian, if the recipient is under guardianship, and the  
16 recipient's substitute decision maker, if any, must be informed  
17 of the recipient's right to refuse medication or  
18 electroconvulsive therapy. The recipient and the recipient's  
19 guardian or substitute decision maker shall be given the  
20 opportunity to refuse generally accepted mental health or  
21 developmental disability services, including but not limited  
22 to medication or electroconvulsive therapy. If such services  
23 are refused, they shall not be given unless such services are  
24 necessary to prevent the recipient from causing serious and

1 imminent physical harm to the recipient or others and no less  
2 restrictive alternative is available. The facility director  
3 shall inform a recipient, guardian, or substitute decision  
4 maker, if any, who refuses such services of alternate services  
5 available and the risks of such alternate services, as well as  
6 the possible consequences to the recipient of refusal of such  
7 services.

8 (b) Psychotropic medication or electroconvulsive therapy  
9 may be administered under this Section for up to 24 hours only  
10 if the circumstances leading up to the need for emergency  
11 treatment are set forth in writing in the recipient's record.

12 (c) Administration of medication or electroconvulsive  
13 therapy may not be continued unless the need for such treatment  
14 is redetermined at least every 24 hours based upon a personal  
15 examination of the recipient by a physician or a nurse under  
16 the supervision of a physician and the circumstances  
17 demonstrating that need are set forth in writing in the  
18 recipient's record.

19 (d) Neither psychotropic medication nor electroconvulsive  
20 therapy may be administered under this Section for a period in  
21 excess of 72 hours, excluding Saturdays, Sundays, and holidays,  
22 unless a petition is filed under Section 2-107.1 and the  
23 treatment continues to be necessary under subsection (a) of  
24 this Section. Once the petition has been filed, treatment may  
25 continue in compliance with subsections (a), (b), and (c) of  
26 this Section until the final outcome of the hearing on the

1 petition.

2 (e) The Department shall issue rules designed to insure  
3 that in State-operated mental health facilities psychotropic  
4 medication and electroconvulsive therapy are administered in  
5 accordance with this Section and only when appropriately  
6 authorized and monitored by a physician or a nurse under the  
7 supervision of a physician in accordance with accepted medical  
8 practice. The facility director of each mental health facility  
9 not operated by the State shall issue rules designed to insure  
10 that in that facility psychotropic medication and  
11 electroconvulsive therapy are administered in accordance with  
12 this Section and only when appropriately authorized and  
13 monitored by a physician or a nurse under the supervision of a  
14 physician in accordance with accepted medical practice. Such  
15 rules shall be available for public inspection and copying  
16 during normal business hours.

17 (f) The provisions of this Section with respect to the  
18 emergency administration of ~~psychotropic medication and~~  
19 electroconvulsive therapy do not apply to facilities licensed  
20 under the Nursing Home Care Act or the MR/DD Community Care  
21 Act. The provisions of this Section concerning the emergency  
22 administration of psychotropic medication do not apply to  
23 facilities licensed under the MR/DD Community Care Act.

24 (g) Under no circumstances may long-acting psychotropic  
25 medications be administered under this Section.

26 (h) Whenever psychotropic medication or electroconvulsive

1 therapy is refused pursuant to subsection (a) of this Section  
2 at least once that day, the physician shall determine and state  
3 in writing the reasons why the recipient did not meet the  
4 criteria for administration of medication or electroconvulsive  
5 therapy under subsection (a) and whether the recipient meets  
6 the standard for administration of psychotropic medication or  
7 electroconvulsive therapy under Section 2-107.1 of this Code.  
8 If the physician determines that the recipient meets the  
9 standard for administration of psychotropic medication or  
10 electroconvulsive therapy under Section 2-107.1, the facility  
11 director or his or her designee shall petition the court for  
12 administration of psychotropic medication or electroconvulsive  
13 therapy pursuant to that Section unless the facility director  
14 or his or her designee states in writing in the recipient's  
15 record why the filing of such a petition is not warranted. This  
16 subsection (h) applies only to State-operated mental health  
17 facilities.

18 (i) The Department shall conduct annual trainings for all  
19 physicians and registered nurses working in State-operated  
20 mental health facilities on the appropriate use of emergency  
21 administration of psychotropic medication and  
22 electroconvulsive therapy, standards for their use, and the  
23 methods of authorization under this Section.

24 (Source: P.A. 95-172, eff. 8-14-07; 96-339, eff. 7-1-10.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.