

**104TH GENERAL ASSEMBLY****State of Illinois****2025 and 2026****HB3811**

Introduced 2/18/2025, by Rep. Terra Costa Howard

SYNOPSIS AS INTRODUCED:

210 ILCS 45/2-202	from Ch. 111 1/2, par. 4152-202
210 ILCS 85/6.09	from Ch. 111 1/2, par. 147.09
755 ILCS 5/11a-5	from Ch. 110 1/2, par. 11a-5
755 ILCS 5/11a-15	from Ch. 110 1/2, par. 11a-15
755 ILCS 5/23-2	from Ch. 110 1/2, par. 23-2

Amends the Hospital Licensing Act. Provides that, if a physician determines that an adult patient is so disabled as to be unable to consent to discharge or placement in a facility or a physician reasonably believes an adult patient is a person with a disability in need of a guardian in accordance with the Probate Act of 1975 and there is no family, surrogate decision maker, agent under a power of attorney, trustee, or other close friend who is ready willing and able to assist that adult patient, then the hospital shall notify the Office of State Guardian and the public guardian of the county where the patient resides. Amends the Nursing Home Care Act. Requires a facility to notify the Office of State Guardian and the public guardian in the county where the patient resides before executing a contract in specified circumstances where the patient has diminished capacity. Amends the Probate Act of 1975. Includes private professional guardians as individuals who may act as guardians. Establishes standards for private professional guardians before appointment. Requires a private professional guardian who serves as guardian for 15 or more persons with disabilities to be certified as a National Master Guardian by the Center for Guardianship Certification and imposes other requirements, including background checks. Sets forth provisions concerning private professional guardians as successor guardians and the removal of private professional guardians who fail to comply with the specified requirements.

LRB104 10924 BAB 21006 b

1 AN ACT concerning regulation.

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
5 changing Section 2-202 as follows:

6 (210 ILCS 45/2-202) (from Ch. 111 1/2, par. 4152-202)

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

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

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

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

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

1 court of Illinois.

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

15 If there is no guardian, agent, or member of the adult's
16 immediate family available, able, or willing to execute the
17 contract required by this Section and a physician determines
18 that the adult is so disabled as to be unable to consent to
19 placement in a facility and the physician reasonably believes
20 the adult is a person with a disability in need of a guardian
21 in accordance with the Probate Act of 1975, then the facility
22 shall notify the Office of State Guardian and the public
23 guardian of the county where the patient resides.

24 No adult shall be admitted to a facility if he objects,
25 orally or in writing, to such admission, except as otherwise
26 provided in Chapters III and IV of the Mental Health and

1 Developmental Disabilities Code or Section 11a-14.1 of the
2 Probate Act of 1975.

3 If a person has not executed a contract as required by this
4 Section, then such a contract shall be executed on or before
5 July 1, 1981, or within 10 days after the disposition of a
6 petition for guardianship or modification of guardianship that
7 was filed prior to July 1, 1981, whichever is later.

8 Before a licensee enters a contract under this Section, it
9 shall provide the prospective resident and his or her
10 guardian, if any, with written notice of the licensee's policy
11 regarding discharge of a resident whose private funds for
12 payment of care are exhausted.

13 Before a licensee enters into a contract under this
14 Section, it shall provide the resident or prospective resident
15 and his or her guardian, if any, with a copy of the licensee's
16 policy regarding the assignment of Social Security
17 representative payee status as a condition of the contract
18 when the resident's or prospective resident's care is being
19 funded under Title XIX of the Social Security Act and Article V
20 of the Illinois Public Aid Code.

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

24 (c) At the time of the resident's admission to the
25 facility, a copy of the contract shall be given to the
26 resident, his guardian, if any, and any other person who

1 executed the contract.

2 (d) A copy of the contract for a resident who is supported
3 by nonpublic funds other than the resident's own funds shall
4 be made available to the person providing the funds for the
5 resident's support.

6 (e) The original or a copy of the contract shall be
7 maintained in the facility and be made available upon request
8 to representatives of the Department and the Department of
9 Healthcare and Family Services.

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

14 (g) The contract shall specify:

15 (1) the term of the contract;

16 (2) the services to be provided under the contract and
17 the charges for the services;

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

20 (4) the sources liable for payments due under the
21 contract;

22 (5) the amount of deposit paid; and

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

1 (h) The contract shall designate the name of the
2 resident's representative, if any. The resident shall provide
3 the facility with a copy of the written agreement between the
4 resident and the resident's representative which authorizes
5 the resident's representative to inspect and copy the
6 resident's records and authorizes the resident's
7 representative to execute the contract on behalf of the
8 resident required by this Section.

9 (i) The contract shall provide that if the resident is
10 compelled by a change in physical or mental health to leave the
11 facility, the contract and all obligations under it shall
12 terminate on 7 days notice. No prior notice of termination of
13 the contract shall be required, however, in the case of a
14 resident's death. The contract shall also provide that in all
15 other situations, a resident may terminate the contract and
16 all obligations under it with 30 days notice. All charges
17 shall be prorated as of the date on which the contract
18 terminates, and, if any payments have been made in advance,
19 the excess shall be refunded to the resident. This provision
20 shall not apply to life-care contracts through which a
21 facility agrees to provide maintenance and care for a resident
22 throughout the remainder of his life nor to continuing-care
23 contracts through which a facility agrees to supplement all
24 available forms of financial support in providing maintenance
25 and care for a resident throughout the remainder of his life.

26 (j) In addition to all other contract specifications

1 contained in this Section admission contracts shall also
2 specify:

3 (1) whether the facility accepts Medicaid clients;

4 (2) whether the facility requires a deposit of the
5 resident or his family prior to the establishment of
6 Medicaid eligibility;

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

11 (4) that all deposits made to a facility by a
12 resident, or on behalf of a resident, shall be returned by
13 the facility within 30 days of the establishment of
14 Medicaid eligibility, unless such deposits must be drawn
15 upon or encumbered in accordance with Medicaid eligibility
16 requirements established by the Department of Healthcare
17 and Family Services.

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

21 (Source: P.A. 98-104, eff. 7-22-13; 99-143, eff. 7-27-15.)

22 Section 10. The Hospital Licensing Act is amended by
23 changing Section 6.09 as follows:

24 (210 ILCS 85/6.09) (from Ch. 111 1/2, par. 147.09)

1 Sec. 6.09. (a) In order to facilitate the orderly
2 transition of aged patients and patients with disabilities
3 from hospitals to post-hospital care, whenever a patient who
4 qualifies for the federal Medicare program is hospitalized,
5 the patient shall be notified of discharge at least 24 hours
6 prior to discharge from the hospital. With regard to pending
7 discharges to a skilled nursing facility, the hospital must
8 notify the case coordination unit, as defined in 89 Ill. Adm.
9 Code 240.260, at least 24 hours prior to discharge. When the
10 assessment is completed in the hospital, the case coordination
11 unit shall provide a copy of the required assessment
12 documentation directly to the nursing home to which the
13 patient is being discharged prior to discharge. The Department
14 on Aging shall provide notice of this requirement to case
15 coordination units. When a case coordination unit is unable to
16 complete an assessment in a hospital prior to the discharge of
17 a patient, 60 years of age or older, to a nursing home, the
18 case coordination unit shall notify the Department on Aging
19 which shall notify the Department of Healthcare and Family
20 Services. The Department on Aging shall adopt rules to address
21 these instances to ensure that the patient is able to access
22 nursing home care, the nursing home is not penalized for
23 accepting the admission, and the patient's timely discharge
24 from the hospital is not delayed, to the extent permitted
25 under federal law or regulation. Nothing in this subsection
26 shall preclude federal requirements for a pre-admission

1 screening/mental health (PAS/MH) as required under Section
2 2-201.5 of the Nursing Home Care Act or State or federal law or
3 regulation. If home health services are ordered, the hospital
4 must inform its designated case coordination unit, as defined
5 in 89 Ill. Adm. Code 240.260, of the pending discharge and must
6 provide the patient with the case coordination unit's
7 telephone number and other contact information.

8 (b) Every hospital shall develop procedures for a
9 physician with medical staff privileges at the hospital or any
10 appropriate medical staff member to provide the discharge
11 notice prescribed in subsection (a) of this Section. The
12 procedures must include prohibitions against discharging or
13 referring a patient to any of the following if unlicensed,
14 uncertified, or unregistered: (i) a board and care facility,
15 as defined in the Board and Care Home Act; (ii) an assisted
16 living and shared housing establishment, as defined in the
17 Assisted Living and Shared Housing Act; (iii) a facility
18 licensed under the Nursing Home Care Act, the Specialized
19 Mental Health Rehabilitation Act of 2013, the ID/DD Community
20 Care Act, or the MC/DD Act; (iv) a supportive living facility,
21 as defined in Section 5-5.01a of the Illinois Public Aid Code;
22 or (v) a free-standing hospice facility licensed under the
23 Hospice Program Licensing Act if licensure, certification, or
24 registration is required. The Department of Public Health
25 shall annually provide hospitals with a list of licensed,
26 certified, or registered board and care facilities, assisted

1 living and shared housing establishments, nursing homes,
2 supportive living facilities, facilities licensed under the
3 ID/DD Community Care Act, the MC/DD Act, or the Specialized
4 Mental Health Rehabilitation Act of 2013, and hospice
5 facilities. Reliance upon this list by a hospital shall
6 satisfy compliance with this requirement. The procedure may
7 also include a waiver for any case in which a discharge notice
8 is not feasible due to a short length of stay in the hospital
9 by the patient, or for any case in which the patient
10 voluntarily desires to leave the hospital before the
11 expiration of the 24 hour period.

12 (c) At least 24 hours prior to discharge from the
13 hospital, the patient shall receive written information on the
14 patient's right to appeal the discharge pursuant to the
15 federal Medicare program, including the steps to follow to
16 appeal the discharge and the appropriate telephone number to
17 call in case the patient intends to appeal the discharge.

18 (d) Before transfer of a patient to a long term care
19 facility licensed under the Nursing Home Care Act where
20 elderly persons reside, a hospital shall as soon as
21 practicable initiate a name-based criminal history background
22 check by electronic submission to the Illinois State Police
23 for all persons between the ages of 18 and 70 years; provided,
24 however, that a hospital shall be required to initiate such a
25 background check only with respect to patients who:

26 (1) are transferring to a long term care facility for

1 the first time;

2 (2) have been in the hospital more than 5 days;

3 (3) are reasonably expected to remain at the long term
4 care facility for more than 30 days;

5 (4) have a known history of serious mental illness or
6 substance abuse; and

7 (5) are independently ambulatory or mobile for more
8 than a temporary period of time.

9 A hospital may also request a criminal history background
10 check for a patient who does not meet any of the criteria set
11 forth in items (1) through (5).

12 A hospital shall notify a long term care facility if the
13 hospital has initiated a criminal history background check on
14 a patient being discharged to that facility. In all
15 circumstances in which the hospital is required by this
16 subsection to initiate the criminal history background check,
17 the transfer to the long term care facility may proceed
18 regardless of the availability of criminal history results.
19 Upon receipt of the results, the hospital shall promptly
20 forward the results to the appropriate long term care
21 facility. If the results of the background check are
22 inconclusive, the hospital shall have no additional duty or
23 obligation to seek additional information from, or about, the
24 patient.

25 (e) If a physician determines that an adult patient is so
26 disabled as to be unable to consent to discharge or placement

1 in a facility or a physician reasonably believes an adult
2 patient is a person with a disability in need of a guardian in
3 accordance with the Probate Act of 1975 and there is no family,
4 surrogate decision maker, agent under a power of attorney,
5 trustee, or other close friend who is ready willing and able to
6 assist that adult patient, then the hospital shall notify the
7 Office of State Guardian and the public guardian of the county
8 where the patient resides.

9 (Source: P.A. 102-538, eff. 8-20-21; 103-102, eff. 1-1-24.)

10 Section 15. The Probate Act of 1975 is amended by changing
11 Sections 11a-5, 11a-15, and 23-2 as follows:

12 (755 ILCS 5/11a-5) (from Ch. 110 1/2, par. 11a-5)

13 Sec. 11a-5. Who may act as guardian.

14 (a) A person is qualified to act as guardian of the person
15 and as guardian of the estate of a person with a disability if
16 the court finds that the proposed guardian is capable of
17 providing an active and suitable program of guardianship for
18 the person with a disability and that the proposed guardian:

19 (1) has attained the age of 18 years;

20 (2) is a resident of the United States;

21 (3) is not of unsound mind;

22 (4) is not an adjudged person with a disability as
23 defined in this Act; and

24 (5) has not been convicted of a felony, unless the

1 court finds appointment of the person convicted of a
2 felony to be in the best interests of the person with a
3 disability, and as part of the best interests
4 determination, the court has considered the nature of the
5 offense, the date of offense, and the evidence of the
6 proposed guardian's rehabilitation. No person shall be
7 appointed who has been convicted of a felony involving
8 harm or threat to a minor or an elderly person or a person
9 with a disability, including a felony sexual offense.

10 (b) Any public agency, private professional guardian, or
11 not-for-profit corporation found capable by the court of
12 providing an active and suitable program of guardianship for
13 the person with a disability, taking into consideration the
14 nature of such person's disability and the nature of such
15 organization's services, may be appointed guardian of the
16 person or of the estate, or both, of the person with a
17 disability. The court shall not appoint as guardian an agency
18 or employee of an agency that is directly providing
19 residential services to the ward. One person or agency may be
20 appointed guardian of the person and another person or agency
21 appointed guardian of the estate.

22 (b-5)(1) The court may appoint separate individuals or
23 entities that are qualified to act as guardians under
24 subsections (b) or (c) to act as the guardian of the person and
25 the guardian of the estate of a person with a disability if the
26 court finds it is in the best interests of the person with a

1 disability that separate guardians be appointed. The court
2 shall not appoint a separate person or entity to act as
3 guardian of the person or guardian of the estate with a public
4 guardian or the Office of State Guardian unless the public
5 guardian or the Office of State Guardian agrees to such an
6 appointment.

7 (2) The court may appoint co-guardians to act as guardian
8 of the person, guardian of the estate, or both the guardian of
9 the person and the guardian of the estate if the court finds it
10 is in the best interests of the person with a disability. When
11 considering appointing co-guardians, the court shall consider
12 the proposed co-guardians' history of cooperating and working
13 together on behalf of the person with a disability. The court
14 shall appoint only co-guardians who agree to serve together.
15 The court shall not appoint a public guardian or the Office of
16 State Guardian as a co-guardian for a person with a
17 disability.

18 (c) Any corporation qualified to accept and execute trusts
19 in this State may be appointed guardian or limited guardian of
20 the estate of a person with a disability.

21 (d) "Private professional guardian" means: (1) a person or
22 entity who receives compensation for services as a guardian to
23 5 or more persons with disabilities who are not related to the
24 guardian by blood or marriage; or (2) a not-for-profit
25 corporation qualified to act as guardian pursuant to
26 subsection (b), including that corporation's officers,

1 directors, and employees. A "private professional guardian"
2 does not include a government agency, the Office of State
3 Guardian, a public guardian, corporations qualified to accept
4 and execute trusts in this state, or a financial institution
5 as defined by Section 2 of the Illinois Banking Act.

6 (d-5) A private professional guardian may only be
7 appointed as guardian if, in addition to meeting the
8 requirements of subsections (a), (b) or (c), that guardian
9 complies with the following standards:

10 (1) A private professional guardian shall not:

11 (A) have any direct or indirect beneficial
12 interest, financial or otherwise, in entities or
13 corporations that transact business with the estate or
14 receive benefits, including referral fees, from
15 persons, entities or corporations that transact
16 business with the estate or on behalf of the person
17 under its guardianship;

18 (B) own, acquire, or possess any pecuniary
19 interest adverse to the persons or estates under its
20 guardianship; or

21 (C) on behalf of a person with a disability under
22 its guardianship, directly or indirectly, purchase,
23 rent, lease or sell any property or service from or to
24 any business entity in which the private professional
25 guardian, their spouse, immediate family or household
26 member is an owner, officer, partner, director,

1 shareholder, or retains a financial interest.

2 (2) The president, director, or other corporate
3 officer of a not-for-profit corporation qualified to act
4 as guardian in accordance with subsection (b) must be
5 named in the order appointing that private professional
6 guardian as guardian of a person with a disability.

7 (d-10) In addition to meeting the requirements of
8 subsection (d-5), a private professional guardian who serves
9 as guardian for 15 or more persons with disabilities must be
10 certified as a National Master Guardian by the Center for
11 Guardianship Certification and shall:

12 (1) Use sound fiscal controls and policies in managing
13 the estates under its guardianship and shall arrange for
14 an independent audit, by a qualified examiner, of its
15 financial records on an annual basis. This report shall be
16 made available to any court presiding over any persons
17 with disabilities for whom the private professional
18 guardian serves as guardian.

19 (2) Maintain a current fee schedule that sets forth
20 information about its hourly rate, costs for its most
21 common and anticipated services such as case management,
22 social work, property management, and such other services
23 as may be appropriate. The fee schedule shall also include
24 the anticipated hourly cost for legal services for the
25 private professional guardian and the annual rate of
26 compensation of its owners, president, directors, and

1 corporate officers. The fee schedule shall be provided to
2 the court prior to the appointment of the private
3 professional guardian as guardian of a person with a
4 disability.

5 (3) Upon presentation of its initial inventory, and
6 with every annual account thereafter, file a budget with
7 the court that outlines the annual anticipated estate
8 expenses that also includes a statement estimating the
9 length of time the estate of the person with a disability
10 can afford the services of the private professional
11 guardian before the estate is depleted.

12 (4) If a private professional guardian estimates, in
13 accordance with paragraph (3) of subsection (d10), that
14 the estate of the person with a disability can afford the
15 services of the private professional guardian for 5 years
16 or less before the estate is depleted and the person with a
17 disability is living in their home, then the private
18 professional guardian shall forgo or delay the collection
19 of court awarded fees until the person with a disability
20 is clinically unable to remain in their home or until it is
21 not financially feasible, for reasons other than the
22 collection of court awarded fees, for the person with a
23 disability to remain in their home.

24 (5) Ensure that any employees of the private
25 professional guardian who are responsible for exercising
26 the guardian's powers and duties as guardian of a person

1 with disability are certified as National Certified
2 Guardians by the Center for Guardianship Certification.

3 (d-15) The court shall not appoint a private professional
4 guardian as temporary, limited or plenary guardian of a person
5 with a disability until all officers, directors, and employees
6 of the private professional guardian who are responsible for
7 exercising the guardian's powers and duties as guardian of a
8 person with a disability submit the results of their Illinois
9 State Police background checks, which shall include state
10 criminal history, national criminal history and Children Abuse
11 and Neglect Tracking System to the Chief Judge of the Judicial
12 Circuit in which the private professional guardian wishes to
13 be appointed. The private professional guardian shall pay any
14 fees and costs associated with the background checks.

15 (Source: P.A. 102-72, eff. 1-1-22.)

16 (755 ILCS 5/11a-15) (from Ch. 110 1/2, par. 11a-15)

17 Sec. 11a-15. Successor guardian.†

18 (a) Upon the death, incapacity, resignation, or removal of
19 a guardian of the estate or person of a living ward, the court
20 shall appoint a successor guardian or terminate the
21 adjudication of disability. The powers and duties of the
22 successor guardian shall be the same as those of the
23 predecessor guardian unless otherwise modified.

24 (b) Notice of the time and place of the hearing on a
25 petition for the appointment of a successor guardian shall be

1 given not less than 3 days before the hearing for a successor
2 to a temporary guardian and not less than 14 days before the
3 hearing for a successor to a limited or plenary guardian. The
4 notice shall be by mail or in person to the alleged person with
5 a disability, to the proposed successor guardian, and to those
6 persons whose names and addresses are listed in the petition
7 for adjudication of disability and appointment of a guardian
8 under Section 11a-8. The court, upon a finding of good cause,
9 may waive the notice requirement under this subsection
10 Section.

11 (c) In addition to the notice requirement set forth in
12 subsection (b), a private professional guardian serving as
13 limited or plenary guardian of a person with a disability
14 shall provide the Office of State Guardian or a public
15 guardian with at least 120 days' written notice of its intent
16 to file a petition for the appointment of the Office of State
17 Guardian or public guardian as successor guardian for a person
18 with a disability.

19 (Source: P.A. 103-740, eff. 1-1-25; revised 11-26-24.)

20 (755 ILCS 5/23-2) (from Ch. 110 1/2, par. 23-2)

21 Sec. 23-2. Removal.

22 (a) On petition of any interested person or on the court's
23 own motion, the court may remove a representative if:

24 (1) the representative is acting under letters secured
25 by false pretenses;

1 (2) the representative is adjudged a person subject to
2 involuntary admission under the Mental Health and
3 Developmental Disabilities Code or is adjudged a person
4 with a disability;

5 (3) the representative is convicted of a felony;

6 (4) the representative wastes or mismanages the
7 estate;

8 (5) the representative conducts himself or herself in
9 such a manner as to endanger any co-representative or the
10 surety on the representative's bond;

11 (6) the representative fails to give sufficient bond
12 or security, counter security or a new bond, after being
13 ordered by the court to do so;

14 (7) the representative fails to file an inventory or
15 accounting after being ordered by the court to do so;

16 (8) the representative conceals himself or herself so
17 that process cannot be served upon the representative or
18 notice cannot be given to the representative;

19 (9) the representative becomes incapable of or
20 unsuitable for the discharge of the representative's
21 duties; ~~or~~

22 (10) the representative is a private professional
23 guardian who fails to comply with the requirements of
24 subsections (d-5), (d-10), or (d-15) of Section
25 11a-5(d-5); or

26 (11) there is other good cause.

1 (b) If the representative becomes a nonresident of the
2 United States, the court may remove the representative as such
3 representative.

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