

**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.

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

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

(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;

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

(3) the representative is convicted of a felony;

(4) the representative wastes or mismanages the estate;

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

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

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

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

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

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

(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.)