**Section 340.1470 Transfer or Discharge**

a) *A resident may be* *discharged from a facility after he* or she *gives the administrator, a physician, or a nurse of the facility written notice of his* or her *desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his* or her *guardian or if the resident is a minor, his* or her *parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being.* (Section 2-111 of the Act)

b) *A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:*

1) *for medical reasons;*

2) *for the resident's physical safety;*

3) *for the physical safety of other residents, the facility staff or facility visitors*; or

4) *for either late payment or nonpayment for the resident's stay, except as prohibited by Titles XVIII and XIX of the federal Social Security Act. For purposes of this Section, "Late Payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after submission of a bill, a facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of* the *Act* and subsection (e) of this Section, *that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings.* This subsection (b) *does not apply to those residents whose care is provided under the Illinois Public Aid Code.* (Section 3-401 of the Act)

c) *A facility participating in the Medical Assistance Program is prohibited from failing or refusing to retain as a resident any person because he or she is a recipient of, or an applicant for, the Medical Assistance Program* under Article V of the Illinois Public Aid Code*. For the purposes of* Section 401.1 of the Act*, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling 10 days or less following a hospital admission.* (Section 3-401.1(a-10) of the Act) The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the 10day period.

d) *Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under Section 3-408 of the Act* and subsection (j) of this Section *and by a minimum written notice of 21 days, except in one of the following instances*:

1) *When an emergency transfer or discharge is ordered by the resident's attending physician because of the resident's health care needs;* (Section 3-402(a) of the Act)

2) *When the transfer or discharge is mandated by the physical safety of other residents, the facility staff, or facility visitors as documented in the clinical record.* *The Department shall be notified prior to any such involuntary transfer or discharge. The Department* will *immediately offer transfer, or discharge and relocation assistance to residents transferred or discharged under this* subsection (d)*, and the Department may place relocation teams as provided in Section 3-419 of* the *Act;* or (Section 3-402(b) of the Act)

3) *When an identified offender is within the provisional admission period defined in Section 1-120.3* of the Act and Section 340.1000 of this Part. *If the Identified Offender Report and Recommendation prepared under Section 2-201.6* of the Act *shows that the identified offender poses a serious threat or danger to the physical safety of other residents, the facility staff, or facility visitors in the admitting facility, and the facility determines that it is unable to provide a safe environment for the other residents, the facility staff, or facility visitors, the facility shall transfer or discharge the identified offender within 3 days after its receipt of the Identified Offender Report and Recommendation.*  (Section 3-402(c) of the Act)

e) For transfer or discharge made under subsection (d), the notice of transfer or discharge shall be made as soon as practicable before the transfer or discharge. *The notice required by Section 3-402 of the Act* and subsection (d) of this Section *shall be on a form prescribed by the Department and shall contain all of the following:*

1) *The stated reason for the proposed transfer or discharge;* (Section 3-403(a) of the Act)

2) *The effective date of the proposed transfer or discharge;* (Section 3-403(b) of the Act)

3) *A statement in not less than 12-point type, which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within 10 days after receiving this notice. If you request a hearing, it will be held not later than 10 days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed below.";* (Section 3-403(c) of the Act)

4) *A hearing request form, together with a postage paid, preaddressed envelope to the Department; and* (Section 3-403(d) of the Act)

5) *The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge.* (Section 3-403(e) of the Act)

f) *A request for a hearing made under Section* 3-403 of the Act and subsection (e) of this Section *shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under* subsections (d)(1) and (2) of this Section *develops in the interim.* (Section 3-404 of the Act)

g) *A copy of the notice required by Section 3-402* of the Act and subsection (d) of this Section *shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Healthcare and Family Services.* (Section 3-405 of the Act)

h) *When the basis for an involuntary transfer or discharge is the result of an action by the Department of Healthcare and Family Services with respect to a recipient of Title XIX and a hearing request is filed with the Department of Healthcare and Family Services, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Healthcare and Family Services or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility.* (Section 3-406 of the Act)

i) *When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility.* (Section 3-407 of the Act)

j) *The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions.* This summary shall be *made a part of the resident's clinical record.* (Section 3-408 of the Act)

k) *The facility shall offer the resident counseling services before the transfer or discharge of the resident.* (Section 3-409 of the Act)

l) *A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his or her parent shall have the opportunity to file a request for a hearing with the Department within 10 days following receipt of the written notice of the involuntary transfer or discharge by the facility.* (Section 3-410 of the Act)

m) *The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Healthcare and Family Services with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than* 10 *days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request.* (Section 3-411 of the Act)

n) *The hearing before the Department provided under Section 3-411* of the Act and subsection (m) of this Section *shall be conducted as prescribed under Section* 3-703 of the Act. *In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge.* (Section 3-412 of the Act)

o) *If the Department determines that a transfer or discharge is authorized under Section* *3-401* of the Act and subsection (b) of this Section, *the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under Section* *3-402* of the Act and subsection (c) of this Section, *or the 10th day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or discharge in less than 21 days as described under Section* *3-402* of the Act and subsections (d)(1) and (2) of this Section *develops in the interim.* (Section 3-413 of the Act)

p) *The Department of Healthcare and Family Services shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by Section* 3-401 of the Act and subsection (c) of this Section. (Section 3-414 of the Act)

q) *Any owner of a facility licensed under* the Act and this Part *shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than 10% percent of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents.* (Section 3-423 of the Act)

(Source: Amended at 35 Ill. Reg. 11896, effective June 29, 2011)