**Section 390.640 Contract Between Resident and Facility**

a) Contract Execution

1) *Before a person is admitted to a facility, or at the expiration of the period of previous contract, or when the source of payment for the resident's care changes from private to public funds or from public to private funds, a written contract shall be executed between a licensee and the following in order of priority:*

A) *The person, or if the person is a minor, his parent or guardian; or*

B) *The person's guardian, if any, or agent, if any, as defined in Section* *2-3 of the Illinois Power of Attorney Act;* *or*

C) *A member of the person's immediate family.* (Section 2-202(a) of the Act)

2) *An adult person shall be presumed to have the capacity to contract for admission to a long-term care facility unless he has been adjudicated a "disabled person" within the meaning of Section 11a-2 of the Probate Act of 1975, or unless a petition for such an adjudication is pending in a circuit court of Illinois.* (Section 2-202(a) of the Act)

3) *If there is no guardian, agent or member of the person's immediate family available, able or willing to execute the contract required by Section 2-202 of the Act and a physician determines that a person is so disabled as to be unable to consent to placement in a facility, or if a person has already been found to be a "disabled person," but no order has been entered allowing residential placement of the person, that person may be admitted to a facility before the execution of a contract required by that Section; provided that a petition for guardianship or for modification of guardianship is filed within 15 days of the person's admission to a facility, and* *provided* *further that such a contract is executed within ten days of the disposition of the petition.* (Section 2-202 (a) of the Act)

4) *No adult shall be admitted to a facility if he objects, orally or in writing, to such admission, except as otherwise provided in Chapters III and IV of the Mental Health and Developmental Disabilities Code* *or Section 11a-14.1 of the Probate Act of 1975*. (Section 2-202(a) of the Act)

5) If on the effective date of this Part, a person has not executed a contract as required by Section 2-202 of the Act, then such a contract shall be executed by, or on behalf of, the person, within ten days of the effective date of this Part, unless a petition has been filed for guardianship or modification of guardianship. If a petition for guardianship or modification of guardianship has been filed, and there is no guardian, agent or member of the person's immediate family available, able, or willing to execute the contract at that time, then a contract shall be executed within ten days of the disposition of such petition.

b) The contract shall be clearly and unambiguously entitled, "Contract Between Resident and (name of facility)."

c) *Before a licensee* (any facility licensed under the Act) *enters a contract under Section 2-202 of the Act, it shall provide the prospective resident and his guardian, if any, with written notice of the licensee's policy regarding discharge of a resident whose private funds for payment of care are exhausted.* (Section 2-202(a) of the Act)

d) *A resident shall not be discharged or transferred at the expiration of the term of a contract, except as provided in Sections 3-401 through 3-423 of the Act.* (Section 2-202(b) of the Act)

e) *At the time of the resident's admission to the facility, a copy of the contract shall be given to the resident, his guardian, if any, and any other person who executed the contract.* (Section 2-202(c) of the Act)

f) The contract shall be signed by the licensee or his agent. The title of each person signing the contract for the facility shall be clearly indicated next to each such signature. The nursing home administrator may sign as the agent of the licensee.

g) The contract shall be signed by, or for, the resident, as described in subsection (a) of this Section. If any person other than the principal signatory is to be held individually responsible for payments due under the contract, that person shall also sign the contract on a separate signature line labelled "signature of responsible party" or "signature of guarantor."

h) The contract shall include a definition of "responsible party" or "guarantor," which describes in full the liability incurred by any such person.

i) *A copy of the contract for a resident who is supported by nonpublic funds other than the resident's own funds shall be made available to the person providing the funds for the resident's support.* (Section 2-202(d) of the Act)

j) *The original or a copy of the contract shall be maintained in the facility and be made available upon request to representatives of the Department and the Department of Public Aid.* (Section 2-202(e) of the Act)

k) *The contract shall be written in clear and unambiguous language and shall be printed in not less than 12 point type.* (Section 2-202(f) of the Act)

l) *The contract shall specify the term of the contract.* (Section 2-202(g)(1) of the Act) The term can be until a certain date or event. If a certain date is specified in the contract, an addendum can extend the term of the contract to another date certain or on a month-to-month basis.

m) Services Provided and Charges

1) *The contract shall specify the services to be provided under the contract and the charges for the services.* (Section 2-202(g)(2) of the Act)

2) A paragraph shall itemize the services and products to be provided by the facility and express the costs of the itemized services and products to be provided either in terms of a daily, weekly, monthly or yearly rate, or in terms of a single fee.

3) The contract may provide that the charges for services may be changed with thirty (30) days advance written notice to the resident or the person executing the contract on behalf of the resident. The resident or the person executing the contract on behalf of the resident may either assent to the change or choose to terminate the contract at any time within 30 days of the receipt of the written notice of the change. The written notice shall become an addendum to the contract.

n) *The contract shall specify the services that may be provided to supplement the contract and the charges for the services.* (Section 2-202(g)(3) of the Act)

1) A paragraph shall itemize all services and products offered by the facility or related institutions which are not covered by the rate or fee established in subsection (m) of this Section. If a separate rate or fee for any such supplemental service or product can be calculated with definiteness at the time the contract is executed, then such additional cost shall be specified in the contract.

2) If the cost of any itemized service or product to be provided to the resident by the facility or related institutions cannot be established or predicted with definiteness at the time of the resident's admission to the facility or at the time of the execution of the contract, then no cost for that service or product need be stated in the contract. But the contract shall include a statement explaining the resident's liability for such itemized service or product and explaining that the resident will be receiving a bill for such itemized service or product beyond and in addition to any rate or fee set forth in the contract.

3) The contract may provide that the charges for services and products not covered by the rate or fee established in subsection (m) may be changed with thirty (30) days advance written notice to the resident or the person executing the contract on behalf of the resident. The resident or the person executing the contract on behalf of the resident may either assent to the change or choose to terminate the contract at any time within 30 days of the receipt of the written notice of the change. The written notice shall become an addendum to the contract.

o) *The contract shall specify the sources liable for payments due under the contract.* (Section 2-202(g)(4) of the Act)

p) Deposit Provisions

1) *The contract shall specify the amount of deposit paid.* (Section 2-202(g)(5) of the Act)

2) Such amount shall be expressed in terms of a precise number of dollars and be clearly designated as a deposit. The contract shall specify when such deposit shall be paid by the resident, and the contract shall specify when such deposit shall be returned by the facility. The contract shall specify the conditions (if any) which must be satisfied by the resident before the facility shall return the deposit. Upon the satisfaction of all such conditions, the deposit shall be returned to the resident. If the deposit is nonrefundable, the contract shall provide express notice of such nonrefundability.

q) *The contract shall specify the rights, duties and obligations of the resident, except that the specification of a resident's rights may be furnished on a separate document which complies with the requirements of Section 2-211 of the Act.* (Section 2-202(g)(6) of the Act)

r) *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 Section 2-202 of the Act.* (Section 2-202(h) of the Act)

s) *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 seven 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 the resident's 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 the resident's life.* (Section 2-202(i) of the Act)

t) All facilities which offer to provide a resident *with nursing services, medical services or personal care services, in addition to maintenance services, conditioned upon the transfer of an entrance fee to the provider of such services in addition to or in lieu of the payment of regular periodic charges for the care and services involved,* for a term in excess of one year or for life pursuant to a life care contract, shall meet all of the provisions of the Life Care Facilities Act (Ill. Rev. Stat. 1991, ch. 111½, par. 4160-1 et seq.) [210 ILCS 40], including the obtaining of a permit from the Department, before they may enter into such contracts. (Section 2(c) of the Life Care Facilities Act)

u) *In addition to all other contract specifications contained in this Section, admission contracts shall also specify*:

1) *whether the facility accepts Medicaid clients;*

2) *whether the facility requires a deposit of the resident or his family prior to the establishment of Medicaid eligibility;*

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

4) *that all deposits made to a facility by a resident, or on behalf of a resident, shall be returned by the facility within 30 days of the establishment of Medicaid eligibility, unless such deposits must be drawn upon or encumbered in accordance with Medicaid eligibility requirements established by the Illinois Department of Public Aid.* (Section 2-202(j) of the Act)

v) *It shall be a business offense for a facility to knowingly and intentionally both retain a resident's deposit and accept Medicaid payments on behalf of the resident.* (Section 2-202(k) of the Act)

(Source: Amended at 18 Ill. Reg. 15807, effective October 15, 1994)