**Section 390.3300 Transfer or Discharge**

a) *A resident may be discharged from a facility after giving the administrator, a physician, or a nurse of the facility written notice of the resident's 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 the guardian, or if the resident is a minor, a 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) Each resident's rights regarding involuntary transfer or discharge from a facility shall be as described in subsections (c) through (y).

c) Reasons for Transfer or Discharge

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

A) *For medical reasons*.

B) *For the resident's physical safety*.

C) *For the physical safety of other residents, the facility staff or facility visitors*.

D) *For either late payment or nonpayment for the resident's stay, except as prohibited by Title 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, the 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), *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.* An in-full payment *shall terminate the transfer or discharge proceedings. This* subsection *does not apply to those residents whose care is provided under the Illinois Public Aid Code*. (B) (Section 3-401 of the Act)

2) Prohibition of Discrimination

A) *A facility participating in the Medical Assistance Program is prohibited from failing or refusing to retain as a resident any person because the resident is a recipient of or an applicant for the Medical Assistance Program. For the purposes of this* Section*, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling ten 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 ten-day period.

B) *A facility which violates* this Section *shall be guilty of a business offense and fined not less than $500 nor more than $1,000 for the first offense and not less than $1,000 nor more than $5,000 for each subsequent offense.* (Section 3-401.1(b) of the Act)

C) *A facility of which only a distinct part is certified to participate in the Medical Assistance Program may refuse to retain as a resident any person who resides in a part of the facility that does not participate in the Medical Assistance Program and who is unable to pay for his or her care in the facility without Medical Assistance only if:*

1) *The facility, no later than at the time of admission and at the time of the resident's contract renewal, explains to the resident (unless the resident is incompetent), and to the resident's representative, and to the person making payment on behalf of the resident for the resident's stay, in writing, that the facility may discharge the resident if the resident is no longer able to pay for care in the facility without Medical Assistance; and*

2) *The resident (unless incompetent), the resident's representative, and the person making payment on behalf of the resident for the resident's stay, acknowledge in writing that they have received the written explanation.* (Section 3-401.1(a-5) of the Act)

d) *Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under* subsection (j) *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); or

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* will *immediately offer transfer, or discharge and relocation assistance to residents transferred or discharged under this* subsection *and may place relocation teams as provided in Section 3-419 of* the *Act.* (Section 3-402(b) of the Act)

e) *The notice required by* subsection (d) *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* subsection (e) *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) *develops in the interim.* (Section 3-404 of the Act)

g) *A copy of the notice required by* subsection (d) *shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, and the resident's representative.* (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 of the Social Security Act 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 and 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* subsection (m) *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* subsection (c)*, the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under* subsection (d)*, 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* subsections (d)(1) and (2) *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 recipients of assistance under Title XIX of the Social Security Act affected by* subsection (c)*.* (Section 3-414 of the Act)

q) *The Department may transfer or discharge any resident from any facility required to be licensed under this Act when any of the following conditions exist:*

1) The *facility is operating without a license;* (Section 3-415(a) of the Act)

2) *The Department has suspended, revoked or refused to renew the license of the facility as provided under Section 3-119 of the Act.* (Section 3-415(b) of the Act)

3) *The facility has requested the aid of the Department in the transfer or discharge of the resident and the Department finds that the resident consents to transfer or discharge;* (Section 3-415(c) of the Act)

4) *The facility is closing or intends to close and adequate arrangement for relocation of the resident has not been made at least 30 days prior to closure; or* (Section 3-415(d) of the Act)

5) *The Department determines that an emergency exists which requires immediate transfer or discharge of the resident.* (Section 3-415(e) of the Act)

r) *In deciding to transfer or discharge a resident from a facility under* subsection (q)*, the Department shall consider the likelihood of serious harm which may result if the resident remains in the facility.* (Section 3-416 of the Act)

s) *The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under* subsections (c) through (q) *including information on available alternative placements. Residents shall be involved in planning the transfer or discharge and shall choose among the available alternative placements, except that where an emergency makes prior resident involvement impossible, the Department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to* the alternative placement*. No resident may be forced to remain in a temporary or permanent placement. Where the Department makes or participates in making the relocation decision, consideration shall be given to proximity to the resident's relatives and friends. The resident shall be allowed three visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate transfer or discharge requires reduction in the number of visits.* (Section 3-417 of the Act)

t) *The Department shall prepare resident transfer or discharge plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergencies and where possible in emergencies, the Department shall design and implement such plans in advance of transfer or discharge.* (Section 3-418 of the Act)

u) *The Department may place relocation teams in any facility from which residents are being discharged or transferred for any reason, for the purpose of implementing transfer or discharge plans.* (Section 3-419 of the Act)

v) *In any transfer or discharge conducted under* subsections (q) through (t) *the Department* will*:*

1) *Provide written notice to the facility prior to the transfer or discharge. The notice shall state the basis for the order of transfer or discharge and shall inform the facility of its right to an informal conference prior to transfer or discharge under this* Section*, and its right to a subsequent hearing under* subsection (x)*. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within 4 working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within 4 working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the Department may affirm, modify or overrule its previous decision. Except in an emergency, transfer or discharge may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held; and* (Section 3-420(a) of the Act)

2) *Provide written notice to any resident to be removed, to the resident's representative, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which transfer or discharge is ordered and shall inform the resident of the resident's right to challenge the transfer or discharge under* subsection (x)*. The Department shall hold an informal conference with the resident or the resident's representative prior to transfer or discharge at which the resident or the representative may present any objections to the proposed transfer or discharge plan or alternative placement.* (Section 3-420(b) of the Act)

w) *In any transfer or discharge conducted under* subsection (q)(5)*, the Department shall notify the facility and any resident to be removed that an emergency has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the Department shall provide written notice to the facility, to the resident, to the resident's representative, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under* subsection (x)*.* (Section 3-421 of the Act)

x) *Within 10 days following transfer or discharge, the facility or any resident transferred or discharged may send a written request to the Department for a hearing under Section 3-703 of the Act to challenge the transfer or discharge. The Department shall hold the hearing within 30 days of receipt of the request. The hearing shall be held at the facility from which the resident is being transferred or discharged, unless the resident or resident's representative, requests an alternative hearing site. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments lost less expenses saved as a result of the transfer or discharge. No resident transferred or discharged may be held liable for the charge for care which would have been made had the resident remained in the facility. If a resident prevails, the resident may file a claim against the State under the Court of Claims Act for any excess expenses directly caused by the order to transfer or discharge. The Department shall assist the resident in returning to the facility if assistance is requested.* (Section 3-422 of the Act)

y) *Any owner of a facility licensed under this Act 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% 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. The Department may place a relocation team in the facility as provided under* subsection (u). (Section 3-423 of the Act)

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