



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4636

Introduced 2/5/2020, by Rep. Debbie Meyers-Martin

SYNOPSIS AS INTRODUCED:

405 ILCS 5/2-200	from Ch. 91 1/2, par. 2-200
405 ILCS 5/3-207	from Ch. 91 1/2, par. 3-207
405 ILCS 5/3-908	from Ch. 91 1/2, par. 3-908

Amends the Mental Health and Developmental Disabilities Code. Provides that notice of a recipient's rights shall include, if applicable, the recipient's right to request a transfer to a different Department of Human Services' facility. Provides that a recipient in any Department facility, his or her attorney, guardian (if any), or responsible relative may make a written application to the facility director of the recipient's current facility to transfer to another Department facility. Provides that the Department shall provide the form to make such an application to a recipient, his or her attorney, guardian (if any), or responsible relative upon request. Provides that upon receipt of the recipient's application, the facility director shall promptly schedule a hearing to be held within 7 days. Provides that the hearing shall be held at the recipient's current facility. Establishes the burden of proof that the recipient must show in order to be transferred. Provides that if the utilization review committee finds that the recipient has sustained his or her burden and the request for transfer is supported by substantial evidence, it shall recommend that the transfer proceed within 30 days. Provides that if it does not so find, it shall recommend that the recipient not be transferred. Provides that if a recipient's application for transfer is denied, no application may be filed for 180 days. Provides that the recipient does, however, have the right to administratively appeal any decision of the utilization review committee.

LRB101 19394 RLC 68866 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

2 WHEREAS, The Mental Health and Developmental Disabilities
3 Code sets forth important procedural protections when a
4 recipient is initially transferred between Department of Human
5 Services' facilities, but has no explicit procedural
6 protection outside of this initial transfer period; and

7 WHEREAS, It is the intent of this Act to protect the
8 liberty interests and to mitigate harm to Department of Human
9 Services' recipients; therefore

10 **Be it enacted by the People of the State of Illinois,**
11 **represented in the General Assembly:**

12 Section 5. The Mental Health and Developmental
13 Disabilities Code is amended by changing Sections 2-200, 3-207,
14 and 3-908 as follows:

15 (405 ILCS 5/2-200) (from Ch. 91 1/2, par. 2-200)

16 Sec. 2-200. (a) Upon commencement of services, or as soon
17 thereafter as the condition of the recipient permits, every
18 adult recipient, as well as the recipient's guardian or
19 substitute decision maker, and every recipient who is 12 years
20 of age or older and the parent or guardian of a minor or person
21 under guardianship shall be informed orally and in writing of

1 the rights guaranteed by this Chapter which are relevant to the
2 nature of the recipient's services program. The notice shall
3 include, if applicable, the recipient's right to request a
4 transfer to a different Department facility under Section 3-
5 908. Every facility shall also post conspicuously in public
6 areas a summary of the rights which are relevant to the
7 services delivered by that facility as well as contact
8 information for the Guardianship and Advocacy Commission and
9 the agency designated by the Governor under Section 1 of the
10 Protection and Advocacy for Persons with Developmental
11 Disabilities Act.

12 (b) A recipient who is 12 years of age or older and the
13 parent or guardian of a minor or person under guardianship at
14 any time may designate, and upon commencement of services shall
15 be informed of the right to designate, a person or agency to
16 receive notice under Section 2-201 or to direct that no
17 information about the recipient be disclosed to any person or
18 agency.

19 (c) Upon commencement of services, or as soon thereafter as
20 the condition of the recipient permits, the facility shall ask
21 the adult recipient or minor recipient admitted pursuant to
22 Section 3-502 whether the recipient wants the facility to
23 contact the recipient's spouse, parents, guardian, close
24 relatives, friends, attorney, advocate from the Guardianship
25 and Advocacy Commission or the agency designated by the
26 Governor under Section 1 of the Protection and Advocacy for

1 Persons with Developmental Disabilities Act, or others and
2 inform them of the recipient's presence at the facility. The
3 facility shall by phone or by mail contact at least two of
4 those people designated by the recipient and shall inform them
5 of the recipient's location. If the recipient so requests, the
6 facility shall also inform them of how to contact the
7 recipient.

8 (d) Upon commencement of services, or as soon thereafter as
9 the condition of the recipient permits, the facility shall
10 advise the recipient as to the circumstances under which the
11 law permits the use of emergency forced medication or
12 electroconvulsive therapy under subsection (a) of Section
13 2-107, restraint under Section 2-108, or seclusion under
14 Section 2-109. At the same time, the facility shall inquire of
15 the recipient which form of intervention the recipient would
16 prefer if any of these circumstances should arise. The
17 recipient's preference shall be noted in the recipient's record
18 and communicated by the facility to the recipient's guardian or
19 substitute decision maker, if any, and any other individual
20 designated by the recipient. If any such circumstances
21 subsequently do arise, the facility shall give due
22 consideration to the preferences of the recipient regarding
23 which form of intervention to use as communicated to the
24 facility by the recipient or as stated in the recipient's
25 advance directive.

26 (Source: P.A. 100-915, eff. 1-1-19.)

1 (405 ILCS 5/3-207) (from Ch. 91 1/2, par. 3-207)

2 Sec. 3-207. (a) Hearings under Sections 3-405, 3-904,
3 3-908, and 3-911 of this Chapter shall be conducted by a
4 utilization review committee. The Secretary shall appoint a
5 utilization review committee at each Department facility. Each
6 such committee shall consist of a multi-disciplinary group of
7 professional staff members who are trained and equipped to deal
8 with the clinical and treatment needs of recipients. The
9 recipient and the objector may be represented by persons of
10 their choice.

11 (b) The committee shall not be bound by rules of evidence
12 or procedure but shall conduct the proceedings in a manner
13 intended to ensure a fair hearing. The committee may make such
14 investigation as it deems necessary. A record of the
15 proceedings shall be made and shall be kept in the recipient's
16 record. Within 3 days of conclusion of the hearing, the
17 committee shall submit to the facility director its written
18 recommendations which include its factual findings and
19 conclusions. A copy of the recommendations shall be given to
20 the recipient and the objector.

21 (c) Within 7 days of receipt of the recommendations, the
22 facility director shall give written notice to the recipient
23 and objector of his acceptance or rejection of the
24 recommendations and his reason therefor. If the director of the
25 facility rejects the recommendations or if the recipient or

1 objector requests review of the director's decision, the
2 director shall promptly forward a copy of his decision, the
3 recommendations, and the record of the hearing to the Secretary
4 of the Department for final review. The decision of the
5 director or the decision of the Secretary of the Department, if
6 his review was requested, shall be considered a final
7 administrative decision.

8 (Source: P.A. 91-726, eff. 6-2-00.)

9 (405 ILCS 5/3-908) (from Ch. 91 1/2, par. 3-908)

10 Sec. 3-908.

11 (a) The facility director of any Department facility may
12 transfer a recipient to another Department facility if he
13 determines the transfer to be clinically advisable and
14 consistent with the treatment needs of the recipient.

15 (b) A recipient in any Department facility, his or her
16 attorney, guardian (if any), or responsible relative may make a
17 written application to the facility director of the recipient's
18 current facility to transfer to another Department facility.
19 The Department shall provide the form to make such an
20 application to a recipient, his or her attorney, guardian (if
21 any), or responsible relative upon request.

22 A recipient of services eligible to apply under this
23 subsection (b) shall not include persons with the primary
24 diagnosis of a developmental disability.

25 (c) Upon receipt of the recipient's application, the

1 facility director shall promptly schedule a hearing to be held
2 by the utilization review committee within 7 days under Section
3 3-207. The hearing shall be held at the recipient's current
4 facility.

5 (d) At the hearing, the recipient shall have the burden of
6 proving that:

7 (1) the facility to which the recipient is requesting a
8 transfer to a less restrictive facility that provides
9 treatment which is more clinically appropriate for the
10 recipient; and

11 (2) the transfer does not threaten the safety of the
12 recipient or others.

13 (e) If the utilization review committee finds that the
14 recipient has sustained his or her burden and the request for
15 transfer is supported by substantial evidence, it shall
16 recommend that the transfer proceed within 30 days. If it does
17 not so find, it shall recommend that the recipient not be
18 transferred.

19 (f) If a recommended transfer cannot be currently made due
20 to lack of space at the receiving facility, that facility shall
21 inform the recipient and his or her petitioning attorney or
22 guardian, in writing, and provide an estimated time frame for
23 the completion of the transfer.

24 (g) If a recipient's application for transfer is denied, no
25 application under this Section may be filed by or for the
26 recipient for 180 days after the date of the denial. The

1 recipient does, however, have the right to administratively
2 appeal any decision of the utilization review committee.

3 If the recipient refuses the transfer recommended under
4 subsection (e), no application under this Section may be filed
5 by or for the recipient for 180 days after the date of the
6 recipient's refusal.

7 (Source: P.A. 88-380.)