



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2490

Introduced 1/22/2020, by Sen. Heather A. Steans

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 the notice of a recipient's rights includes, if applicable, the recipient's right to request a transfer to a different Department of Human Services facility. Provides that a recipient, his or her attorney, guardian, if any, and responsible relative, in any Department facility 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, and responsible relative upon request. Provides that a recipient of services shall not include a person with the primary diagnosis of a developmental disability. 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 recipient's burden of proof at the transfer hearing. 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. Effective immediately.

LRB101 17437 RLC 66846 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

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

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

7 (405 ILCS 5/2-200) (from Ch. 91 1/2, par. 2-200)

8 Sec. 2-200. (a) Upon commencement of services, or as soon
9 thereafter as the condition of the recipient permits, every
10 adult recipient, as well as the recipient's guardian or
11 substitute decision maker, and every recipient who is 12 years
12 of age or older and the parent or guardian of a minor or person
13 under guardianship shall be informed orally and in writing of
14 the rights guaranteed by this Chapter which are relevant to the
15 nature of the recipient's services program. The notice shall
16 include, if applicable, the recipient's right to request a
17 transfer to a different Department facility under Section
18 3-908. Every facility shall also post conspicuously in public
19 areas a summary of the rights which are relevant to the
20 services delivered by that facility as well as contact
21 information for the Guardianship and Advocacy Commission and
22 the agency designated by the Governor under Section 1 of the
23 Protection and Advocacy for Persons with Developmental

1 Disabilities Act.

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

9 (c) Upon commencement of services, or as soon thereafter as
10 the condition of the recipient permits, the facility shall ask
11 the adult recipient or minor recipient admitted pursuant to
12 Section 3-502 whether the recipient wants the facility to
13 contact the recipient's spouse, parents, guardian, close
14 relatives, friends, attorney, advocate from the Guardianship
15 and Advocacy Commission or the agency designated by the
16 Governor under Section 1 of the Protection and Advocacy for
17 Persons with Developmental Disabilities Act, or others and
18 inform them of the recipient's presence at the facility. The
19 facility shall by phone or by mail contact at least two of
20 those people designated by the recipient and shall inform them
21 of the recipient's location. If the recipient so requests, the
22 facility shall also inform them of how to contact the
23 recipient.

24 (d) Upon commencement of services, or as soon thereafter as
25 the condition of the recipient permits, the facility shall
26 advise the recipient as to the circumstances under which the

1 law permits the use of emergency forced medication or
2 electroconvulsive therapy under subsection (a) of Section
3 2-107, restraint under Section 2-108, or seclusion under
4 Section 2-109. At the same time, the facility shall inquire of
5 the recipient which form of intervention the recipient would
6 prefer if any of these circumstances should arise. The
7 recipient's preference shall be noted in the recipient's record
8 and communicated by the facility to the recipient's guardian or
9 substitute decision maker, if any, and any other individual
10 designated by the recipient. If any such circumstances
11 subsequently do arise, the facility shall give due
12 consideration to the preferences of the recipient regarding
13 which form of intervention to use as communicated to the
14 facility by the recipient or as stated in the recipient's
15 advance directive.

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

17 (405 ILCS 5/3-207) (from Ch. 91 1/2, par. 3-207)

18 Sec. 3-207. (a) Hearings under Sections 3-405, 3-904,
19 3-908, and 3-911 of this Chapter shall be conducted by a
20 utilization review committee. The Secretary shall appoint a
21 utilization review committee at each Department facility. Each
22 such committee shall consist of a multi-disciplinary group of
23 professional staff members who are trained and equipped to deal
24 with the clinical and treatment needs of recipients. The
25 recipient and the objector may be represented by persons of

1 their choice.

2 (b) The committee shall not be bound by rules of evidence
3 or procedure but shall conduct the proceedings in a manner
4 intended to ensure a fair hearing. The committee may make such
5 investigation as it deems necessary. A record of the
6 proceedings shall be made and shall be kept in the recipient's
7 record. Within 3 days of conclusion of the hearing, the
8 committee shall submit to the facility director its written
9 recommendations which include its factual findings and
10 conclusions. A copy of the recommendations shall be given to
11 the recipient and the objector.

12 (c) Within 7 days of receipt of the recommendations, the
13 facility director shall give written notice to the recipient
14 and objector of his acceptance or rejection of the
15 recommendations and his reason therefor. If the director of the
16 facility rejects the recommendations or if the recipient or
17 objector requests review of the director's decision, the
18 director shall promptly forward a copy of his decision, the
19 recommendations, and the record of the hearing to the Secretary
20 of the Department for final review. The decision of the
21 director or the decision of the Secretary of the Department, if
22 his review was requested, shall be considered a final
23 administrative decision.

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

25 (405 ILCS 5/3-908) (from Ch. 91 1/2, par. 3-908)

1 Sec. 3-908. Application for transfer of recipient to
2 another Department facility.

3 (a) The facility director of any Department facility may
4 transfer a recipient to another Department facility if he
5 determines the transfer to be clinically advisable and
6 consistent with the treatment needs of the recipient.

7 (b) A recipient, his or her attorney, guardian, if any, and
8 responsible relative, in any Department facility may make a
9 written application to the facility director of the recipient's
10 current facility to transfer to another Department facility.

11 The Department shall provide the form to make such an
12 application to a recipient, his or her attorney, guardian, if
13 any, and responsible relative upon request. A recipient of
14 services shall not include a person with the primary diagnosis
15 of a developmental disability.

16 (c) Upon receipt of the recipient's application, the
17 facility director shall promptly schedule a hearing to be held
18 within 7 days under Section 3-207. The hearing shall be held at
19 the recipient's current facility.

20 (d) At the hearing the recipient shall have the burden of
21 proving that:

22 (1) the facility to which the recipient is requesting a
23 transfer to a less restrictive facility that provides
24 treatment which is more clinically appropriate for the
25 recipient. If the recipient refuses the transfer it shall
26 be considered the same as if the recipient was denied a

1 transfer and the recipient shall be prohibited from making
2 another request for 180 days after the initial denial of
3 transfer; and

4 (2) the transfer does not threaten the safety of the
5 recipient or others.

6 If the utilization review committee finds that the
7 recipient has sustained his burden and the request for transfer
8 is supported by substantial evidence, it shall recommend that
9 the transfer proceed within 30 days. If it does not so find, it
10 shall recommend that the recipient not be transferred. If the
11 transfer to a less restricted facility cannot be executed due
12 to lack of beds, the transferring facility shall inform the
13 recipient and his petitioning attorney or guardian, in writing,
14 and provide an estimated time frame for the transfer.

15 (e) If a recipient's application for transfer is denied, no
16 application may be filed for 180 days. The recipient does,
17 however, have the right to administratively appeal any decision
18 of the utilization review committee.

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.