

1 TITLE 77: PUBLIC HEALTH
2 CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
3 SUBCHAPTER c: LONG-TERM CARE FACILITIES
4

5 PART 380
6 SPECIALIZED MENTAL HEALTH REHABILITATION FACILITIES CODE
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82 AUTHORITY: Implementing and authorized by the Specialized Mental Health Rehabilitation
83 Act of 2013 [210 ILCS 49].
84

85 SOURCE: Emergency rule adopted at 38 Ill. Reg. 11819, effective May 22, 2014, for a
86 maximum of 150 days; emergency expired October 18, 2014; adopted at 38 Ill. Reg. 22897,

87 effective November 21, 2014; amended at 43 Ill. Reg. 1651, effective January 18, 2019;
88 emergency amendment at 44 Ill. Reg. 8568, effective May 5, 2020, for a maximum of 150 days;
89 emergency repeal of emergency rule at 44 Ill. Reg. 16314, effective September 15, 2020;
90 amended at 44 Ill. Reg. _____, effective _____.

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SUBPART A: GENERAL PROVISIONS

93

94 **Section 380.140 Consumer Rights and Choices**

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96 a) *Consumers served by a facility under the Act and this Part shall have all the rights*
97 *guaranteed pursuant to Chapter II, Article I of the Mental Health and*
98 *Developmental Disabilities Code, a list of which shall be prominently posted in*
99 *English and any other language representing at least 5% of the county population*
100 *in which the specialized mental health rehabilitation facility is located. (Section*
101 *3-101 of the Act)*

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103 1) *Each consumer and consumer's guardian or other person acting on behalf*
104 *of the consumer shall be given a written explanation of all of his or her*
105 *rights. The explanation shall be given at the time of admission to a facility*
106 *or as soon thereafter as the condition of the consumer permits, but in no*
107 *event later than 48 hours after admission and again at least annually*
108 *thereafter, except for triage. If a consumer is unable to read the written*
109 *explanation, it shall be read to the consumer in a language the consumer*
110 *understands. (Section 3-209 of the Act)*

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112 2) *The facility shall ensure that its staff is familiar with and observes the*
113 *rights and responsibilities enumerated in Article 3 of the Act. (Section 3-*
114 *210 of the Act)*

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116 b) *A consumer shall be permitted to manage his or her own financial affairs unless*
117 *he or she or his or her guardian authorizes the executive director of the facility in*
118 *writing to manage the consumer's financial affairs. (Section 3-102 of the Act)*

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120 c) *To the extent possible, each consumer shall be responsible for his or her own*
121 *moneys and personal property or possessions in his or her own immediate living*
122 *quarters unless deemed inappropriate by a physician or other facility LPHA*
123 *clinician and so documented in the consumer's record. In the event the moneys or*
124 *possessions of a consumer come under the supervision of the facility, either*
125 *voluntarily on the part of the consumer or so ordered by a facility physician or*
126 *other LPHA clinician, each facility to whom a consumer's moneys or possessions*
127 *have been entrusted shall comply with the following:*

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129 1) *No facility shall commingle consumers' moneys or possessions with those*

130 *of the facility; consumers' moneys and possessions shall be maintained*
131 *separately, intact, and free from any liability that the facility incurs in the*
132 *use of the facility's funds;*
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134 2) *The facility shall provide reasonably adequate space for the possessions of*
135 *the consumer; the facility shall provide a means of safeguarding small*
136 *items of value for its consumers in their rooms or in any other part of the*
137 *facility so long as the consumers have reasonable and adequate access to*
138 *their possessions; and*
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140 3) *The facility shall make reasonable efforts to prevent loss and theft of*
141 *consumers' possessions; those efforts shall be appropriate to the*
142 *particular facility and particular living setting within each facility and*
143 *may include staff training and monitoring, labeling possessions, and*
144 *frequent possession inventories; the facility shall develop procedures for*
145 *investigating complaints concerning theft of consumers' possessions and*
146 *shall promptly investigate all complaints. (Section 3-103 of the Act)*
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148 d) *Every consumer, except those in triage centers, shall be permitted unimpeded,*
149 *private, and uncensored communication of his or her choice by mail, telephone,*
150 *Internet, or visitation.*
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152 1) *The executive director shall ensure that correspondence is conveniently*
153 *received and reasonably accessible.*
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155 2) *The executive director shall ensure that consumers may have private visits*
156 *at any reasonable hour unless visits are restricted due to the treatment*
157 *plan of the consumer.*
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159 3) *The executive director shall ensure that space for visits is available and*
160 *that facility personnel reasonably announce their intent to enter, except in*
161 *an emergency, before entering any consumer's room during visits.*
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163 4) *Consumers shall be free to leave at any time. If a consumer in a triage*
164 *center expresses a desire to contact a third party for any purpose, the*
165 *facility staff shall contact that third party on behalf of the consumer.*
166 *(Section 3-108 of the Act)*
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168 e) *A consumer shall be permitted the free exercise of religion. Upon a consumer's*
169 *request, and if necessary, at the consumer's expense, the executive director may*
170 *make arrangements for a consumer's attendance at religious services of the*
171 *consumer's choice. However, no religious beliefs or practices or attendance at*
172 *religious services may be imposed upon any consumer. (Section 3-109 of the Act)*

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- f) *Access to Consumers*
 - 1) *Any employee or agent of a public agency, any representative of a community legal services program, or any other member of the general public shall be permitted access at reasonable hours to any individual consumer of any facility, unless the consumer is receiving care and treatment in triage centers. This subsection (f)(1) shall not be construed to limit the Department's ability to conduct off-hour surveys or inspections.*
 - 2) *All persons entering a facility under the Act and this subsection (f) shall promptly notify appropriate facility personnel of their presence. They shall, upon request, produce identification to establish their identity. No person shall enter the immediate living area of any consumer without first identifying himself or herself and then receiving permission from the consumer to enter. The rights of other consumers present in the room shall be respected. A consumer may terminate at any time a visit by a person having access to the consumer's living area under the Act and this subsection.*
 - 3) *This subsection (f) shall not limit the power of the Department or other public agency otherwise permitted or required by law to enter and inspect a facility.*
 - 4) *Notwithstanding subsection (f)(1), the executive director of a facility may refuse access to the facility to any person if the presence of that person in the facility would be injurious to the health and safety of a consumer or would threaten the security of the property of a consumer or the facility, or if the person seeks access to the facility for commercial purposes.*
 - 5) *Nothing in this subsection (f) shall be construed to conflict with, or infringe upon, any court orders or consent decrees regarding access. (Section 3-110 of the Act)*
- g) *A consumer shall be permitted to present grievances on behalf of himself or herself or others to the executive director, the consumers' advisory council (see subsection (j)), State governmental agencies, or other persons without threat of discharge or reprisal in any form or manner whatsoever. The executive director shall provide all consumers or their representatives with the name, address, and telephone number of the appropriate State governmental office where complaints may be lodged. (Section 3-112 of the Act) All facilities shall display contact information and make it accessible and visible to consumers and visitors with a minimum of interaction with staff.*

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- h) *A consumer may refuse to perform labor for a facility. (Section 3-113 of the Act)*

- i) *No consumer shall be subjected to unlawful discrimination as defined in Section 1-103 of the Illinois Human Rights Act by any owner, licensee, executive director, employee, or agent of a facility. Unlawful discrimination does not include an action by any licensee, executive director, employee, or agent of a facility that is required by the Act or by this Part. (Section 3-114 of the Act)*

- j) *Except for triage centers and crisis stabilization units, each facility shall establish a consumers' advisory council consisting of at least five consumers chosen by consumers. If there are not five consumers capable of functioning on the consumers' advisory council, as determined by the interdisciplinary team, consumers' substitute decision makers shall take the place of the required number of consumers. The executive director shall designate a member of the facility staff other than the executive director to coordinate the establishment of, and render assistance to, the council.*
 - 1) *No employee or affiliate of a facility shall be a member of the council.*
 - 2) *The council shall meet at least once each month with the staff coordinator, who shall provide assistance to the council in preparing and disseminating a report of each meeting to all consumers, the executive director, and the staff.*
 - 3) *Records of council meetings shall be maintained in the office of the executive director, subject to compliance with the Health Insurance Portability and Accountability Act and Mental Health and Developmental Disabilities Confidentiality Act.*
 - 4) *The consumers' advisory council may communicate to the executive director the opinions and concerns of the consumers. The council shall review procedures for implementing consumer rights and facility responsibilities, and make recommendations for changes or additions that will strengthen the facility's policies and procedures as they affect consumer rights and facility responsibilities.*
 - 5) *The council shall be a forum for:*
 - A) *Obtaining and disseminating information;*
 - B) *Soliciting and adopting recommendations for facility programming and improvements; and*

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C) *Early identification and for recommending orderly resolution of problems.*

6) *The council may present complaints on behalf of a consumer to the Department or to any other person it considers appropriate, without retaliation of any kind from the facility or any facility employee. (Section 3-203 of the Act)*

k) A facility shall provide language assistance services in accordance with the Language Assistance Services Act and the Language Assistance Services Code.

l) A facility shall inform a consumer of his or her right to designate a substitute decision maker in writing and shall assist the consumer in naming a substitute decision maker, if the consumer requests it.

m) Pursuant to Section 380.600(g), all facilities shall conspicuously display a poster informing consumers of their right to explore or decline community transition and their right to be free from retaliation. This notice shall include a telephone number for reporting retaliation to the Department and shall include the steps a consumer should take if retaliation does occur.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART E: SUPPORT SERVICES AND ENVIRONMENT

Section 380.600 Required Support Services

a) For the purpose of this Section, "physician orders" includes instructions from medical doctors (MD), doctors of osteopathy (OD), dentists, podiatrists, advanced practice nurses (APN) in collaboration with an MD, and physician assistants (PA) under the supervision of a physician for that physician's patients.

b) *Facilities shall provide, at a minimum, the following services: physician, nursing, pharmaceutical, rehabilitative, and dietary services. To provide these services, the facility shall adhere to the following:*

1) *Each consumer shall be encouraged and assisted to achieve and maintain the highest level of self-care and independence. Every effort shall be made to keep consumers active and out of bed for reasonable periods of time, except where contraindicated by physician orders.*

2) *Every consumer shall participate in a person-centered planning process*

302 *regarding his or her total care and treatment, to the extent that his or her*
303 *condition permits.*

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305 3) *All medical treatment and procedures shall be administered as ordered by*
306 *a physician. All new physician orders shall be reviewed by the facility's*
307 *director of nursing or charge nurse designee within 24 hours after the*
308 *orders have been issued to ensure facility compliance with the orders.*
309 *Every woman consumer of child bearing age shall receive routine*
310 *obstetrical and gynecological evaluations, as well as necessary prenatal*
311 *care, except in triage centers.*

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313 A) The frequency and administration of obstetrical, gynecological and
314 pre-natal care shall be according to the guidelines set forth in the
315 Guidelines for Women's Health Care, published by the American
316 College of Obstetricians and Gynecologists. The date of the
317 consumer's last obstetrical, gynecological or prenatal appointments
318 shall be identified as part of the treatment assessment, and
319 pregnancy screening may be required before medications are
320 prescribed and administered.

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322 B) If obstetrical and gynecological evaluations are performed in a
323 facility, the facility shall ensure that the examination room is
324 adequately equipped for these examinations.

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326 C) If obstetrical and gynecological evaluations are not performed in a
327 facility, the facility shall arrange with a local OB/GYN practice or
328 clinic to have the evaluations performed at that location.

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330 c) *Each consumer shall be provided with good nutrition and with necessary fluids*
331 *for hydration in accordance with the Food and Nutrition Board of the National*
332 *Research Council of the National Academy of Science's standard.*

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334 d) *Each consumer shall be provided visual privacy during treatment and personal*
335 *care.*

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337 e) *Every consumer or consumer's guardian shall be permitted to inspect and copy*
338 *all of his or her clinical and other records concerning his or her care kept by the*
339 *facility or by his or her physician. The facility may charge a reasonable fee for*
340 *duplication of a record. (Section 3-104 of the Act)*

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342 f) A facility with a pharmacy on premises shall comply with the Controlled
343 Substances Act. Facilities without pharmacies shall ensure that pharmacies they
344 make arrangements, or contract, with comply with the Controlled Substances Act.

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g) Facilities licensed under the Act and this Part shall provide transitional living assistance to prepare those with serious mental illness to reintegrate successfully into community living settings. (Section 1-101.3 of the Act)

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART F: LICENSURE REQUIREMENTS

Section 380.740 Surveys and Inspections

- a) Upon receipt of a completed application and verification of the facility's compliance with the Act and this Part, and a licensure fee of \$5,700, and the completion of an initial survey as described in subsection (b), the Department will issue a provisional license for one or more of the four levels of service identified in the Act and in Section 380.100 of this Part (definition for facility), as requested by the licensee in the application.
- b) Prior to the issuance of the initial provisional license, and then at least annually, *the Department shall conduct surveys of licensed facilities and their certified programs and services. The Department shall review the records or premises, or both, as it deems appropriate for the purpose of determining compliance with the Act and this Part. The Department shall have access to and may reproduce or photocopy any books, records, and other documents maintained by the facility to the extent necessary to carry out the Act and this Part.* In addition, the Department will:
 - 1) Conduct staff interviews;
 - 2) Conduct consumer interviews; ~~and~~
 - 3) Review evidence-based program outcomes; ~~and-~~
 - 4) Confirm that the posters required by Section 380.140(m) are conspicuously posted in the facility.
- c) *Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to enter and inspect the facility in accordance with the Act. Refusal to permit entry or inspection shall constitute grounds for denial, suspension, or revocation of a license under the Act.* (Section 4-108 of the Act) The Department's access to the facility's books, records and any other documents maintained by the facility includes, but is not limited to:

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- 1) Verifying whether the facility complies with all of the requirements for authorization and review of treatment appropriateness for each consumer, based on the service level or levels for which the facility is licensed. The facility shall ensure that State-designated authorization agents and other authorized State personnel are provided with timely and unfettered access to consumers, records, facility staff and consultants who are part of the facility's treatment team; and
- 2) Verifying whether, for all programs except for triage centers, the facility has admitted any consumer prior to completing the required authorization. The Department may revoke a facility's license for admission of consumers into crisis stabilization units, transitional living units, or recovery and rehabilitation supports units without pre-authorization for that program. Admission of a consumer without pre-authorization violates this Part and the Department of Healthcare and Family Services' rate requirements. Facilities will not receive retroactive payment for services provided prior to pre-authorization through the required authorization.

(Source: Amended at 44 Ill. Reg. _____, effective _____)