**Section 350.3300 Transfer or Discharge**

a) *A resident may be discharged from a facility after he or she gives the administrator, a physician, or a nurse of the facility written notice of his or her 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 his or her guardian or if the resident is a minor, his or her 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 (z) and in Sections 350.636(a) and 350.637(a).

c) Reasons for Transfer or Discharge

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

A) *for medical reasons* as determined by the IDT and as ordered by the resident's attending physician;

B) *for the resident's physical safety;*

C) *for the physical safety of other residents, the facility staff or facility visitors; or*

D) *for either late payment or nonpayment for the resident's stay, except as prohibited by Titles 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, a 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. Such 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.* (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 he or she is a recipient of or an applicant for the Medical Assistance Program under Article V of the Illinois Public Aid Code.* (Section 3-401.1(a) of the Act) *For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling 10 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 10-day period.

B) *A facility which violates* subsection (c)(2)(A) *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)

d) *Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under* subsection (k) *of this Section and by a minimum written notice of 21 days, except in one of the following instances:*

1) *When an emergency transfer or discharge is attending physician because of the resident's health care needs;* 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 shall be notified prior to any such involuntary transfer or discharge. The Department* *shall* *immediately offer transfer, or discharge and relocation assistance to residents transferred or discharged under this* subsection (d), *and the Department may place relocation teams as provided in Section 3-419 of* the *Act*. (Section 3-402 of the Act) Risks to physical safety means behavior that has not changed, or risks that have not been reduced, after appropriate assessment, program changes, behavioral intervention, and expert consultation, as determined by the IDT, and among which may include, but are not limited to, such behaviors as the following:

A) The resident has displayed aggression to self or to others;

B) The resident has committed property destruction that caused injury to the resident or to others;

C) The resident habitually leaves the facility and, because of his or her lack of safety skills, is likely to be in danger of harming himself or herself, or others.

e) *The notice required by* subsection (d) *of this Section 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;* (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*; and (Section 3-403(e) of the Act)

6) Confirmation that the Independent Service Coordination (ISC) agency has been formally notified in writing of the facility's intent to involuntarily discharge a resident, and the facility:

A) Has requested assistance from the ISC agency in the resident's relocation, transfer, or discharge; and

B) Has included supporting documentation with the request for assistance that demonstrates the effort the facility has made to address the resident's needs, such as program plans, behavioral intervention plans, consultation reports and other supportive documentation.

f) The parties to a hearing arising from this Section shall be the resident and the facility. All hearings arising from this Section shall proceed unless the resident, the resident's guardian, or the resident's authorized representative voluntarily withdraws the request for hearing. Once the resident has made a request for hearing, the facility shall not have the ability to terminate the proceedings unless the facility meets the following two criteria:

1) The facility withdraws the Notice of Involuntary Transfer or Discharge; and

2) The resident shall be allowed to return to the facility.

g) *A request for a hearing made under* subsection (m) *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)

h) *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)

i) *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 assistance under 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)

j) *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)

k) *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)

l) *The facility shall offer the resident counseling services before the transfer or discharge of the resident.* (Section 3-409 of the Act)

m) *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)

n) *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)

o) *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)

p) *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)

q) *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)

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

1) *Such 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; or* (Section 3-415(e) of the Act)

6) The facility is a distressed facility.

s) *In deciding to transfer or discharge a resident from a facility under* subsection (r)*, 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)

t) *The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under* subsections (c) through (r) *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 such place. 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)

u) *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)

v) *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)

w) *In any transfer or discharge conducted under* subsections (r) through (u) *the Department shall:*

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 (y)*. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within four working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within four 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 (y)*. 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)

x) *In any transfer or discharge conducted under* subsection (r)(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 (y)*.* (Section 3-421 of the Act)

y) *Within ten 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* after *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)

z) *Any owner of a facility licensed under* the *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 (v)*.* (Section 3-423 of the Act)

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