

SB2031



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2031

Introduced 2/10/2017, by Sen. Thomas Cullerton

SYNOPSIS AS INTRODUCED:

210 ILCS 45/2-202

from Ch. 111 1/2, par. 4152-202

Amends the Nursing Home Care Act. Provides that for a specified written agreement provided by a resident to a facility under the Act, the agreement may authorize the resident's representative to represent the resident's interests in securing and maintaining Medicaid long-term care benefits, including banking records, redeterminations, appeal proceedings, and legal challenges, or that the resident may choose another individual or entity to perform these functions, which shall require a separate written agreement. Provides that an authorization granted by a resident under a specified provision shall not be diminished or terminated by the death of the resident. Effective immediately.

LRB100 11002 MJP 21241 b

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Nursing Home Care Act is amended by changing
5 Section 2-202 as follows:

6 (210 ILCS 45/2-202) (from Ch. 111 1/2, par. 4152-202)

7 Sec. 2-202. (a) Before a person is admitted to a facility,
8 or at the expiration of the period of previous contract, or
9 when the source of payment for the resident's care changes from
10 private to public funds or from public to private funds, a
11 written contract shall be executed between a licensee and the
12 following in order of priority:

13 (1) the person, or if the person is a minor, his parent
14 or guardian; or

15 (2) the person's guardian, if any, or agent, if any, as
16 defined in Section 2-3 of the Illinois Power of Attorney
17 Act; or

18 (3) a member of the person's immediate family.

19 An adult person shall be presumed to have the capacity to
20 contract for admission to a long term care facility unless he
21 has been adjudicated a "person with a disability" within the
22 meaning of Section 11a-2 of the Probate Act of 1975, or unless
23 a petition for such an adjudication is pending in a circuit

1 court of Illinois.

2 If there is no guardian, agent or member of the person's
3 immediate family available, able or willing to execute the
4 contract required by this Section and a physician determines
5 that a person is so disabled as to be unable to consent to
6 placement in a facility, or if a person has already been found
7 to be a "person with a disability", but no order has been
8 entered allowing residential placement of the person, that
9 person may be admitted to a facility before the execution of a
10 contract required by this Section; provided that a petition for
11 guardianship or for modification of guardianship is filed
12 within 15 days of the person's admission to a facility, and
13 provided further that such a contract is executed within 10
14 days of the disposition of the petition.

15 No adult shall be admitted to a facility if he objects,
16 orally or in writing, to such admission, except as otherwise
17 provided in Chapters III and IV of the Mental Health and
18 Developmental Disabilities Code or Section 11a-14.1 of the
19 Probate Act of 1975.

20 If a person has not executed a contract as required by this
21 Section, then such a contract shall be executed on or before
22 July 1, 1981, or within 10 days after the disposition of a
23 petition for guardianship or modification of guardianship that
24 was filed prior to July 1, 1981, whichever is later.

25 Before a licensee enters a contract under this Section, it
26 shall provide the prospective resident and his or her guardian,

1 if any, with written notice of the licensee's policy regarding
2 discharge of a resident whose private funds for payment of care
3 are exhausted.

4 Before a licensee enters into a contract under this
5 Section, it shall provide the resident or prospective resident
6 and his or her guardian, if any, with a copy of the licensee's
7 policy regarding the assignment of Social Security
8 representative payee status as a condition of the contract when
9 the resident's or prospective resident's care is being funded
10 under Title XIX of the Social Security Act and Article V of the
11 Illinois Public Aid Code.

12 (b) A resident shall not be discharged or transferred at
13 the expiration of the term of a contract, except as provided in
14 Sections 3-401 through 3-423.

15 (c) At the time of the resident's admission to the
16 facility, a copy of the contract shall be given to the
17 resident, his guardian, if any, and any other person who
18 executed the contract.

19 (d) A copy of the contract for a resident who is supported
20 by nonpublic funds other than the resident's own funds shall be
21 made available to the person providing the funds for the
22 resident's support.

23 (e) The original or a copy of the contract shall be
24 maintained in the facility and be made available upon request
25 to representatives of the Department and the Department of
26 Healthcare and Family Services.

1 (f) The contract shall be written in clear and unambiguous
2 language and shall be printed in not less than 12-point type.
3 The general form of the contract shall be prescribed by the
4 Department.

5 (g) The contract shall specify:

6 (1) the term of the contract;

7 (2) the services to be provided under the contract and
8 the charges for the services;

9 (3) the services that may be provided to supplement the
10 contract and the charges for the services;

11 (4) the sources liable for payments due under the
12 contract;

13 (5) the amount of deposit paid; and

14 (6) the rights, duties and obligations of the resident,
15 except that the specification of a resident's rights may be
16 furnished on a separate document which complies with the
17 requirements of Section 2-211.

18 (h) The contract shall designate the name of the resident's
19 representative, if any. The resident shall provide the facility
20 with a copy of the written agreement between the resident and
21 the resident's representative which authorizes the resident's
22 representative to inspect and copy the resident's records and
23 authorizes the resident's representative to execute the
24 contract on behalf of the resident required by this Section.
25 The agreement may also authorize the resident's representative
26 to represent the resident's interests in securing and

1 maintaining Medicaid long-term care benefits, including
2 banking records, redeterminations, appeal proceedings, and
3 legal challenges, or the resident may choose another individual
4 or entity to perform these functions, which shall require a
5 separate written agreement. An authorization granted under
6 this subsection shall not be diminished or terminated by the
7 death of the resident.

8 (i) The contract shall provide that if the resident is
9 compelled by a change in physical or mental health to leave the
10 facility, the contract and all obligations under it shall
11 terminate on 7 days notice. No prior notice of termination of
12 the contract shall be required, however, in the case of a
13 resident's death. The contract shall also provide that in all
14 other situations, a resident may terminate the contract and all
15 obligations under it with 30 days notice. All charges shall be
16 prorated as of the date on which the contract terminates, and,
17 if any payments have been made in advance, the excess shall be
18 refunded to the resident. This provision shall not apply to
19 life-care contracts through which a facility agrees to provide
20 maintenance and care for a resident throughout the remainder of
21 his life nor to continuing-care contracts through which a
22 facility agrees to supplement all available forms of financial
23 support in providing maintenance and care for a resident
24 throughout the remainder of his life.

25 (j) In addition to all other contract specifications
26 contained in this Section admission contracts shall also

1 specify:

2 (1) whether the facility accepts Medicaid clients;

3 (2) whether the facility requires a deposit of the
4 resident or his family prior to the establishment of
5 Medicaid eligibility;

6 (3) in the event that a deposit is required, a clear
7 and concise statement of the procedure to be followed for
8 the return of such deposit to the resident or the
9 appropriate family member or guardian of the person;

10 (4) that all deposits made to a facility by a resident,
11 or on behalf of a resident, shall be returned by the
12 facility within 30 days of the establishment of Medicaid
13 eligibility, unless such deposits must be drawn upon or
14 encumbered in accordance with Medicaid eligibility
15 requirements established by the Department of Healthcare
16 and Family Services.

17 (k) It shall be a business offense for a facility to
18 knowingly and intentionally both retain a resident's deposit
19 and accept Medicaid payments on behalf of that resident.

20 (Source: P.A. 98-104, eff. 7-22-13; 99-143, eff. 7-27-15.)

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