



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2426

Introduced 2/17/2021, 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 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.

LRB102 12653 RLC 17992 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,
6 3-207, 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
15 the nature of the recipient's services program. The notice
16 shall include, if applicable, the recipient's right to request
17 a 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
5 shall be informed of the right to designate, a person or agency
6 to 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
10 as the condition of the recipient permits, the facility shall
11 ask the adult recipient or minor recipient admitted pursuant
12 to 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
25 as 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
8 record and communicated by the facility to the recipient's
9 guardian or substitute decision maker, if any, and any other
10 individual designated by the recipient. If any such
11 circumstances subsequently do arise, the facility shall give
12 due consideration to the preferences of the recipient
13 regarding which form of intervention to use as communicated to
14 the 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
24 deal 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
16 the facility rejects the recommendations or if the recipient
17 or 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
20 Secretary of the Department for final review. The decision of
21 the director or the decision of the Secretary of the
22 Department, if his review was requested, shall be considered a
23 final 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,
8 and responsible relative, in any Department facility may make
9 a written application to the facility director of the
10 recipient's current facility to transfer to another Department
11 facility. The Department shall provide the form to make such
12 an application to a recipient, his or her attorney, guardian,
13 if 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
23 a 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
8 transfer is supported by substantial evidence, it shall
9 recommend that the transfer proceed within 30 days. If it does
10 not so find, it shall recommend that the recipient not be
11 transferred. If the transfer to a less restricted facility
12 cannot be executed due to lack of beds, the transferring
13 facility shall inform the recipient and his petitioning
14 attorney or guardian, in writing, and provide an estimated
15 time frame for the transfer.

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

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

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