



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/04/04, by Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

20 ILCS 1705/15	from Ch. 91 1/2, par. 100-15
405 ILCS 5/2-116 new	
405 ILCS 5/3-405	from Ch. 91 1/2, par. 3-405
405 ILCS 5/3-903	from Ch. 91 1/2, par. 3-903

Amends the Mental Health and Developmental Disabilities Administrative Act and the Mental Health and Developmental Disabilities Code. Makes the following provisions applicable to facilities that receive funding from the Department of Human Services for the provision of mental health services to persons who would be eligible for treatment in a State-operated facility: (1) provisions concerning release or discharge from a mental health facility; and (2) provisions concerning denial of admission to a mental health facility. Provides that a person receiving services in a residential mental health facility funded in whole or in part by the Department of Human Services shall be afforded the same rights and procedures as afforded to persons in State-operated facilities. Effective immediately.

LRB093 15247 DRJ 40845 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning mental 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 Administrative Act is amended by changing Section
6 15 as follows:

7 (20 ILCS 1705/15) (from Ch. 91 1/2, par. 100-15)

8 Sec. 15. Before any person is released from a facility
9 operated by the State or that receives moneys from the
10 Department for the provision of mental health services to
11 persons who would be eligible for treatment in a facility
12 operated by the Department pursuant to an absolute discharge or
13 a conditional discharge from hospitalization under this Act,
14 the facility director of the facility in which such person is
15 hospitalized shall determine that such person is not currently
16 in need of hospitalization and:

17 (a) is able to live independently in the community; or

18 (b) requires further oversight and supervisory care
19 for which arrangements have been made with responsible
20 relatives or supervised residential program approved by
21 the Department; or

22 (c) requires further personal care or general
23 oversight as defined by the Nursing Home Care Act, for
24 which placement arrangements have been made with a suitable
25 family home or other licensed facility approved by the
26 Department under this Section.

27 Such determination shall be made in writing and shall
28 become a part of the facility record of such absolutely or
29 conditionally discharged person. When the determination
30 indicates that the condition of the person to be granted an
31 absolute discharge or a conditional discharge is described
32 under subparagraph (c) of this Section, the name and address of

1 the continuing care facility or home to which such person is to
2 be released shall be entered in the facility record. Where a
3 discharge from a mental health facility is made under
4 subparagraph (c), the facility director ~~Department~~ shall
5 assign the person so discharged to an existing community based
6 not-for-profit agency for participation in day activities
7 suitable to the person's needs, such as but not limited to
8 social and vocational rehabilitation, and other recreational,
9 educational and financial activities unless the community
10 based not-for-profit agency is unqualified to accept such
11 assignment. Where the clientele of any not-for-profit agency
12 increases as a result of assignments under this amendatory Act
13 of 1977 by more than 3% over the prior year, the Department
14 shall fully reimburse such agency for the costs of providing
15 services to such persons in excess of such 3% increase.

16 Insofar as desirable in the interests of the former
17 recipient, the facility, program or home in which the
18 discharged person is to be placed shall be located in or near
19 the community in which the person resided prior to
20 hospitalization or in the community in which the person's
21 family or nearest next of kin presently reside. Placement of
22 the discharged person in facilities, programs or homes located
23 outside of this State shall not be made ~~by the Department~~
24 unless there are no appropriate facilities, programs or homes
25 available within this State. Out-of-state placements shall be
26 subject to return of recipients so placed upon the availability
27 of facilities, programs or homes within this State to
28 accommodate these recipients, except where placement in a
29 contiguous state results in locating a recipient in a facility
30 or program closer to the recipient's home or family. If an
31 appropriate facility or program becomes available equal to or
32 closer to the recipient's home or family, the recipient shall
33 be returned to and placed at the appropriate facility or
34 program within this State.

35 To place any person who is under a program operated or
36 funded by ~~of~~ the Department at board in a suitable family home

1 or in such other facility or program as the Department may
2 consider desirable. The facility ~~Department~~ may place in
3 licensed nursing homes, sheltered care homes, or homes for the
4 aged those persons whose behavioral manifestations and medical
5 and nursing care needs are such as to be substantially
6 indistinguishable from persons already living in such
7 facilities. Prior to any placement ~~by the Department~~ under this
8 Section, a determination shall be made by the personnel of the
9 Department or their designees, as to the capability and
10 suitability of such facility to adequately meet the needs of
11 the person to be discharged. When specialized programs are
12 necessary in order to enable persons in need of supervised
13 living to develop and improve in the community, the facility
14 ~~Department~~ shall place such persons only in specialized
15 residential care facilities which shall meet Department
16 standards including restricted admission policy, special
17 staffing and programming for social and vocational
18 rehabilitation, in addition to the requirements of the
19 appropriate State licensing agency. The facility ~~Department~~
20 shall not place any new person in a facility the license of
21 which has been revoked or not renewed on grounds of inadequate
22 programming, staffing, or medical or adjunctive services,
23 regardless of the pendency of an action for administrative
24 review regarding such revocation or failure to renew. Before
25 the facility ~~Department~~ may transfer any person to a licensed
26 nursing home, sheltered care home or home for the aged or place
27 any person in a specialized residential care facility, the
28 facility ~~Department~~ shall notify the person to be transferred,
29 or a responsible relative of such person, in writing, at least
30 30 days before the proposed transfer, with respect to all the
31 relevant facts concerning such transfer, except in cases of
32 emergency when such notice is not required. If either the
33 person to be transferred or a responsible relative of such
34 person objects to such transfer, in writing to the Department,
35 at any time after receipt of notice and before the transfer,
36 the Department ~~facility director of the facility in which the~~

1 ~~person was a recipient~~ shall immediately schedule a hearing at
2 the facility with the presence of the facility director, the
3 person who objected to such proposed transfer, and a
4 psychiatrist who is familiar with the record of the person to
5 be transferred. Such person to be transferred or a responsible
6 relative may be represented by such counsel or interested party
7 as he may appoint, who may present such testimony with respect
8 to the proposed transfer. Testimony presented at such hearing
9 shall become a part of the ~~facility~~ record of the
10 person-to-be-transferred. The record of testimony shall be
11 held in the person-to-be-transferred's record in the central
12 files of the facility. If such hearing is held a transfer may
13 only be implemented, if at all, in accordance with the results
14 of such hearing. Within 15 days after such hearing the
15 Secretary of the Department or his or her designee ~~facility~~
16 ~~director~~ shall deliver his findings based on the record of the
17 case and the testimony presented at the hearing, by registered
18 or certified mail, to the parties to such hearing. The findings
19 of the Secretary ~~facility director~~ shall be deemed a final
20 administrative decision of the Department. For purposes of this
21 Section, "case of emergency" means those instances in which the
22 health of the person to be transferred is imperiled and the
23 most appropriate mental health care or medical care is
24 available at a licensed nursing home, sheltered care home or
25 home for the aged or a specialized residential care facility.

26 Prior to placement of any person in a facility under this
27 Section the Department or its designee shall ensure that an
28 appropriate training plan for staff is provided by the
29 facility. Said training may include instruction and
30 demonstration by Department personnel qualified in the area of
31 mental illness or mental retardation, as applicable to the
32 person to be placed. Training may be given both at the facility
33 from which the recipient is transferred and at the facility
34 receiving the recipient, and may be available on a continuing
35 basis subsequent to placement. In a facility providing services
36 to former Department recipients, training shall be available as

1 necessary for facility staff. Such training will be on a
2 continuing basis as the needs of the facility and recipients
3 change and further training is required.

4 The Department shall not place any person in a facility
5 which does not have appropriately trained staff in sufficient
6 numbers to accommodate the recipient population already at the
7 facility. As a condition of further or future placements of
8 persons, the Department shall require the employment of
9 additional trained staff members at the facility where said
10 persons are to be placed. The Secretary, or his or her
11 designate, shall establish guidelines for placement of persons
12 in facilities under this Act.

13 Bills for the support for a person boarded out shall be
14 payable monthly out of the proper maintenance funds and shall
15 be audited as any other accounts of the Department. If a person
16 is placed in a facility or program outside the Department, the
17 Department may pay the actual costs of residence, treatment or
18 maintenance in such facility and may collect such actual costs
19 or a portion thereof from the recipient or the estate of a
20 person placed in accordance with this Section.

21 Other than those placed in a family home the Department
22 shall cause all persons who are placed in a facility, as
23 defined by the Nursing Home Care Act, or in designated
24 community living situations or programs, to be visited at least
25 once during the first month following placement, and once every
26 month thereafter when indicated. Visits shall be made by
27 qualified and trained Department personnel, or their designee,
28 in the area of mental health or developmental disabilities
29 applicable to the person visited, and shall be made on a more
30 frequent basis when indicated. The Department may not use as
31 designee any personnel connected with or responsible to the
32 representatives of any facility in which persons who have been
33 transferred under this Section are placed. In the course of
34 such visit there shall be consideration of the following areas,
35 but not limited thereto: effects of transfer on physical and
36 mental health of the person, sufficiency of nursing care and

1 medical coverage required by the person, sufficiency of staff
2 personnel and ability to provide basic care for the person,
3 social, recreational and programmatic activities available for
4 the person, and other appropriate aspects of the person's
5 environment.

6 A report containing the above observations shall be made to
7 the Department and to any other appropriate agency subsequent
8 to each visitation. At the conclusion of one year following
9 absolute or conditional discharge, or a longer period of time
10 if required by the Department, the Department may terminate the
11 visitation requirements of this Section as to a person placed
12 in accordance with this Section, by filing a written statement
13 of termination setting forth reasons to substantiate the
14 termination of visitations in the person's file, and sending a
15 copy thereof to the person, and to his guardian or next of kin.

16 Upon the complaint of any person placed in accordance with
17 this Section or any responsible citizen or upon discovery that
18 such person has been abused, neglected, or improperly cared
19 for, or that the placement does not provide the type of care
20 required by the recipient's current condition, the Department
21 immediately shall investigate, and determine if the
22 well-being, health, care, or safety of any person is affected
23 by any of the above occurrences, and if any one of the above
24 occurrences is verified, the Department shall remove such
25 person at once to a facility of the Department or to another
26 facility outside the Department, provided such person's needs
27 can be met at said facility. The Department may also provide
28 any person placed in accordance with this Section who is
29 without available funds, and who is permitted to engage in
30 employment outside the facility, such sums for the
31 transportation, and other expenses as may be needed by him
32 until he receives his wages for such employment.

33 The Department shall promulgate rules and regulations
34 governing the purchase of care for persons who are wards of or
35 who are receiving services from the Department. Such rules and
36 regulations shall apply to all monies expended by any agency of

1 the State of Illinois for services rendered by any person,
2 corporate entity, agency, governmental agency or political
3 subdivision whether public or private outside of the Department
4 whether payment is made through a contractual, per-diem or
5 other arrangement. No funds shall be paid to any person,
6 corporation, agency, governmental entity or political
7 subdivision without compliance with such rules and
8 regulations.

9 The rules and regulations governing purchase of care shall
10 describe categories and types of service deemed appropriate for
11 purchase by the Department.

12 Any provider of services under this Act may elect to
13 receive payment for those services, and the Department is
14 authorized to arrange for that payment, by means of direct
15 deposit transmittals to the service provider's account
16 maintained at a bank, savings and loan association, or other
17 financial institution. The financial institution shall be
18 approved by the Department, and the deposits shall be in
19 accordance with rules and regulations adopted by the
20 Department.

21 (Source: P.A. 89-507, eff. 7-1-97; 90-423, eff. 8-15-97.)

22 Section 10. The Mental Health and Developmental
23 Disabilities Code is amended by adding Section 2-116 and by
24 changing Sections 3-405 and 3-903 as follows:

25 (405 ILCS 5/2-116 new)

26 Sec. 2-116. Rights of persons in residential mental health
27 facilities whose care is funded by the Department.
28 Notwithstanding any other provision of this Act, if a person is
29 receiving services in a residential mental health facility and
30 those services are being funded in whole or in part by the
31 Department, that person shall be afforded the rights and
32 procedures set forth in Sections 3-405 and 3-903 of this Act.

33 (405 ILCS 5/3-405) (from Ch. 91 1/2, par. 3-405)

1 Sec. 3-405. (a) If the facility director of a ~~Department~~
2 mental health facility operated by the Department or that
3 receives moneys from the Department for the provision of mental
4 health services to persons who would be eligible for treatment
5 in a facility operated by the Department declines to admit a
6 person seeking admission under Articles III or IV of this
7 Chapter, a review of the denial may be requested by the person
8 seeking admission or, with his consent, by an interested person
9 on his behalf. Such a request may be made on behalf of a minor
10 presented for admission under Section 3-502, 3-503 or 3-504 by
11 the minor's attorney, by the parent, guardian or person in loco
12 parentis who executed the application for his admission, or by
13 the minor himself if he is 16 years of age or older. Whenever
14 admission to a ~~Department~~ facility operated by the Department
15 or that receives moneys from the Department for the provision
16 of mental health services to persons who would be eligible for
17 treatment in a facility operated by the Department is denied,
18 the person seeking admission shall immediately be given written
19 notice of the right to request review of the denial under this
20 Section and shall be provided, if he is 12 or older, with the
21 address and phone number of the Guardianship and Advocacy
22 Commission. If the person requests, the facility director shall
23 assist him in contacting the Commission. A written request for
24 review shall be submitted to the director of the facility that
25 denied admission within 14 days of the denial. If the recipient
26 is receiving mental health services in a residential mental
27 health facility and those services are funded in whole or in
28 part by the Department, the facility director shall promptly
29 forward a copy of the request to the Department. Upon receipt
30 of the request, the Department ~~facility director~~ shall promptly
31 schedule a hearing to be held at the denying facility within 7
32 days pursuant to Section 3-207.

33 (b) At the hearing the Department shall have the burden of
34 proving that the person denied admission does not meet the
35 standard set forth in the Section under which admission is
36 sought or that an appropriate alternative community treatment

1 program was available to meet the person's needs and was
2 offered. If the utilization review committee finds that the
3 decision denying admission is based upon substantial evidence,
4 it shall recommend that the denial of admission be upheld.
5 However, if it finds that the facility to which admission is
6 sought can provide adequate and appropriate treatment for the
7 person and no appropriate community alternative treatment is
8 available, it shall recommend that the person denied admission
9 be admitted. If it determines that another facility can provide
10 treatment appropriate to the clinical condition and needs of
11 the person denied admission, it may recommend that the
12 Department or other agency assist the person in obtaining such
13 treatment.

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

15 (405 ILCS 5/3-903) (from Ch. 91 1/2, par. 3-903)

16 Sec. 3-903. (a) The facility director shall give written
17 notice of discharge from a ~~Department~~ mental health facility
18 operated by the Department or that receives moneys from the
19 Department for the provision of mental health services to
20 persons who would be eligible for treatment in a facility
21 operated by the Department to the recipient, his attorney, and
22 guardian, if any, or in the case of a minor, to his attorney,
23 to the parent, guardian, or person in loco parentis who
24 executed the application for admission, to the resident school
25 district when appropriate, and to the minor if he is 12 years
26 of age or older. The notice, except that to the school
27 district, shall include the reason for discharge and a
28 statement of the right to object. Whenever possible, this
29 notice shall be given at least 7 days prior to the date of
30 intended discharge.

31 (b) A recipient may object to his discharge or his attorney
32 or guardian may object on his behalf. In the case of a minor,
33 his attorney, the person who executed the application or the
34 minor himself if he is 12 years of age or older may object to
35 the discharge. Prior to discharge a written objection shall be

1 submitted to the facility director of the mental health
2 facility where the recipient is located. If the recipient is
3 receiving mental health services in a residential mental health
4 facility and those services are funded in whole or in part by
5 the Department, the facility director shall promptly forward a
6 copy of the objection to the Department. Upon receipt of an
7 objection, the Department ~~facility director~~ shall promptly
8 schedule a hearing to be held within 7 days at the facility
9 pursuant to Section 3-207. No discharge shall proceed pending
10 hearing on an objection, unless the person objecting to the
11 discharge consents to discharge pending the outcome of the
12 hearing.

13 (c) At the hearing the Department shall have the burden of
14 proving that the recipient meets the standard for discharge
15 under this Chapter and under Section 15 of the Mental Health
16 and Developmental Disabilities Administrative Act. If the
17 utilization review committee finds that the Department
18 sustained its burden and that the proposed discharge is based
19 upon substantial evidence, it shall recommend that the
20 discharge proceed. If the utilization review committee does not
21 so find, it shall recommend that the recipient not be
22 discharged but it may recommend that the recipient be
23 transferred to another mental health facility which can provide
24 treatment appropriate to the clinical condition and needs of
25 the recipient. It may recommend that the Department or other
26 agency assist the person in obtaining such appropriate
27 treatment.

28 (Source: P.A. 88-380; 89-507, eff. 7-1-97.)

29 Section 99. Effective date. This Act takes effect upon
30 becoming law.