



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0209

Introduced 2/3/2009, by Sen. Heather Steans

SYNOPSIS AS INTRODUCED:

405 ILCS 5/3-400
755 ILCS 5/11a-17

from Ch. 91 1/2, par. 3-400
from Ch. 110 1/2, par. 11a-17

Amends the Mental Health and Developmental Disabilities Code and the Probate Act of 1975. Provides that a person who may be voluntarily admitted to a mental health facility includes a person adjudicated a disabled person. Provides for voluntary admission to a mental health facility if the facility director determines and documents in the recipient's medical record that the person (i) is clinically suitable for admission as a voluntary recipient and (ii) has the capacity to consent to voluntary admission (instead of if the director deems such person clinically suitable for admission as a voluntary recipient). Sets forth factors to be considered in determining whether a person has the capacity to consent to voluntary admission. Provides that a guardian of the person may not admit a ward to a mental health facility except at the ward's request as provided in the Mental Health and Developmental Disabilities Code and unless the ward has the capacity to consent to such admission.

LRB096 03119 DRJ 13135 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 Section 3-400 as
6 follows:

7 (405 ILCS 5/3-400) (from Ch. 91 1/2, par. 3-400)

8 Sec. 3-400. Voluntary admission to mental health facility.

9 Any person 16 or older, including a person adjudicated a
10 disabled person, may be admitted to a mental health facility as
11 a voluntary recipient for treatment of a mental illness upon
12 the filing of an application with the facility director of the
13 facility if the facility director determines and documents in
14 the recipient's medical record that the person (i) is
15 clinically suitable for admission as a voluntary recipient and
16 (ii) has the capacity to consent to voluntary admission. For
17 purposes of consenting to voluntary admission, a person has the
18 capacity to consent to voluntary admission if he or she
19 understands all of the following:

20 (1) She or he is being admitted to a mental health
21 facility.

22 (2) If he or she requests discharge from the facility
23 pursuant to Section 3-403, his or her request must be in

1 writing.

2 (3) Following a written request for discharge from the
3 facility, his or her discharge is not automatic.

4 (4) Within 5 business days after receipt of the written
5 request for discharge from the facility, the facility must
6 either discharge the person or initiate commitment
7 proceedings against the person.

8 (5) If the person does not request discharge from the
9 facility, he or she may be confined for up to 30 days
10 pursuant to Section 3-404. ~~deems such person clinically~~
11 ~~suitable for admission as a voluntary recipient.~~

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

13 Section 10. The Probate Act of 1975 is amended by changing
14 Section 11a-17 as follows:

15 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

16 Sec. 11a-17. Duties of personal guardian.

17 (a) To the extent ordered by the court and under the
18 direction of the court, the guardian of the person shall have
19 custody of the ward and the ward's minor and adult dependent
20 children and shall procure for them and shall make provision
21 for their support, care, comfort, health, education and
22 maintenance, and professional services as are appropriate, but
23 the ward's spouse may not be deprived of the custody and
24 education of the ward's minor and adult dependent children,

1 without the consent of the spouse, unless the court finds that
2 the spouse is not a fit and competent person to have that
3 custody and education. The guardian shall assist the ward in
4 the development of maximum self-reliance and independence. The
5 guardian of the person may petition the court for an order
6 directing the guardian of the estate to pay an amount
7 periodically for the provision of the services specified by the
8 court order. If the ward's estate is insufficient to provide
9 for education and the guardian of the ward's person fails to
10 provide education, the court may award the custody of the ward
11 to some other person for the purpose of providing education. If
12 a person makes a settlement upon or provision for the support
13 or education of a ward, the court may make an order for the
14 visitation of the ward by the person making the settlement or
15 provision as the court deems proper. A guardian of the person
16 may not admit a ward to a mental health facility except at the
17 ward's request as provided in Article IV of the Mental Health
18 and Developmental Disabilities Code and unless the ward has the
19 capacity to consent to such admission as provided in Article IV
20 of the Mental Health and Developmental Disabilities Code.

21 (a-5) If the ward filed a petition for dissolution of
22 marriage under the Illinois Marriage and Dissolution of
23 Marriage Act before the ward was adjudicated a disabled person
24 under this Article, the guardian of the ward's person and
25 estate may maintain that action for dissolution of marriage on
26 behalf of the ward.

1 (b) If the court directs, the guardian of the person shall
2 file with the court at intervals indicated by the court, a
3 report that shall state briefly: (1) the current mental,
4 physical, and social condition of the ward and the ward's minor
5 and adult dependent children; (2) their present living
6 arrangement, and a description and the address of every
7 residence where they lived during the reporting period and the
8 length of stay at each place; (3) a summary of the medical,
9 educational, vocational, and other professional services given
10 to them; (4) a resume of the guardian's visits with and
11 activities on behalf of the ward and the ward's minor and adult
12 dependent children; (5) a recommendation as to the need for
13 continued guardianship; (6) any other information requested by
14 the court or useful in the opinion of the guardian. The Office
15 of the State Guardian shall assist the guardian in filing the
16 report when requested by the guardian. The court may take such
17 action as it deems appropriate pursuant to the report.

18 (c) Absent court order pursuant to the Illinois Power of
19 Attorney Act directing a guardian to exercise powers of the
20 principal under an agency that survives disability, the
21 guardian has no power, duty, or liability with respect to any
22 personal or health care matters covered by the agency. This
23 subsection (c) applies to all agencies, whenever and wherever
24 executed.

25 (d) A guardian acting as a surrogate decision maker under
26 the Health Care Surrogate Act shall have all the rights of a

1 surrogate under that Act without court order including the
2 right to make medical treatment decisions such as decisions to
3 forgo or withdraw life-sustaining treatment. Any decisions by
4 the guardian to forgo or withdraw life-sustaining treatment
5 that are not authorized under the Health Care Surrogate Act
6 shall require a court order. Nothing in this Section shall
7 prevent an agent acting under a power of attorney for health
8 care from exercising his or her authority under the Illinois
9 Power of Attorney Act without further court order, unless a
10 court has acted under Section 2-10 of the Illinois Power of
11 Attorney Act. If a guardian is also a health care agent for the
12 ward under a valid power of attorney for health care, the
13 guardian acting as agent may execute his or her authority under
14 that act without further court order.

15 (e) Decisions made by a guardian on behalf of a ward shall
16 be made in accordance with the following standards for decision
17 making. Decisions made by a guardian on behalf of a ward may be
18 made by conforming as closely as possible to what the ward, if
19 competent, would have done or intended under the circumstances,
20 taking into account evidence that includes, but is not limited
21 to, the ward's personal, philosophical, religious and moral
22 beliefs, and ethical values relative to the decision to be made
23 by the guardian. Where possible, the guardian shall determine
24 how the ward would have made a decision based on the ward's
25 previously expressed preferences, and make decisions in
26 accordance with the preferences of the ward. If the ward's

1 wishes are unknown and remain unknown after reasonable efforts
2 to discern them, the decision shall be made on the basis of the
3 ward's best interests as determined by the guardian. In
4 determining the ward's best interests, the guardian shall weigh
5 the reason for and nature of the proposed action, the benefit
6 or necessity of the action, the possible risks and other
7 consequences of the proposed action, and any available
8 alternatives and their risks, consequences and benefits, and
9 shall take into account any other information, including the
10 views of family and friends, that the guardian believes the
11 ward would have considered if able to act for herself or
12 himself.

13 (f) Upon petition by any interested person (including the
14 standby or short-term guardian), with such notice to interested
15 persons as the court directs and a finding by the court that it
16 is in the best interest of the disabled person, the court may
17 terminate or limit the authority of a standby or short-term
18 guardian or may enter such other orders as the court deems
19 necessary to provide for the best interest of the disabled
20 person. The petition for termination or limitation of the
21 authority of a standby or short-term guardian may, but need
22 not, be combined with a petition to have another guardian
23 appointed for the disabled person.

24 (Source: P.A. 90-250, eff. 7-29-97; 90-796, eff. 12-15-98;
25 91-139, eff. 1-1-00.)