

Joint Committee on Administrative Rules

ADMINISTRATIVE CODE

**TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES
PART 300 SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE
SECTION 300.3210 GENERAL**

Section 300.3210 General

- a) *No resident shall be deprived of any rights, benefits, or privileges guaranteed by law based on their status as a resident of a facility. (Section 2-101 of the Act) (A, B)*
- b) *A resident shall be permitted to retain and use or wear his personal property in his immediate living quarters, unless deemed medically inappropriate by a physician and so documented in the resident's clinical record. (Section 2-103 of the Act)*
- c) *If clothing is provided to the resident by the facility it shall be of a proper fit. (Section 2-103 of the Act)*
- d) *The facility shall provide adequate and convenient storage space for the personal property of the resident. (Section 2-103 of the Act)*
- e) *The facility shall provide a means of safeguarding small items of value for its residents in their rooms or in any other part of the facility so long as the residents have daily access to such valuables. (Section 2-103 of the Act)*
- f) *The facility shall make reasonable efforts to prevent loss and theft of residents' property. Those efforts shall be appropriate to the particular facility and may, for example, include, but are not limited to, staff training and monitoring, labeling property, and frequent property inventories. (Section 2-103 of the Act)*
- g) *The facility shall develop procedures for investigating complaints concerning theft of residents' property and shall promptly investigate all such complaints. (Section 2-103 of the Act)*
- h) *The facility administrator shall ensure that married residents residing in the same facility be allowed to reside in the same room within the facility unless there is no room available in the facility or it is deemed medically inadvisable by the*

residents' attending physician and so documented in the residents' medical records.
(Section 2-108(e) of the Act)

- i) There shall be no traffic through a resident's room to reach any other area of the building. (B)
- j) Children under 16 years of age who are related to employees or owners of a facility, and who are not themselves employees of the facility, shall be restricted to quarters reserved for family or employee use except during times when such children are part of a group visiting the facility as part of a planned program, or similar activity.
- k) *A resident may refuse to perform labor for a facility.* (Section 2-113 of the Act)
- l) *A resident shall be permitted the free exercise of religion. Upon a resident's request, and if necessary at his expense, the facility administrator shall make arrangements for a resident's attendance at religious services of the resident's choice. However, no religious beliefs or practices, or attendance at religious services, may be imposed upon any resident.* (Section 2-109 of the Act)
- m) All facilities shall comply with the "Election Code" (Ill. Rev. Stat. 1991, ch. 46, par. 1-1 et seq.) [10 ILCS 5] as it pertains to absentee voting for residents of licensed long-term care facilities.
- n) *The facility shall immediately notify the resident's next of kin, representative and physician of the resident's death or when the resident's death appears to be imminent.* (Section 2-208 of the Act)
- o) The facility shall also immediately notify the resident's family, guardian, representative, conservator and any private or public agency financially responsible for the resident's care whenever unusual circumstances such as accidents, sudden illness, disease, unexplained absences, extraordinary resident charges, billings, or related administrative matters arise. (B)
- p) *Where a resident, a resident's representative or a resident's next of kin believes that an emergency exists each of them, collectively or separately, may file a verified petition to the circuit court for the county in which the facility is located for an order placing the facility under the control of a receiver.* (Section 3-503 of the Act) *As used in Section 3-503 of the Act, "emergency" means a threat to the health, safety or welfare of a resident that the facility is unwilling or unable to correct.* (Section 3-501 of the Act)

(Source: Amended at 17 Ill. Reg. 19279, effective October 26, 1993)

Section 300.3220 Medical and Personal Care Program

- a) *A resident shall be permitted to retain the services of his own personal physician at his own expense under an individual or group plan of health insurance, or under any public or private assistance program providing such coverage. (B) (Section 2-104(a) of the Act)*
- b) *The Department shall not prescribe the course of medical treatment provided to an individual resident by the resident's physician in a facility. (Section 2-104(a) of the Act)*
- c) *All resident shall be permitted to obtain from their own physician or the physician attached to the facility complete and current information concerning his medical diagnosis, treatment and prognosis in terms and language the resident can reasonably be expected to understand. (Section 2-104(a) of the Act)*
- d) *All resident shall be permitted to participate in the planning of their total care and medical treatment to the extent that their condition permits. (Section 2-104(a) of the Act)*
- e) *No resident shall be subjected to experimental research or treatment without first obtaining his informed, written consent. The conduct of any experimental research or treatment shall be authorized and monitored by an institutional review committee appointed by the administrator of the facility where such research and treatment is conducted. (A, B) (Section 2-104(a) of the Act)*
- f) *All medical treatment and procedures shall be administered as ordered by a physician. All new physician orders shall be reviewed by the facility's Director of nursing or charge nurse designee within 24 hours after such orders have been issued to assure facility compliance with such orders. (Section 2-104(b) of the Act)*
- g) *Every woman resident of child-bearing age shall receive routine obstetrical and gynecological evaluations as well as necessary prenatal care. (Section 2-104(b) of the Act) In addition, women residents should be referred immediately for diagnosis whenever pregnancy is suspected.*
 - 1) "Routine obstetrical evaluations" and "necessary prenatal care" shall include, as a minimum, the following:
 - A) Early diagnosis of pregnancy;
 - B) A comprehensive health history, including menstrual history, data on the current pregnancy that allow the physician to estimate the date of delivery;

- C) Identification of factors in the current pregnancy that help to identify the patient at high risk, such as maternal age, vaginal bleeding, edema, urinary infection, exposure to radiation and chemicals, ingestion of drugs and alcohol, and use of tobacco;
- D) A comprehensive physical examination, including an evaluation of nutritional status; determination of height, weight and blood pressure; examination of the head, breasts, heart, lungs, abdomen, pelvis, rectum, and extremities.
- E) The following laboratory tests, as early in pregnancy as possible. Findings obtained from the history and physical examination may determine the need for additional laboratory evaluations.
 - i) Hemoglobin or hematocrit measurement
 - ii) Urinalysis, including microscopic examination or culture
 - iii) Blood group and Rh type determination
 - iv) Antibody screen
 - v) Rubella antibody titer measurement
 - vi) Syphilis screen
 - vii) Cervical cytology
 - viii) Viral hepatitis (HBsAg) testing
- F) A risk assessment, which, based on the findings of the history and physical examination, should indicate any risk factors that may require special management, such as cardiovascular disease, maternal age less than 15 years or more than 35 years, neurologic disorder, or congenital abnormalities.
- G) Return visits, the frequency of which will be determined by the patient's needs and risk factors. Generally a woman with an uncomplicated pregnancy should be seen every 4 weeks for the first 28 weeks of pregnancy, every 2-3 weeks until 36 weeks of gestation, and weekly thereafter.

- H) The physical examination at each visit should include determinations of blood pressure, measured fundal height, fetal heart rate, and, in later months, fetal presentation, and urinalysis for albumin and glucose. Hemoglobin or hematocrit level should be measured again early in the third trimester. Glucose screening is recommended for women who are 30 years of age or older.
 - I) Evaluation and monitoring of nutritional status and habits.
 - J) Education for health promotion and maintenance.
 - K) Counseling concerning exercise and child birth education programs.
 - L) Postpartum review and evaluation 4-8 weeks after delivery, including determination of weight and blood pressure and assessment of status of breasts, abdomen, and external and internal genitalia.
- 2) "Routine gynecological evaluations" shall include, as a minimum, the following:
- A) An initial examination, the basic components of which are:
 - i) History; any present illnesses; menstrual, reproductive, medical, surgical, emotional, social, family, and sexual history; medications; allergies; family planning; and systems review.
 - ii) Physical examination, including height, weight, nutritional status, and blood pressure; head and neck, including thyroid gland; heart; lungs; breasts; abdomen; pelvis, including external and internal genitalia; rectum; extremities, including signs of abuse; lymph nodes.
 - iii) Laboratory tests, including urine screen; hemoglobin or hematocrit determination and, if indicated, complete blood cell count; cervical cytology; rubella titer.
 - B) Annual updates:

- i) History, including the purpose of the visit; menstrual history; interval history, including systems review; emotional history:
- ii) Physical examination, including weight, nutritional status and blood pressure; thyroid gland; breasts; abdomen; pelvis, including external and internal genitalia; rectum; other areas as indicated by the interval history.
- iii) Laboratory, including urine screen; cervical cytology, unless not indicated; hemoglobin or hematocrit determinations.
- iv) Additional laboratory tests, such as screening for sexually transmitted disease, should be performed as warranted by the history, physical findings, and risk factors.

C) Cancer screening.

- i) An annual Pap test for all women who are or have been sexually active or have reached age 18.
- ii) Mammography if indicated.

3) When a resident is referred for a diagnosis of pregnancy and/or prenatal care, the facility shall send the provider a copy of the resident's medical record, including a list of prescription medications taken by the resident; use of alcohol, tobacco and illicit drugs; or exposure to radiation or chemicals during the preceding three months.

h) *Every resident shall be permitted to refuse medical treatment and to know the consequences of such action, unless such refusal would be harmful to the health and safety of others and such harm is documented by a physician in the resident's clinical record.* (B) (Section 2-104(c) of the Act)

i) Inspection and Copying of Records

1) *Every resident, resident's guardian, or parent (if the resident is a minor) shall be permitted to inspect and copy all of the resident's clinical and other records concerning the resident's care and maintenance kept by the facility or by the resident's physician.* (Section 2-104(d) of the Act)

- 2) *Every resident's representative shall be permitted to inspect and copy the resident's records. A "resident's representative" is a person, other than the owner or agent or employee of a facility who is not related to the resident, designated in writing by a resident to be his representative, or the resident's guardian, or the parent of a minor resident for whom no guardian has been appointed. (Sections 1-123 and 2-202(h) of the Act) (B)*
- j) *All residents shall be permitted respect and privacy in their medical and personal care program. Every resident's case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly, and those persons not directly involved in the resident's care must have the resident's permission to be present. (B) (Section 2-105 of the Act)*

(Source: Amended at 15 Ill. Reg. 554, effective January 1, 1991)

Section 300.3230 Restraints (Repealed)

(Source: Repealed at 22 Ill. Reg. 16609, effective September 18, 1998)

Section 300.3240 Abuse and Neglect

- a) *An owner, licensee, administrator, employee or agent of a facility shall not abuse or neglect a resident. (A, B) (Section 2-107 of the Act)*
- b) *A facility employee or agent who becomes aware of abuse or neglect of a resident shall immediately report the matter to the facility administrator. (Section 3-610 of the Act)*
- c) *A facility administrator who becomes aware of abuse or neglect of a resident shall immediately report the matter by telephone and in writing to the resident's representative. (Section 3-610 of the Act)*
- d) *A facility administrator, employee, or agent who becomes aware of abuse or neglect of a resident shall also report the matter to the Department. (Section 3-610 of the Act)*
- e) *Employee as perpetrator of abuse. When an investigation of a report of suspected abuse of a resident indicates, based upon credible evidence, that an employee of a long-term care facility is the perpetrator of the abuse, that employee shall immediately be barred from any further contact with residents of the facility, pending the outcome of any further investigation,*

prosecution or disciplinary action against the employee. (Section 3-611 of the Act)

- f) *Resident as perpetrator of abuse. When an investigation of a report of suspected abuse of a resident indicates, based upon credible evidence, that another resident of the long-term care facility is the perpetrator of the abuse, that resident's condition shall be immediately evaluated to determine the most suitable therapy and placement for the resident, considering the safety of that resident as well as the safety of other residents and employees of the facility. (Section 3-612 of the Act)*

(Source: Amended at 15 Ill. Reg. 554, effective January 1, 1991)

Section 300.3250 Communication and Visitation

- a) *Every resident shall be permitted unimpeded, private and uncensored communication of his choice by mail, public telephone or visitation. (Section 2-108 of the Act)*
- b) *The facility administrator shall ensure that correspondence is conveniently received and mailed, and that telephones are reasonably accessible. (Section 2-108(a) of the Act)*
- c) *The facility administrator shall ensure that residents may have private visits at any reasonable hour unless such visits are not medically advisable for the resident as documented in the resident's clinical record by the resident's physician. (Section 2-108(a) of the Act)*
- d) *The facility shall allow daily visiting between 10:00 A.M. and 8:00 P.M. These visiting hours shall be posted in plain view of visitors.*
- e) *The facility administrator shall ensure that space for visits is available and that facility personnel knock, except in an emergency, before entering any resident's room. (Section 2-108(c) of the Act)*
- f) *Unimpeded, private and uncensored communication by mail, public telephone, and visitation may be reasonably restricted by a physician only in order to protect the resident or others from harm, harassment or intimidation provided that the reason for any such restriction is placed in the resident's clinical record by the physician and that notice of such restriction shall be given to all residents upon admission. (Section 2-108(d) of the Act)*
- g) *Notwithstanding subsection (f) of this Section, all letters addressed by a resident to the Governor, members of the General Assembly, Attorney General, judges, state's attorneys, officers of the Department, or licensed*

attorneys at law shall be forwarded at once to the persons to whom they are addressed without examination by facility personnel. Letters in reply from the officials and attorneys mentioned above shall be delivered to the recipient without examination by facility personnel. (Section 2-108(d) of the Act)

- h) *Any employee or agent of a public agency, any representative of a community legal services program or any member of a community organization shall be permitted access at reasonable hours to any individual resident of any facility, if the purpose of such agency, program or organization includes rendering assistance to residents without charge, but only if there is neither a commercial purpose nor affect to such access and if the purpose is to do any other the following:*
 - 1) *Visit, talk with and make personal, social, and legal services available to all residents;*
 - 2) *Inform residents of their rights and entitlements and their corresponding obligations, under federal and State laws, by means of educational materials and discussions in groups and with individual residents;*
 - 3) *Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or*
 - 4) *Engage in other methods of asserting, advising and representing residents so as to extend to them full enjoyment of their rights. (Section 2-110(a) of the Act)*
- i) *No visitor shall enter the immediate living area of any resident without first identifying himself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. (B) (Section 2-110(b) of the Act)*
- j) *A resident may terminate at any time a visit by a person having access to the resident's living area. (Section 2-110(b) of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3260 Resident's Funds

- a) *A resident shall be permitted to manage his own financial affairs unless he or his guardian or if the resident is a minor, his parent, authorizes the administrator of the facility in writing to manage such resident's financial*

affairs under subsections (b) through (o) of this Section. (Section 2-102 of the Act)

- b) *The facility shall at the time of admission, provide in order of priority, each resident, or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any, with a written statement explaining to the resident and the resident's spouse their spousal impoverishment rights as defined at Section 5-4 of the Illinois Public Aid Code, and at Section 303 of Title III of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360), and the resident's rights regarding personal funds and listing the services for which the resident will be charged. The facility shall obtain a signed acknowledgement from each resident or the resident's representative, if any, or the resident's immediate family member, if any, that such person has received the statement. (Section 2-201(1) of the Act)*
- c) *The facility may accept funds from a resident for safekeeping and managing, if it receives written authorization from, in order of priority, the resident or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any; such authorization shall be attested to by a witness who has no pecuniary interest in the facility or its operations, and who is not connected in any way to facility personnel or the administrator in any manner whatsoever. (Section 2-101(2) of the Act)*
- d) *The facility shall maintain and allow, in order of priority, each resident or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any, access to a written record of all financial arrangements and transactions involving the individual resident's funds. (Section 2-201(3) of the Act)*
- e) *The facility shall provide, in order of priority, each resident, or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any, with a written itemized statement at least quarterly, of all financial transactions involving the resident's funds. (Section 2-201(4) of the Act)*
- f) *The facility shall purchase a surety bond, or otherwise provide assurance satisfactory to the Departments of Public Health and Insurance that all residents' personal funds deposited with the facility are secure against loss, theft, and insolvency. (Section 2-201(5) of the Act)*
 - 1) *If a surety bond is secured, it must be issued by a company licensed to do business in Illinois, the amount of bond must be equal to or greater than all resident funds managed by the facility,*

and the obligee named in the bond must be the Illinois Department of Public Health or its assignees.

- 2) If an alternative to a surety bond is secured, the alternative must provide a protection equivalent to that afforded by a surety bond. To be acceptable, the alternative must have a person(s) or entity(ies) designated who can collect in case of loss (e.g., residents, the Department). The alternative must also provide a guarantee that lost funds will be repaid. The guarantee may be made either by an independent entity (e.g., a bank) or the facility. If the facility provides the guarantee, it must be backed by facility money at least equal to resident funds. This money must be reserved solely for the purpose of assuring the security of resident funds. Two examples of acceptable alternatives to surety bonds are letters of credit and self-insurance. Both surety bonds and alternatives must protect the full amount of residents' funds deposited with the facility.
 - 3) Any alternative to a surety bond shall be submitted to the Department for review and approval. Alternatives that meet the requirements of this Section and were in place prior to October 1, 1994, must be submitted to the Department for review and approval within 120 days after October 1, 1994.
- g) *The facility shall keep any funds received from a resident for safekeeping in an account separate from the facility's funds, and shall at no time withdraw any part or all of such funds for any purpose other than to return the funds to the resident upon the request of the resident or any other person entitled to make such request, to pay the resident his allowance, or to make any other payment authorized by the resident or any other person entitled to make such authorization. (Section 2-201(6) of the Act)*
 - h) *The facility shall deposit any funds received from a resident in excess of \$100 in an interest bearing account insured by agencies of, or corporations chartered by, the State or federal government. The account shall be in a form which clearly indicates that the facility has only a fiduciary interest in the funds and any interest from the account shall accrue to the resident. (Section 2-201(7) of the Act)*
 - i) *The facility may keep up to \$100 of a resident's money in a non-interest bearing account or petty cash fund, to be readily available for the resident's current expenditures. (Section 2-201(7) of the Act)*
 - j) *The facility shall return to the resident, or the person who executed the written authorization required in subsection (c) of this Section, upon*

written request, all or any part of the resident's funds given the facility for safekeeping, including the interest accrued from deposits. (Section 2-201(8) of the Act)

- k) *The facility shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the facility has written authorization from the resident or the resident's guardian, or if the resident is a minor, his parent, to handle it differently. (Section 2-2-1(9) of the Act)*
- l) *Unless otherwise provided by State law, the facility shall upon the death of a resident provide the executor or administrator of the resident's estate with a complete accounting of all the resident's personal property, including any funds of the resident being held by the facility. (Section 2-201(10) of the Act)*
- m) *If an adult resident is incapable of managing his funds and does not have a resident's representative, guardian, or an immediate family member the facility shall notify the Office of the State Guardian of the Guardianship and Advocacy Commission. (Section 2-201(11) of the Act)*
- n) *If the facility is sold, the seller shall provide the buyer with a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new owner. (Section 2-201(12) of the Act)*
- o) *The facility shall take all steps necessary to ensure that a personal needs allowance that is placed in a resident's personal account is used exclusively by the resident or for the benefit of the resident. Where such funds are withdrawn from the resident's personal account by any person other than the resident, the facility shall require such person to whom funds constituting any part of a resident's personal needs allowance are released to execute an affidavit that such funds shall be used exclusively for the benefit of the resident. (Section 2-201(9)(b) of the Act) "Personal needs allowance," for the purposes of this subsection, refers to the monthly allowance allotted by the Illinois Department of Public Aid to public aid recipients.*

(Source: Amended at 18 Ill. Reg. 15868, effective October 15, 1994)

Section 300.3270 Residents' Advisory Council

Each resident shall have the right to participate in a residents' advisory council as indicated in Section 300.640.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3280 Contract With Facility

Each resident shall have the right to contract with the facility as indicated in Section 300.630.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3290 Private Right of Action

- a) Each resident shall have the right to maintain a private right of action against a facility as described in subsections (b) through (i) of this Section.
- b) *The owner and licensee of a facility are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. (Section 3-601 of the Act)*
- c) *The licensee shall pay three times the actual damages, or \$500, whichever is greater, and costs and attorney's fees to a facility resident whose rights as specified in Part 1 of Article II of the Act are violated. (Section 3-602 of the Act)*
- d) *A resident may maintain an action under the Act and this Part for any other type of relief, including injunctive and declaratory relief, permitted by law. (Section 3-603 of the Act)*
- e) *Any damages recoverable under subsection (b) through (i) of this Section, including minimum damages as provided by this Part, may be recovered in any action which a court may authorize to be brought as a class action pursuant to Part 8 of the Civil Practice law (Ill. Rev. Stat. 1987, ch. 110, par. 2-801 et seq.). The remedies provided in subsections (b) through (i) of this Section are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of a suit hereunder. (Section 3-604 of the Act)*
- f) *The amount of damages recovered by a resident in an action brought under subsections (b) through (i) of this Section shall be exempt for purposes of determining initial or continuing eligibility for medical assistance under "The Illinois Public Aid Code," (Ill. Rev. Stat. 1987, ch. 23, par. 1-1 et seq.) as now or hereafter amended, and shall neither be taken into consideration nor required to be applied toward the payment or partial payment of the cost of medical care or services available under "The Illinois Public Aid Code." (Section 3-605 of the Act)*

- g) *Any waiver by a resident or his legal representative of the right to commence an action under subsections (b) through (i) of this Section, whether oral or in writing, shall be null and void, and without legal force or effect. (Section 3-606 of the Act)*
- h) *Any party to an action brought under subsections (b) through (i) of this Section shall be entitled to a trial by jury and any waiver of the right to a trial by jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect. (Section 3-607 of the Act)*
- i) *A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss, or retaliate against a resident, a resident's representative, or an employee or agent who makes a report of resident abuse or neglect, brings or testifies in a private right of action, or files a complaint, because of the such action or testimony.(B) (Section 3-608 of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3300 Transfer or Discharge

- a) *A resident may be voluntarily discharged from a facility after he gives the administrator, a physician, or a nurse of the facility written notice of his 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 guardian or if the resident is a minor, his 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 (y) of this Section.
- c) **Reasons for Transfer or Discharge**
 - 1) *A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:*
 - A) *for medical reasons.*
 - B) *for the resident's physical safety.*
 - C) *for the physical safety of other residents, the facility staff or facility visitors.*

D) *for either late payment or nonpayment for the resident's stay, except as prohibited by Title 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, the 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) of this Section, 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. (B) (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 the resident is a recipient of or an applicant for the medical assistance program. For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling ten days or less following a hospital admission. The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the ten-day period. (Section 3-401.1(a) of the Act)*

B) *A facility which violates subsection (c)(2)(B) of this Section 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 (j) of this Section and by a minimum written notice of 21 days. The 21-day requirement shall not apply in any of the following instances:*

- 1) *When an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician; (Section 3-402(a) of the Act)*
 - 2) *When the transfer or discharge is mandated by the physical safety of other residents as documented in the clinical record. (Section 3-402(b) of the Act)*
- 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 ten days after receiving this notice. If you request a hearing, it will be held not later than ten 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; and (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. (Section 3-403(e) of the Act)*
- f) *A request for a hearing made under subsection (e) of this Section 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) of this Section develops in the interim. (Section 3-404 of the Act)

- g) *A copy of the notice required by subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Public Aid. (Section 3-405 of the Act)*
- h) *When the basis for an involuntary transfer or discharge is the result of an action by the Department of Public Aid with respect to a recipient of Title XIX and a hearing request is filed with the Department of Public Aid, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Public Aid 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)*
- i) *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)*
- j) *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)*
- k) *The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)*
- l) *A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his parent shall have the opportunity to file a request for a hearing with the Department within ten days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)*
- m) *The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than ten 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)

- n) *The hearing before the Department provided under subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 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)*
- o) *If the Department determines that a transfer or discharge is authorized under subsection (c) of this Section, the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under subsection (d) of this Section, or the tenth 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) of this Section develops in the interim. (B) (Section 3-413 of the Act)*
- p) *The Department of Public Aid shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by subsection (c) of this Section. (Section 3-414 of the Act)*
- q) *The Department may transfer or discharge any resident from any facility required to be licensed under this Act 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. (Section 3-415(e) of the Act)*

- r) *In deciding to transfer or discharge a resident from a facility under subsection (q) of this Section, 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)*
- s) *The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under subsections (c) through (q) of this Section 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)*
- t) *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)*
- u) *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)*
- v) *In any transfer or discharge conducted under subsections (q) through (t) of this Section 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 (x) of this Section. 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 (x) of this Section. 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)*

- w) *In any transfer or discharge conducted under subsection (q)(5) of this Section, 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 (x) of this Section. (Section 3-421 of the Act)*

- x) *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 of receipt of the request. Where a challenge is by a resident, the hearing shall be held at a location convenient to the resident. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments 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 (Ill. Rev. Stat. 1987, ch. 37, pars. 439.1 et seq.) 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)*

- y) *Any owner of a facility licensed under this 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 ten percent 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 (u) of this Section. (A, B) (Section 3-423 of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3310 Complaint Procedures

- a) *A resident shall be permitted to present grievances on behalf of himself and others to the administrator, the Long-Term Care Facility Advisory Board, the residents' advisory council, State governmental agencies or other persons without threat of discharge or reprisal in any form or manner whatsoever. (Section 2-112 of the Act)*
- b) *The facility administrator shall provide all residents or their representatives with the name, address, and telephone number of the appropriate State governmental office where complaints may be lodged. (Section 2-112 of the Act)*
- c) *A person who believes that the Act or a rule promulgated under the Act may have been violated may request an investigation. The request may be submitted to the Department in writing, by telephone, or by personal visit. An oral complaint shall be reduced to writing by the Department. (Section 3-702(a) of the Act)*
- d) *The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint. (Section 3-702(b) of the Act)*

- e) *The Department shall not disclose the name of the complainant unless the complainant consents in writing to the disclosure or the investigation results in a judicial proceeding, or unless disclosure is essential to the investigation. The complainant shall be given the opportunity to withdraw the complaint before disclosure. Upon the request of the complainant, the Department may permit the complainant or a representative of the complainant to accompany the person making the on-site inspection of the facility. (Section 3-702(c) of the Act)*
- f) *Upon receipt of a complaint, the Department shall determine whether the Act or a rule promulgated under the Act has been or is being violated. The Department shall investigate all complaints alleging abuse or neglect within seven days after the receipt of the complaint except that complaints of abuse or neglect which indicate that a resident's life or safety is in imminent danger shall be investigated with 24 hours after receipt of the complaint. All other complaints shall be investigated within 30 days after the receipt of the complaint. All complaints shall be classified as "an invalid report," "a valid report," or "an undetermined report." For any complaint classified as "a valid report," the Department must determine within 30 working days if any rule or provision of the Act has been or is being violated. (Section 3-702(d) of the Act)*
- g) *Upon the request of a resident or complainant, the Department may permit the resident or complainant or a representative of the complainant to accompany the person making the on-site inspection of the facility pursuant to the complaint. (Section 3-702(c) of the Act)*
- h) *In all cases, the Department shall inform the complainant of its findings within ten days of its determination unless otherwise indicated by the complainant, and the complainant may direct the Department to send a copy of such findings to another person. The Department's findings may include contents or documentation provided by either the complainant or the licensee pertaining to the complaint. The Department shall also notify the facility of such findings within ten days of the determination, but the name of the complainant or residents shall not be disclosed in this notice to the facility. The notice of such findings shall include a copy of the written determination; the correction order, if any; the inspection report; the warning notice, if any; and the State licensure form on which the violation is listed. (Section 3-702(e) of the Act)*
- i) *A written determination, correction order, or warning notice concerning a complaint shall be available for public inspection, but the name of the complainant or resident shall not be disclosed without the consent of the complainant or resident. (Section 3-702(f) of the Act)*

- j) *A complainant who is dissatisfied with the determination or investigation by the Department may request a hearing under subsection (k) of this Section. The facility shall be given notice of any such hearing and may participate in the hearing as a party. If a facility requests a hearing under subsection (k) of this Section which concerns a matter covered by a complaint, the complainant shall be given written notice and may participate in the hearing as a party. A request for a hearing by either a complainant or a facility shall be submitted in writing to the Department within 30 days after the mailing of the Department's findings as described in subsection (h) of this Section. Upon receipt of the request the Department shall conduct a hearing as provided under subsection (k) of this Section. (Section 3-702(g) of the Act)*
- k) Any person aggrieved by a decision of the Department rendered in a particular case which affects the legal rights, duties or privileges created under the Act may have such decision reviewed in accordance with Sections 3-703 through 3-712 of the Act.
- l) When the Department finds that a provision of Article II of the Act regarding residents' rights has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or \$100, whichever is greater.

(Source: Amended at 16 Ill. Reg. 17089, effective November 3, 1992)

Section 300.3320 Confidentiality

- a) *The Department, the facility and all other public or private agencies shall respect the confidentiality of a resident's record and shall not divulge or disclose the contents of a record in a manner which identifies a resident, except upon a resident's death to a relative or guardian, or under judicial proceedings. This Section shall not be construed to limit the right of a resident or a resident's representative to inspect or copy the resident's records. (Section 2-206(a) of the Act)*
- b) *Confidential medical, social, personal, or financial information identifying a resident shall not be available for public inspection in a manner which identifies a resident. (B) (Section 2-206(b) of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3330 Facility Implementation

- a) *The facility shall establish written policies and procedures to implement the responsibilities and rights provided in Article II of the Act. The policies shall include the procedure for the investigation and resolution of*

resident complaints under the Act. The policies shall be clear and unambiguous and shall be available for inspection by any person. A summary of the policies and procedures, printed in not less than 12 point type, shall be distributed to each resident and representative. (Section 2-210 of the Act)

- b) The facility shall provide copies of these policies and procedures upon request to next of kin, sponsoring agencies, representative payees and the public.
- c) *Each resident and resident's guardian or other person acting for the resident shall be given a written explanation prepared by the Office of the State Long-term Care Ombudsman of all the rights enumerated in Part 1 of Article II of the Act and in Part 4 of Article III. For residents of facilities participating in Title 18 or 19 of the Social Security Act, the explanation shall include an explanation of residents' rights enumerated in the Act. The explanation shall be given at the time of admission to a facility or as soon thereafter as the condition of this resident permits, but in no event later than 48 hours after admission, and again at least annually thereafter. At the time of implementation of the Act each resident shall be given a written summary of all the rights enumerated in Part I of Article II of the Act. If a resident is unable to read such written explanation, it shall be read to the resident in a language the resident understands. In the case of a minor or a person having a guardian or other person acting for him, both the resident and the parent, guardian or other person acting for the resident shall be fully informed of these rights. (Section 2-211 of the Act)*
- d) The resident, resident's representative, guardian, or parent of a minor resident shall acknowledge in writing the receipt from the facility of a copy of all resident rights set forth in Article II of the Act and a copy of all facility policies implementing such rights.
- e) *The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in the Act and this Part. (Section 2-212 of the Act) (B)*

(Source: Amended at 17 Ill. Reg. 19279, effective October 26, 1993)