



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

**HB4436**

by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

405 ILCS 5/2-107.1

from Ch. 91 1/2, par. 2-107.1

Amends the Mental Health and Developmental Disabilities Code. Provides that notwithstanding any of the provisions of the Code concerning the administration of psychotropic medication and electroconvulsive therapy, psychotropic medication or electroconvulsive therapy may be administered pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act over the objection of the recipient if the recipient has not revoked the power of attorney or declaration for mental health treatment as provided in the relevant statute. Effective immediately.

LRB100 16194 RLC 31315 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 2-107.1 as  
6 follows:

7 (405 ILCS 5/2-107.1) (from Ch. 91 1/2, par. 2-107.1)

8 Sec. 2-107.1. Administration of psychotropic medication  
9 and electroconvulsive therapy upon application to a court.

10 (a) (Blank).

11 (a-5) Notwithstanding the provisions of Section 2-107 of  
12 this Code, psychotropic medication and electroconvulsive  
13 therapy may be administered to an adult recipient of services  
14 on an inpatient or outpatient basis without the informed  
15 consent of the recipient under the following standards:

16 (1) Any person 18 years of age or older, including any  
17 guardian, may petition the circuit court for an order  
18 authorizing the administration of psychotropic medication  
19 and electroconvulsive therapy to a recipient of services.  
20 The petition shall state that the petitioner has made a  
21 good faith attempt to determine whether the recipient has  
22 executed a power of attorney for health care under the  
23 Powers of Attorney for Health Care Law or a declaration for

1 mental health treatment under the Mental Health Treatment  
2 Preference Declaration Act and to obtain copies of these  
3 instruments if they exist. If either of the above-named  
4 instruments is available to the petitioner, the instrument  
5 or a copy of the instrument shall be attached to the  
6 petition as an exhibit. The petitioner shall deliver a copy  
7 of the petition, and notice of the time and place of the  
8 hearing, to the respondent, his or her attorney, any known  
9 agent or attorney-in-fact, if any, and the guardian, if  
10 any, no later than 3 days prior to the date of the hearing.  
11 Service of the petition and notice of the time and place of  
12 the hearing may be made by transmitting them via facsimile  
13 machine to the respondent or other party. Upon receipt of  
14 the petition and notice, the party served, or the person  
15 delivering the petition and notice to the party served,  
16 shall acknowledge service. If the party sending the  
17 petition and notice does not receive acknowledgement of  
18 service within 24 hours, service must be made by personal  
19 service.

20 The petition may include a request that the court  
21 authorize such testing and procedures as may be essential  
22 for the safe and effective administration of the  
23 psychotropic medication or electroconvulsive therapy  
24 sought to be administered, but only where the petition sets  
25 forth the specific testing and procedures sought to be  
26 administered.

1           If a hearing is requested to be held immediately  
2 following the hearing on a petition for involuntary  
3 admission, then the notice requirement shall be the same as  
4 that for the hearing on the petition for involuntary  
5 admission, and the petition filed pursuant to this Section  
6 shall be filed with the petition for involuntary admission.

7           (2) The court shall hold a hearing within 7 days of the  
8 filing of the petition. The People, the petitioner, or the  
9 respondent shall be entitled to a continuance of up to 7  
10 days as of right. An additional continuance of not more  
11 than 7 days may be granted to any party (i) upon a showing  
12 that the continuance is needed in order to adequately  
13 prepare for or present evidence in a hearing under this  
14 Section or (ii) under exceptional circumstances. The court  
15 may grant an additional continuance not to exceed 21 days  
16 when, in its discretion, the court determines that such a  
17 continuance is necessary in order to provide the recipient  
18 with an examination pursuant to Section 3-803 or 3-804 of  
19 this Act, to provide the recipient with a trial by jury as  
20 provided in Section 3-802 of this Act, or to arrange for  
21 the substitution of counsel as provided for by the Illinois  
22 Supreme Court Rules. The hearing shall be separate from a  
23 judicial proceeding held to determine whether a person is  
24 subject to involuntary admission but may be heard  
25 immediately preceding or following such a judicial  
26 proceeding and may be heard by the same trier of fact or

1 law as in that judicial proceeding.

2 (3) Unless otherwise provided herein, the procedures  
3 set forth in Article VIII of Chapter III of this Act,  
4 including the provisions regarding appointment of counsel,  
5 shall govern hearings held under this subsection (a-5).

6 (4) Psychotropic medication and electroconvulsive  
7 therapy may be administered to the recipient if and only if  
8 it has been determined by clear and convincing evidence  
9 that all of the following factors are present. In  
10 determining whether a person meets the criteria specified  
11 in the following paragraphs (A) through (G), the court may  
12 consider evidence of the person's history of serious  
13 violence, repeated past pattern of specific behavior,  
14 actions related to the person's illness, or past outcomes  
15 of various treatment options.

16 (A) That the recipient has a serious mental illness  
17 or developmental disability.

18 (B) That because of said mental illness or  
19 developmental disability, the recipient currently  
20 exhibits any one of the following: (i) deterioration of  
21 his or her ability to function, as compared to the  
22 recipient's ability to function prior to the current  
23 onset of symptoms of the mental illness or disability  
24 for which treatment is presently sought, (ii)  
25 suffering, or (iii) threatening behavior.

26 (C) That the illness or disability has existed for

1 a period marked by the continuing presence of the  
2 symptoms set forth in item (B) of this subdivision (4)  
3 or the repeated episodic occurrence of these symptoms.

4 (D) That the benefits of the treatment outweigh the  
5 harm.

6 (E) That the recipient lacks the capacity to make a  
7 reasoned decision about the treatment.

8 (F) That other less restrictive services have been  
9 explored and found inappropriate.

10 (G) If the petition seeks authorization for  
11 testing and other procedures, that such testing and  
12 procedures are essential for the safe and effective  
13 administration of the treatment.

14 (5) In no event shall an order issued under this  
15 Section be effective for more than 90 days. A second 90-day  
16 period of involuntary treatment may be authorized pursuant  
17 to a hearing that complies with the standards and  
18 procedures of this subsection (a-5). Thereafter,  
19 additional 180-day periods of involuntary treatment may be  
20 authorized pursuant to the standards and procedures of this  
21 Section without limit. If a new petition to authorize the  
22 administration of psychotropic medication or  
23 electroconvulsive therapy is filed at least 15 days prior  
24 to the expiration of the prior order, and if any  
25 continuance of the hearing is agreed to by the recipient,  
26 the administration of the treatment may continue in

1           accordance with the prior order pending the completion of a  
2           hearing under this Section.

3           (6) An order issued under this subsection (a-5) shall  
4           designate the persons authorized to administer the  
5           treatment under the standards and procedures of this  
6           subsection (a-5). Those persons shall have complete  
7           discretion not to administer any treatment authorized  
8           under this Section. The order shall also specify the  
9           medications and the anticipated range of dosages that have  
10          been authorized and may include a list of any alternative  
11          medications and range of dosages deemed necessary.

12          (a-10) The court may, in its discretion, appoint a guardian  
13          ad litem for a recipient before the court or authorize an  
14          existing guardian of the person to monitor treatment and  
15          compliance with court orders under this Section.

16          (b) A guardian may be authorized to consent to the  
17          administration of psychotropic medication or electroconvulsive  
18          therapy to an objecting recipient only under the standards and  
19          procedures of subsection (a-5).

20          (c) Notwithstanding any other provision of this Section, a  
21          guardian may consent to the administration of psychotropic  
22          medication or electroconvulsive therapy to a non-objecting  
23          recipient under Article XIa of the Probate Act of 1975.

24          (d) Nothing in this Section shall prevent the  
25          administration of psychotropic medication or electroconvulsive  
26          therapy to recipients in an emergency under Section 2-107 of

1 this Act.

2 (e) Notwithstanding any of the provisions of this Section,  
3 psychotropic medication or electroconvulsive therapy may be  
4 administered pursuant to a power of attorney for health care  
5 under the Powers of Attorney for Health Care Law or a  
6 declaration for mental health treatment under the Mental Health  
7 Treatment Preference Declaration Act over the objection of the  
8 recipient if the recipient has not revoked the power of  
9 attorney or declaration for mental health treatment as provided  
10 in the relevant statute.

11 (f) The Department shall conduct annual trainings for  
12 physicians and registered nurses working in State-operated  
13 mental health facilities on the appropriate use of psychotropic  
14 medication and electroconvulsive therapy, standards for their  
15 use, and the preparation of court petitions under this Section.

16 (Source: P.A. 97-375, eff. 8-15-11; 98-756, eff. 7-16-14.)

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law.