**Section 106.35 Liability for services charges**

a) A *recipient of services* in Department facilities and the estate of such recipient has the primary liability for payment of sums representing charges for services at the prevailing maximum rate as determined by the Department. *If a recipient is unable to pay* such rate, *or the estate of the recipient is insufficient* for payment, *the* *responsible relatives are* *severally* *liable* *for payment of the balance due* according to the rates prescribed in Section 106.Table A of this Part. *The liability of each responsible relative for payment of services charges ceases when payments on the basis of financial ability have been made for a total of 12 years*. (Section 5-105 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-105])

b) The responsibility for liability for services charges shall be established in the following order:

1) Recipient of services or the estate of the recipient

A) The recipient of services or the estate of the recipient has a liability as long as there are unpaid services charges.

B) Income accruing from a trust estate of a recipient shall be charged the same as other assets. If the income from such trust is not sufficient to meet the maximum cost of services to the recipient, the Department shall, in those cases where the trust agreement specifically states that the principal, if needed, may be used, establish charges against both the income and the corpus of the trust.

2) Responsible relatives

A) A spouse is liable for services charges unless the other spouse *willfully failed to contribute to the spouse's support for a period of* five *years preceding admission. Any spouse claiming exemption* from liability for charges, due to *willful failure to support for* five or more years, shall be required to *furnish the Department with clear and convincing evidence substantiating* such *claim*. (Section 5-105 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-105]) Such evidence may consist of a judgment of legal separation or other evidence of lack of support for the five year period. A spouse ceases to be liable for services charges for the other spouse on the effective date of a divorce unless financial liability is established by the marriage dissolution or maintenance decree.

B) Parents, natural or adoptive (Instruments Regarding Adopted Children Act [760 ILCS 30]), are severally liable whether living together or apart unless a court order pursuant to a marriage dissolution under the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5] provides otherwise. No parent shall be personally liable for services charges incurred by a child after such child reaches the age of majority (18), except under a type of insurance arrangement which provides coverage for the recipient.

c) Charges for services shall not be made for recipients committed by the court to the Department of Corrections and then admitted to a Department facility for observation, diagnosis and treatment/habilitation for any period that the recipient is still under commitment to the Department of Corrections.

d) Charges for services shall be established against the estate and income of recipients in Department facilities whom the court has determined as being legally unfit to stand trial or not guilty by reason of insanity, but no services charges shall be assessed against the relatives of such recipients.

e) Charges for services for a recipient under the age of 18 shall be limited to the lesser of the cost of medical care provided, which are unrelated to the individual's handicapping condition, or the amount indicated on the responsible relative schedule for a responsible relative (see Section 106.Table A of this Part); or individual liability as determined by Section 106.45 for an individual payee.

f) Charges for a recipient between the ages of 18 and 21 are limited to the provisions of subsection (e) of this Section if the individual is receiving services under the Education for the Handicapped Act (20 U.S.C.A. 1400 (1996)). For a recipient between the ages of 18 and 21, who is not receiving services under the Education for the Handicapped Act (20 U.S.C.A. 1400 (1996)), the provisions of subsections (a) through (d) of this Section apply.

g) When a recipient of services under the age of 22 receives benefits from a federal government agency, which are to provide for the individual's care and maintenance needs, such funds, less the applicable personal allowance of $40 per month, shall be applied toward the State's cost of providing such care.

h) If the recipient is also a Medicaid recipient and receives benefits from a federal government agency, such funds, less the applicable personal allowance as specified in 89 Ill. Adm. Code 113.247, must be applied toward such Medicaid charges in accordance with 42 CFR 435.732 (1996). Claims submitted by the Department to the Illinois Department of Public Aid (IDPA) shall be reduced by the amount of these net benefits.

(Source: Amended at 12 Ill. Reg. 10472, effective June 7, 1988)