

# STATE OF NEW YORK

7467--A

Cal. No. 409

2023-2024 Regular Sessions

## IN ASSEMBLY

May 24, 2023

Introduced by M. of A. PAULIN, SAYEGH, STECK, SIMON, COOK, GLICK, VANEL, LUNSFORD, L. ROSENTHAL, BRONSON, ZEBROWSKI, THIELE, WILLIAMS, BICHOTTE HERMELYN, CARROLL, FALL, GALLAGHER, FORREST, CRUZ, STIRPE, CLARK, COLTON, SANTABARBARA, HUNTER, JACKSON, ZINERMAN, KELLES, JACOBSON, OTIS, WALLACE, MEEKS, SILLITTI, GUNTHER, WEPRIN -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law, in relation to the use of anti-psychotic medications in nursing homes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section  
2 280-d to read as follows:

3 § 280-d. Use of antipsychotic medications in nursing homes. 1. As  
4 used in this section:

5 (a) "lawful representative" means, where a resident lacks capacity to  
6 consent to health care, a person authorized to consent on behalf of the  
7 resident, including, but not limited to, a health care agent authorized  
8 by a health care proxy under article twenty-nine-C of this chapter or a  
9 surrogate under article twenty-nine-CC of this chapter; and

10 (b) "health care professional" means a health care professional,  
11 licensed, certified or authorized to practice under title eight of the  
12 education law, acting within such health care professional's lawful  
13 scope of practice, who has authority to order an antipsychotic medica-  
14 tion.

15 2. (a) A nursing home or a health care professional shall obtain the  
16 informed consent of the resident or the resident's lawful represen-  
17 tative, before initiating the administration of an antipsychotic medica-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD01548-06-4

1 tion for a resident, provided that informed consent shall not be  
2 required in the case of:

3 (i) a resident who has been prescribed an antipsychotic medication  
4 prior to an admission or readmission to the nursing home;

5 (ii) a resident who has previously provided informed consent within  
6 the last twelve months;

7 (iii) a resident receiving hospice care;

8 (iv) a resident of a nursing home's certified behavioral unit;

9 (v) a resident with a primary diagnosis of Huntington's disease; or

10 (vi) an emergency as defined in subdivision three of this section.

11 (b) Where a resident lacks capacity to consent to health care and  
12 lacks a lawful representative, a prescription under this section shall  
13 be subject to subdivision four of section twenty-nine hundred ninety-  
14 four-g of this chapter as if the resident were an inpatient of a general  
15 hospital. To constitute informed consent, the following disclosure shall  
16 be given to the resident or, where the resident lacks capacity to  
17 consent to health care, the resident's lawful representative, in a clear  
18 and explicit manner:

19 (i) the reason for the medication, including the nature and serious-  
20 ness of the resident's illness, disorder or condition that the medica-  
21 tion is intended to treat;

22 (ii) the anticipated benefit from the medication, and the dosage,  
23 frequency, and duration of the order;

24 (iii) the probability of side effects and significant risks of the  
25 medication, including the nature, degree, and duration of such effects  
26 and reasonably known risks;

27 (iv) the reasonable alternative treatments to the proposed medication  
28 and the reason that the prescribing health care professional prefers the  
29 proposed medication in this instance; and

30 (v) that the resident or lawful representative has the right to  
31 consent or refuse consent to use of the proposed medication, and that if  
32 such resident or lawful representative consents, such resident or lawful  
33 representative has the right to revoke such resident's or lawful repre-  
34 sentative's consent for any reason, at any time, including a description  
35 of how the consent shall be revoked.

36 (c) The health care professional shall document in the resident's  
37 medical record the date and time that the informed consent disclosure  
38 was provided, and to whom and by whom it was provided, and include the  
39 written consent.

40 (d) Where the resident's medical record notes that a family member has  
41 requested notification of medication orders or prescriptions, and such  
42 notification is otherwise lawful, the health care professional shall  
43 cause notice to be provided within forty-eight hours of the order under  
44 this section. Such notice shall not be provided if the resident specif-  
45 ically requests that the family member not be given notification.

46 3. A nursing home and a health care professional shall not be required  
47 to obtain consent under this section to issue an order for use of an  
48 antipsychotic medication for a resident in a nursing home where it is  
49 necessary in an emergency to protect against an immediate threat to the  
50 life, health or safety of the resident or another person. The medica-  
51 tion must be the most appropriate available means of reducing that  
52 threat, with the least risk of harm considering the resident's condition  
53 or disorder. The order shall only apply, in the absence of consent,  
54 during the emergency. Where an order is made under this subdivision, the  
55 health care professional shall immediately record the use of the anti-  
56 psychotic medication, the reason for the use, and the dosage, in the

1 resident's medical record; and shall promptly notify the resident or the  
2 resident's lawful representative who would have had the authority to  
3 consent, and any family member required to be notified under this  
4 section and record such notifications in the resident's medical record.

5 4. This section does not increase the lawful scope of practice of any  
6 health care professional and does not diminish or impair any requirement  
7 for or regulation of consent to health care treatment.

8 5. The commissioner may make regulations to implement this section.

9 § 2. This act shall take effect one year after it shall have become a  
10 law. Effective immediately, the addition, amendment and/or repeal of any  
11 rule or regulation necessary for the implementation of this act on its  
12 effective date are authorized to be made and completed on or before such  
13 effective date.