STATE OF NEW YORK

3255

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to the use of electroconvulsive therapy

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

1 Section 1. Title E of the mental hygiene law is amended by adding a
2 new article 85 to read as follows:

3 ARTICLE 85
4 ELECTROCONVULSIVE AND OTHER THERAPIES
5 Section 85.01 Application.
6 85.02 Use of electroconvulsive therapy.
7 85.03 Consent to therapy.
8 85.04 Withdrawal of consent.
9 85.05 Physician requirement.
10 85.06 Registration of equipment.
11 85.07 Reports.
12 85.08 Use of information; report.
13 § 85.01 Application.
14 This article shall apply to the use of electroconvulsive therapy by
15 any person, including a private physician who uses the therapy on an
16 outpatient basis.
17 § 85.02 Use of electroconvulsive therapy.
18 (a) Electroconvulsive therapy may not be used on a person who is youn-
19 ger than sixteen years of age.
20 (b) Unless the person consents to the use of the therapy in accordance
21 with section 85.03 of this article, electroconvulsive therapy may not be
22 used on:
23 (1) a person who is sixteen years of age or older and who is voluntar-
24 ily receiving mental health services; or

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

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(2) an involuntary patient who is sixteen years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is sixteen years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with section 85.03 of this article. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

§ 85.03 Consent to therapy.

(a) The department by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The department by rule shall also prescribe the information that must be contained in the written supplement required under subdivision (c) of this section. In addition to the information required under this section, the form must include the information required by the mental hygiene medical review board for electroconvulsive therapy. In developing the form, the department shall consider recommendations of the medical review board. Use of the consent form prescribed by the department in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of this chapter have been met.

(b) The written consent form must clearly and explicitly state:

(1) the nature and purpose of the procedure;

(2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;

(3) that there is a division of opinion as to the efficacy of the procedure; and

(4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy of the consent form is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e) For a patient sixty-five years of age or older, before each treatment series begins, the hospital, facility or physician administering the procedure shall:

(1) ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2) make the form described by paragraph one of this subdivision available to the patient or the patient's guardian of the person; and

(3) inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

§ 85.04 Withdrawal of consent.

(a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

§ 85.05 Physician requirement.

(a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of the laws of this state.

§ 85.06 Registration of equipment.

(a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by the department.

(c) The application must be accompanied by a nonrefundable application fee. The department shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by the department.

(e) The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f) The department by rule may prohibit the registration and use of equipment of a type, model or age the department determines is dangerous.

(g) The department may deny, suspend or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension or revocation of a registration is considered a contested case.

§ 85.07 Reports.

(a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:
(1) the number of patients who received the therapy, including:
(A) the number of persons voluntarily receiving mental health services who consented to the therapy;
(B) the number of involuntary patients who consented to the therapy;
(C) the number of involuntary patients for whom a guardian consented to the therapy;
(2) the age, sex and race of the persons receiving the therapy;
(3) the source of the treatment payment;
(4) the average number of nonelectroconvulsive treatments;
(5) the average number of nonelectroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;
(6) the average number of maintenance electroconvulsive treatments administered per month;
(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;
(8) autopsy findings if death followed within fourteen days after the date of the administration of the therapy; and
(9) any other information required by the department.
§ 85.08 Use of information; report.
(a) The department shall use the information received under sections 85.06 and 85.07 of this article to analyze, audit and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.
(b) The department shall file annually with the governor, the temporary president of the senate and the speaker of the assembly a written report summarizing by facility the information received pursuant to sections 85.06 and 85.07 of this article. If the therapy is administered by a private physician on an outpatient basis, the report must include that information but may not identify directly or indirectly in a report issued pursuant to this section a patient who received the therapy.
§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately the commissioner of mental health may promulgate any rules and regulations necessary for the implementation of the provisions of this act on such date.