AN ACT to amend the public health law, in relation to the use of psycho-

tropic medications in nursing homes and adult care facilities

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

Section 1. The public health law is amended by adding a new section
280-d to read as follows:
§ 280-d. Use of psychotropic medications in nursing homes and adult
care facilities. 1. As used in this section:
(a) "psychotropic medication" means a drug that affects brain activ-
ities associated with mental processes and behavior, including, but not
limited to, antipsychotics, antidepressants, antianxiety drugs or anxio-
lytics, and hypnotics;
(b) "lawful representative" means, where a patient lacks capacity to
consent to health care, a person authorized to consent on behalf of the
patient, including, but not limited to, a health care agent authorized
by a health care proxy under article twenty-nine-C of this chapter or a
surrogate under article twenty-nine-CC of this chapter;
(c) "increase" when used in relation to an order for a psychotropic
medication, means an increase of the dosage or duration of the medica-
tion above the dosage or duration covered by the currently active
consent;
(d) "health care professional" means a health care professional,
licensed, certified or authorized to practice under title eight of the
education law, acting within his or her lawful scope of practice, who
has authority to order a psychotropic medication; and
(e) "patient" means an individual who is a resident of a residential
health care facility as defined in article twenty-eight of this chapter,
or an adult care facility certified under section four hundred sixty-
one-b of the social services law.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.
2. (a) An order for a psychotropic medication shall include the
dosage, frequency, and duration of the order which shall not exceed
fourteen days. A health care professional may not order or increase an
order for a psychotropic medication for a patient unless the health care
professional has obtained the written informed consent of the patient or
the patient's lawful representative, or is acting pursuant to an order
under this section, or is acting under subdivision three of this
section. Where a patient lacks capacity to consent to health care and
lacks a lawful representative, an order or increase of an order under
this section shall be subject to subdivision four of section twenty-nine
hundred ninety-four-g of this chapter as if the patient were an inpa-
tient of a general hospital. To constitute informed consent, the follow-
ing disclosure shall be given to the patient or, where the patient lacks
capacity to consent to health care, the patient's lawful representative,
in a clear and explicit manner:
   (i) the reason for the medication, including the nature and serious-
   ness of the patient's illness, disorder or condition that the medication
   is intended to treat;
   (ii) the anticipated benefit from the medication, and the dosage,
frequency, and duration of the order;
   (iii) the probability of side effects and significant risks of the
   medication, including the nature, degree, and duration of such effects
   and reasonably known risks;
   (iv) the reasonable alternative treatments to the proposed medication
   and the reason that the health care professional prefers the proposed
   medication in this instance; and
   (v) that the patient or lawful representative has the right to consent
or refuse consent to use of the proposed medication, and that if he or
she consents, he or she has the right to revoke his or her consent for
any reason, at any time, including a description of how the consent
shall be revoked.
   (b) The health care professional shall document in the patient's
medical record the date and time that the informed consent disclosure
was provided, and to whom and by whom it was provided, and include the
written consent.
   (c) Where the patient's medical record notes that a family member has
requested notification of medication orders, and such notification is
otherwise lawful, the health care professional shall cause notice to be
provided within forty-eight hours of the prescription, order, or
increase of an order under this section. Such notice shall not be
provided if the patient specifically requests that the family member not
be given notification.
3. A health care professional is not required to obtain consent under
this section to issue an order for use of a psychotropic medication for
a patient where it is reasonably necessary in an emergency to protect
the life, health or safety of the patient or another person. Where an
order is made under this subdivision, the health care professional shall
immediately record the use of the psychotropic medication, the reason
for the use, and the dosage, in the patient's medical record; and shall
promptly notify the patient or the patient's lawful representative who
would have had the authority to consent, and any family member required
to be notified under this section and record such notifications in the
patient's medical record.
4. This section does not increase the lawful scope of practice of any
health care professional and does not diminish or impair any requirement
for or regulation of consent to health care treatment.
5. The commissioner may make regulations to implement this section.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the commissioner of health is authorized to make regulations and take any other actions necessary to implement section 280-d of the public health law.