

# STATE OF NEW YORK

5441

2019-2020 Regular Sessions

## IN SENATE

May 1, 2019

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the use of psychotropic medications in nursing homes and adult care facilities

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 psychotropic medications in nursing homes and adult  
4 care facilities. 1. As used in this section:

5 (a) "psychotropic medication" means a drug that affects brain activ-  
6 ities associated with mental processes and behavior, including, but not  
7 limited to, antipsychotics, antidepressants, antianxiety drugs or anxio-  
8 lytics, and hypnotics;

9 (b) "lawful representative" means, where a patient lacks capacity to  
10 consent to health care, a person authorized to consent on behalf of the  
11 patient, including, but not limited to, a health care agent authorized  
12 by a health care proxy under article twenty-nine-C of this chapter or a  
13 surrogate under article twenty-nine-CC of this chapter;

14 (c) "increase" when used in relation to an order for a psychotropic  
15 medication, means an increase of the dosage or duration of the medica-  
16 tion above the dosage or duration covered by the currently active  
17 consent;

18 (d) "health care professional" means a health care professional,  
19 licensed, certified or authorized to practice under title eight of the  
20 education law, acting within his or her lawful scope of practice, who  
21 has authority to order a psychotropic medication; and

22 (e) "patient" means an individual who is a resident of a residential  
23 health care facility as defined in article twenty-eight of this chapter,  
24 or an adult care facility certified under section four hundred sixty-  
25 one-b of the social services law.

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

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1     2. (a) An order for a psychotropic medication shall include the  
2 dosage, frequency, and duration of the order which shall not exceed  
3 fourteen days. A health care professional may not order or increase an  
4 order for a psychotropic medication for a patient unless the health care  
5 professional has obtained the written informed consent of the patient or  
6 the patient's lawful representative, or is acting pursuant to an order  
7 under this section, or is acting under subdivision three of this  
8 section. Where a patient lacks capacity to consent to health care and  
9 lacks a lawful representative, an order or increase of an order under  
10 this section shall be subject to subdivision four of section twenty-nine  
11 hundred ninety-four-g of this chapter as if the patient were an inpa-  
12 tient of a general hospital. To constitute informed consent, the follow-  
13 ing disclosure shall be given to the patient or, where the patient lacks  
14 capacity to consent to health care, the patient's lawful representative,  
15 in a clear and explicit manner:

16     (i) the reason for the medication, including the nature and serious-  
17 ness of the patient's illness, disorder or condition that the medication  
18 is intended to treat;

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

21     (iii) the probability of side effects and significant risks of the  
22 medication, including the nature, degree, and duration of such effects  
23 and reasonably known risks;

24     (iv) the reasonable alternative treatments to the proposed medication  
25 and the reason that the health care professional prefers the proposed  
26 medication in this instance; and

27     (v) that the patient or lawful representative has the right to consent  
28 or refuse consent to use of the proposed medication, and that if he or  
29 she consents, he or she has the right to revoke his or her consent for  
30 any reason, at any time, including a description of how the consent  
31 shall be revoked.

32     (b) The health care professional shall document in the patient's  
33 medical record the date and time that the informed consent disclosure  
34 was provided, and to whom and by whom it was provided, and include the  
35 written consent.

36     (c) Where the patient's medical record notes that a family member has  
37 requested notification of medication orders, and such notification is  
38 otherwise lawful, the health care professional shall cause notice to be  
39 provided within forty-eight hours of the prescription, order, or  
40 increase of an order under this section. Such notice shall not be  
41 provided if the patient specifically requests that the family member not  
42 be given notification.

43     3. A health care professional is not required to obtain consent under  
44 this section to issue an order for use of a psychotropic medication for  
45 a patient where it is reasonably necessary in an emergency to protect  
46 the life, health or safety of the patient or another person. Where an  
47 order is made under this subdivision, the health care professional shall  
48 immediately record the use of the psychotropic medication, the reason  
49 for the use, and the dosage, in the patient's medical record; and shall  
50 promptly notify the patient or the patient's lawful representative who  
51 would have had the authority to consent, and any family member required  
52 to be notified under this section and record such notifications in the  
53 patient's medical record.

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

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

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