STATE OF NEW YORK

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2021-2022 Regular Sessions

IN ASSEMBLY

February 26, 2021

Introduced by M. of A. GOTTFRIED, WEINSTEIN, SAYEGH, STECK, SIMON, CUSICK, ABINANTI, COOK, GLICK, VANEL, LUNSFORD, CAHILL, L. ROSENTHAL, RICHARDSON, BRONSON, ZEBROWSKI, THIELE, WILLIAMS, BICHOTTE HERMELYN, CARROLL, FALL, GALLAGHER, FORREST, CRUZ, STIRPE, NOLAN, CLARK, COLTON, PERRY, SANTABARBARA, HUNTER, JACKSON, ZINERMAN, GRIFFIN, KELLES, JACOBSON, FERNANDEZ, GALEF, SILLITTI -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- ordered 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 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:

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 activities associated with mental processes and behavior, including, but not limited to, antipsychotics, antidepressants, antianxiety drugs or anxiolytics, 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-

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

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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.

2. (a) An order for a psychotropic medication in a nursing home shall include the dosage, frequency, and duration of the order which shall not exceed fourteen days. A health care professional, who is employed by or contracted with a nursing home or adult care facility to provide services to facility residents, or who provides services on site in a nursing home or adult care facility, may not prescribe or increase a prescription for a psychotropic medication for a patient in such facility 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, a prescription or increase of a prescription 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 inpatient of a general hospital. To constitute informed consent, the following 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 seriousness 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 or prescriptions, 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 or prescription 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 in a nursing home where it is necessary in an emergency to protect against an immediate threat to the life, health or safety of the patient or another person. The medication must be the most appropriate available means of reducing that threat, with the least risk of harm considering the patient's condition or disorder. The order shall only apply, in the absence of consent, during the emergency. 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.