

STATE OF NEW YORK

2103--A

Cal. No. 541

2021-2022 Regular Sessions

IN SENATE

January 19, 2021

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in 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:

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 anxi-
8 olytics, 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

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

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

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

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

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

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

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

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

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

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

1 reason for the use, and the dosage, in the patient's medical record; and
2 shall promptly notify the patient or the resident's lawful represen-
3 tative who would have had the authority to consent, and any family
4 member required to be notified under this section and record such
5 notifications in the patient's medical record.

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

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

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