

# STATE OF NEW YORK

2103--B

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 -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD00036-05-2

1 education law, acting within his or her lawful scope of practice, who  
2 has authority to order a psychotropic medication; and

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

7 2. (a) An order for a psychotropic medication in a nursing home shall  
8 include the dosage, frequency, and duration of the order which shall not  
9 exceed fourteen days. A health care professional, who is employed by or  
10 contracted with a nursing home or adult care facility to provide  
11 services to facility residents, or who provides services on site in a  
12 nursing home or adult care facility, may not prescribe or increase a  
13 prescription for a psychotropic medication for a patient in such facili-  
14 ty unless the health care professional has obtained the written informed  
15 consent of the patient or the patient's lawful representative, or is  
16 acting pursuant to an order under this section, or is acting under  
17 subdivision three of this section. Where a patient lacks capacity to  
18 consent to health care and lacks a lawful representative, a prescription  
19 or increase of a prescription under this section shall be subject to  
20 subdivision four of section twenty-nine hundred ninety-four-g of this  
21 chapter as if the patient were an inpatient of a general hospital. To  
22 constitute informed consent, the following disclosure shall be given to  
23 the patient or, where the patient lacks capacity to consent to health  
24 care, the patient's lawful representative, in a clear and explicit  
25 manner:

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

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

31 (iii) the probability of side effects and significant risks of the  
32 medication, including the nature, degree, and duration of such effects  
33 and reasonably known risks;

34 (iv) the reasonable alternative treatments to the proposed medication  
35 and the reason that the health care professional prefers the proposed  
36 medication in this instance; and

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

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

46 (c) Where the patient's medical record notes that a family member has  
47 requested notification of medication orders or prescriptions, and such  
48 notification is otherwise lawful, the health care professional shall  
49 cause notice to be provided within forty-eight hours of the  
50 prescription, order, or increase of an order or prescription under this  
51 section. Such notice shall not be provided if the patient specifically  
52 requests that the family member not be given notification.

53 3. A health care professional is not required to obtain consent under  
54 this section to issue an order for use of a psychotropic medication for  
55 a patient in a nursing home where it is necessary in an emergency to  
56 protect against an immediate threat to the life, health or safety of the

1 patient or another person. The medication must be the most appropriate  
2 available means of reducing that threat, with the least risk of harm  
3 considering the patient's condition or disorder. The order shall only  
4 apply, in the absence of consent, during the emergency. Where an order  
5 is made under this subdivision, the health care professional shall imme-  
6 diately record the use of the psychotropic medication, the reason for  
7 the use, and the dosage, in the patient's medical record; and shall  
8 promptly notify the patient or the patient's lawful representative who  
9 would have had the authority to consent, and any family member required  
10 to be notified under this section and record such notifications in the  
11 patient's medical record.

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

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

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