

# STATE OF NEW YORK

5841--A

R. R. 27

2021-2022 Regular Sessions

## IN ASSEMBLY

February 26, 2021

Introduced by M. of A. GOTTFRIED, WEINSTEIN, SAYEGH, STECK, SIMON, CUSICK, BARRON, ABINANTI, COOK, GLICK, VANEL, LUNSFORD, CAHILL, L. ROSENTHAL, PICHARDO, RICHARDSON, BRONSON, ZEBROWSKI, THIELE, WILLIAMS, BICHOTTE HERMELYN, CARROLL, FALL, GALLAGHER, FORREST, CRUZ, STIRPE, NOLAN, CLARK, COLTON, PERRY, SANTABARBARA, HUNTER, JACKSON, ZINERMAN, GRIFFIN, KELLES, 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

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;

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

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

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

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

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

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

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

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

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

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

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

51 3. A health care professional is not required to obtain consent under  
52 this section to issue an order for use of a psychotropic medication for  
53 a patient who is a nursing home resident where it is necessary in an  
54 emergency to protect against an immediate threat to the life, health or  
55 safety of the resident or another person. The medication must be the  
56 most appropriate available means of reducing that threat, with the least

1 risk of harm considering the resident's condition or disorder. The order  
2 shall only apply, in the absence of consent, during the emergency. Where  
3 an order is made under this subdivision, the health care professional  
4 shall immediately record the use of the psychotropic medication, the  
5 reason for the use, and the dosage, in the patient's medical record; and  
6 shall promptly notify the patient or the resident's lawful represen-  
7 tative who would have had the authority to consent, and any family  
8 member required to be notified under this section and record such  
9 notifications in the patient's medical record.

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

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

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