

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.

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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.