STATE OF NEW YORK

7467--A

Cal. No. 409

2023-2024 Regular Sessions

IN ASSEMBLY

May 24, 2023

Introduced by M. of A. PAULIN, SAYEGH, STECK, SIMON, COOK, GLICK, VANEL, LUNSFORD, L. ROSENTHAL, BRONSON, ZEBROWSKI, THIELE, WILLIAMS, BICHOTTE HERMELYN, CARROLL, FALL, GALLAGHER, FORREST, CRUZ, STIRPE, CLARK, COLTON, SANTABARBARA, HUNTER, JACKSON, ZINERMAN, KELLES, JACOBSON, OTIS, WALLACE, MEEKS, SILLITTI, GUNTHER, WEPRIN -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported from committee, advanced 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 antipsychotic medications in nursing homes

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 antipsychotic medications in nursing homes. 1. As used in this section:

(a) "lawful representative" means, where a resident lacks capacity to consent to health care, a person authorized to consent on behalf of the resident, 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; and

(b) "health care professional" means a health care professional, licensed, certified or authorized to practice under title eight of the education law, acting within such health care professional's lawful scope of practice, who has authority to order an antipsychotic medication.

2. (a) A nursing home or a health care professional shall obtain the informed consent of the resident or the resident's lawful representative, before initiating the administration of an antipsychotic medica-

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

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tion for a resident, provided that informed consent shall not be required in the case of:

(i) a resident who has been prescribed an antipsychotic medication prior to an admission or readmission to the nursing home;

(ii) a resident who has previously provided informed consent within the last twelve months;

(iii) a resident receiving hospice care;

(iv) a resident of a nursing home's certified behavioral unit;

(v) a resident with a primary diagnosis of Huntington's disease; or

(vi) an emergency as defined in subdivision three of this section.

(b) Where a resident lacks capacity to consent to health care and lacks a lawful representative, 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 resident were an inpatient of a general hospital. To constitute informed consent, the following disclosure shall be given to the resident or, where the resident lacks capacity to consent to health care, the resident's lawful representative, in a clear and explicit manner:

(i) the reason for the medication, including the nature and seriousness of the resident'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 prescribing health care professional prefers the proposed medication in this instance; and

(v) that the resident or lawful representative has the right to consent or refuse consent to use of the proposed medication, and that if such resident or lawful representative consents, such resident or lawful representative has the right to revoke such resident's or lawful representative's consent for any reason, at any time, including a description of how the consent shall be revoked.

(c) The health care professional shall document in the resident'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.

(d) Where the resident'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 order under this section. Such notice shall not be provided if the resident specifically requests that the family member not be given notification.

3. A nursing home and a health care professional shall not be required to obtain consent under this section to issue an order for use of an antipsychotic medication for a resident 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 resident or another person. The medication must be the most appropriate available means of reducing that threat, with the least risk of harm considering the resident'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 antipsychotic medication, the reason for the use, and the dosage, in the

resident's medical record; and shall promptly notify the resident or the resident'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 resident'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 one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.