

# STATE OF NEW YORK

7467

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 -- read once and referred to the Committee on Health

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:

Section 1. The public health law is amended by adding a new section 280-d to read as follows:

§ 280-d. Use of psychotropic medications in nursing homes and adult care facilities. 1. As used in this section:

(a) "psychotropic medication" means a drug that affects brain activities associated with mental processes and behavior, including, but not limited to, antipsychotics, antidepressants, antianxiety drugs or anxiolytics, and hypnotics;

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

(c) "increase" when used in relation to an order for a psychotropic medication, means an increase of the dosage or duration of the medication above the dosage or duration covered by the currently active consent;

(d) "health care professional" means a health care professional, licensed, certified or authorized to practice under title eight of the education law, acting within his or her lawful scope of practice, who 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 in a nursing home shall  
6 include the dosage, frequency, and duration of the order which shall not  
7 exceed fourteen days. A health care professional, who is employed by or  
8 contracted with a nursing home or adult care facility to provide  
9 services to facility residents, or who provides services on site in a  
10 nursing home or adult care facility, may not prescribe or increase a  
11 prescription for a psychotropic medication for a patient in such facili-  
12 ty unless the health care professional has obtained the written informed  
13 consent of the patient or the patient's lawful representative, or is  
14 acting pursuant to an order under this section, or is acting under  
15 subdivision three of this section. Where a patient lacks capacity to  
16 consent to health care and lacks a lawful representative, a prescription  
17 or increase of a prescription under this section shall be subject to  
18 subdivision four of section twenty-nine hundred ninety-four-g of this  
19 chapter as if the patient were an inpatient of a general hospital. To  
20 constitute informed consent, the following disclosure shall be given to  
21 the patient or, where the patient lacks capacity to consent to health  
22 care, the patient's lawful representative, in a clear and explicit  
23 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 or prescriptions, and such  
46 notification is otherwise lawful, the health care professional shall  
47 cause notice to be provided within forty-eight hours of the  
48 prescription, order, or increase of an order or prescription under this  
49 section. Such notice shall not be provided if the patient specifically  
50 requests that the family member not 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 in a nursing home where it is necessary in an emergency to  
54 protect against an immediate threat to the life, health or safety of the  
55 patient or another person. The medication must be the most appropriate  
56 available means of reducing that threat, with the least risk of harm

1 considering the patient's condition or disorder. The order shall only  
2 apply, in the absence of consent, during the emergency. Where an order  
3 is made under this subdivision, the health care professional shall imme-  
4 diately record the use of the psychotropic medication, the reason for  
5 the use, and the dosage, in the patient's medical record; and shall  
6 promptly notify the patient or the patient's lawful representative who  
7 would have had the authority to consent, and any family member required  
8 to be notified under this section and record such notifications in the  
9 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 addition, amend-  
16 ment and/or repeal of any rule or regulation necessary for the implemen-  
17 tation of this act on its effective date are authorized to be made and  
18 completed on or before such effective date.