

STATE OF NEW YORK

466

2023-2024 Regular Sessions

IN SENATE

January 4, 2023

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

LBD01548-01-3

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

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

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

25 (iii) the probability of side effects and significant risks of the
26 medication, including the nature, degree, and duration of such effects
27 and reasonably known risks;

28 (iv) the reasonable alternative treatments to the proposed medication
29 and the reason that the health care professional prefers the proposed
30 medication in this instance; and

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

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

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

47 3. A health care professional is not required to obtain consent under
48 this section to issue an order for use of a psychotropic medication for
49 a patient in a nursing home where it is necessary in an emergency to
50 protect against an immediate threat to the life, health or safety of the
51 patient or another person. The medication must be the most appropriate
52 available means of reducing that threat, with the least risk of harm
53 considering the patient's condition or disorder. The order shall only
54 apply, in the absence of consent, during the emergency. Where an order
55 is made under this subdivision, the health care professional shall imme-
56 diately record the use of the psychotropic medication, the reason for

1 the use, and the dosage, in the patient's medical record; and shall
2 promptly notify the patient or the patient's lawful representative who
3 would have had the authority to consent, and any family member required
4 to be notified under this section and record such notifications in the
5 patient's medical record.

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

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

10 § 2. This act shall take effect on the one hundred eightieth day after
11 it shall have become a law. Effective immediately, the addition, amend-
12 ment and/or repeal of any rule or regulation necessary for the implemen-
13 tation of this act on its effective date are authorized to be made and
14 completed on or before such effective date.