

STATE OF NEW YORK

466--A

2023-2024 Regular Sessions

IN SENATE

January 4, 2023

Introduced by Sens. SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Aging -- 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 antipsychotic medications in nursing homes. 1. As
4 used in this section:

5 (a) "lawful representative" means, where a resident lacks capacity to
6 consent to health care, a person authorized to consent on behalf of the
7 resident, including, but not limited to, a health care agent authorized
8 by a health care proxy under article twenty-nine-C of this chapter or a
9 surrogate under article twenty-nine-CC of this chapter; and

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

15 2. (a) A nursing home or a health care professional shall obtain the
16 informed consent of the resident or the resident's lawful represen-
17 tative, before initiating the administration of an antipsychotic medica-
18 tion for a resident, provided that informed consent shall not be
19 required in the case of:

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

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

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

3 (iii) a resident receiving hospice care;

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

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

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

7 (b) Where a resident lacks capacity to consent to health care and
8 lacks a lawful representative, a prescription under this section shall
9 be subject to subdivision four of section twenty-nine hundred ninety-
10 four-g of this chapter as if the resident were an inpatient of a general
11 hospital. To constitute informed consent, the following disclosure shall
12 be given to the resident or, where the resident lacks capacity to
13 consent to health care, the resident's lawful representative, in a clear
14 and explicit manner:

15 (i) the reason for the medication, including the nature and serious-
16 ness of the resident's illness, disorder or condition that the medica-
17 tion is intended to treat;

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

20 (iii) the probability of side effects and significant risks of the
21 medication, including the nature, degree, and duration of such effects
22 and reasonably known risks;

23 (iv) the reasonable alternative treatments to the proposed medication
24 and the reason that the prescribing health care professional prefers the
25 proposed medication in this instance; and

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

32 (c) The health care professional shall document in the resident's
33 medical record the date and time that the informed consent disclosure
34 was provided, and to whom and by whom it was provided.

35 (d) Where the resident's medical record notes that a family member has
36 requested notification of medication orders or prescriptions, and such
37 notification is otherwise lawful, the health care professional shall
38 cause notice to be provided within forty-eight hours of the order under
39 this section. Such notice shall not be provided if the resident specif-
40 ically requests that the family member not be given notification.

41 3. A nursing home and a health care professional shall not be required
42 to obtain consent under this section to issue an order for use of an
43 antipsychotic medication for a resident in a nursing home where it is
44 necessary in an emergency to protect against an immediate threat to the
45 life, health or safety of the resident or another person. The medica-
46 tion must be the most appropriate available means of reducing that
47 threat, with the least risk of harm considering the resident's condition
48 or disorder. The order shall only apply, in the absence of consent,
49 during the emergency. Where an order is made under this subdivision, the
50 health care professional shall immediately record the use of the anti-
51 psychotic medication, the reason for the use, and the dosage, in the
52 resident's medical record; and shall promptly notify the resident or the
53 resident's lawful representative who would have had the authority to
54 consent, and any family member required to be notified under this
55 section and record such notifications in the resident's medical record.

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

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

5 § 2. This act shall take effect one year after it shall have become a
6 law. Effective immediately, the addition, amendment and/or repeal of any
7 rule or regulation necessary for the implementation of this act on its
8 effective date are authorized to be made and completed on or before such
9 effective date.