

# An Act

ENROLLED HOUSE  
BILL NO. 1877

By: West (Tammy), Baker and  
Virgin of the House

and

Coleman of the Senate

An Act relating to assisted living centers; amending Section 1, Chapter 311, O.S.L. 2019 (63 O.S. Supp. 2020, Section 1-881), which relates to prescribing antipsychotic drugs to long-term care facility residents; modifying definition; amending 63 O.S. 2011, Section 1-890.8, as amended by Section 1, Chapter 248, O.S.L. 2013 (63 O.S. Supp. 2020, Section 1-890.8), which relates to the plan of accommodation for certain disabled residents; modifying criteria for prescription of antipsychotic drugs for residents; requiring assessments and monitoring; listing requirements; requiring documentation; and providing an effective date.

SUBJECT: Assisted living centers

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 311, O.S.L. 2019 (63 O.S. Supp. 2020, Section 1-881), is amended to read as follows:

Section 1-881. A. As used in this section:

1. "Antipsychotic drug" means a drug, sometimes called a major tranquilizer, used to treat symptoms of severe psychiatric disorders, including, but not limited to, schizophrenia and bipolar disorder;

2. "Long-term care facility" means:

- a. a nursing facility as defined by Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title,
- b. the nursing facility component of a continuum of care facility as defined under the Continuum of Care and Assisted Living Act, or
- c. the nursing care component of a life care community as defined by the Long-term Care Insurance Act;

3. "Resident" means a resident as defined by Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title;

4. "Representative of a resident" means a representative of a resident as defined by Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title; and

5. "Prescribing clinician" means:

- a. an allopathic or osteopathic physician licensed by and in good standing with the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, as appropriate,
- b. a physician assistant licensed by and in good standing with the State Board of Medical Licensure and Supervision, or
- c. an Advanced Practice Registered Nurse licensed by and in good standing with the Oklahoma Board of Nursing.

B. Except in case of an emergency in which the resident poses harm to the resident or others, no long-term care facility resident shall be prescribed or administered an antipsychotic drug that was not already prescribed to the resident prior to admission to the facility unless each of the following conditions has been satisfied:

1. The resident has been examined by the prescribing clinician and diagnosed with a psychiatric condition and the prescribed drug is approved by the United States Food and Drug Administration for that condition or prescribed in accordance with generally accepted clinical practices;

2. The prescribing clinician, or a previous prescribing clinician, has unsuccessfully attempted to accomplish the drug's intended effect using contemporary and generally accepted nonpharmacological care options, and has documented those attempts and their results in the resident's medical record or has deemed that those attempts would not be medically appropriate based upon a physical examination by the prescribing clinician and documented the rationale in the resident's medical record;

3. The facility has provided to the resident or representative of a the resident a written explanation of applicable informed consent laws. The explanation shall be written in language that the resident or representative of a resident can be reasonably expected to understand;

4. The prescribing clinician has confirmed with the nursing facility verbally or otherwise that written, informed consent has been obtained from the resident or representative of the resident that meets the requirements of subsection C of this section; and

5. In the event a long-term care facility resident is prescribed an antipsychotic medication in the case of an emergency, the prescribing physician shall prescribe the minimum dosage and duration that is prudent for the resident's condition and shall examine the patient in person within thirty (30) days.

C. Except in the case of an emergency as provided for in subsection B of this section, the prescribing clinician shall confirm that written, voluntary informed consent to authorize the administration of an antipsychotic drug to a facility resident has been obtained from the resident or the representative of the resident prior to the initial administration of the antipsychotic drug. Voluntary informed consent shall, at minimum, consist of the following:

1. The prescribing clinician has confirmed that a signed, written affirmation has been obtained from the resident or the representative of the resident that the resident has been informed of all pertinent information concerning the administration of an antipsychotic drug in language that the signer can reasonably be expected to understand. Pertinent information shall include, but not be limited to:

- a. the reason for the drug's prescription and the intended effect of the drug on the resident's condition,
- b. the nature of the drug and the procedure for its administration, including dosage, administration schedule, method of delivery and expected duration for the drug to be administered,
- c. risks, common side effects and potential severe adverse reactions associated with the administration of the drug,
- d. the right of the resident or representative of the resident to refuse the administration of the antipsychotic drug and the medical consequences of such refusal, and
- e. an explanation of pharmacological and nonpharmacological alternatives to the administration of antipsychotic drugs and the resident's right to choose such alternatives; and

2. Except in the case of an emergency as provided for in subsection B of this section, the prescribing clinician shall inform the resident or the representative of the resident of the existence of the long-term care facility's policies and procedures for compliance with informed consent requirements. The facility shall make these available to the resident or representative of the resident prior to administering any antipsychotic drug upon request.

D. 1. Antipsychotic drug prescriptions and administration shall be consistent with standards for dosage, duration and frequency of administration that are generally accepted for the resident's condition.

2. Throughout the duration of the administration of an antipsychotic drug and at generally accepted intervals approved for the resident's condition, the prescribing clinician or designee shall monitor the resident's condition and evaluate drug performance with respect to the condition for which the drug was prescribed. The prescribing clinician shall provide documentation of the status of the resident's condition to the resident or the representative of the resident upon request and without unreasonable delay.

3. Any change in dosage or duration of the administration of an antipsychotic drug shall be justified by the prescribing clinician with documentation on the resident's record of the clinical observations that warranted the change.

E. 1. No long-term care facility shall deny admission or continued residency to a person on the basis of the person's or his or her representative's refusal to the administration of antipsychotic drugs, unless the prescribing clinician or care facility can demonstrate that the resident's refusal would place the health and safety of the resident, the facility staff, other residents or visitors at risk.

2. Any care facility that alleges that the resident's refusal to consent to the administration of antipsychotic drugs will place the health and safety of the resident, the facility staff, other residents or visitors at risk shall document the alleged risk in detail and shall present this documentation to the resident or the representative of the resident, to the State Department of Health and to the Long-Term Care Ombudsman~~, and~~ and shall inform the resident or the representative of the resident of the resident's right to appeal to the State Department of Health. The documentation of the alleged risk shall include a description of all nonpharmacological or alternative care options attempted and why they were unsuccessful or why the prescribing clinician determined alternative treatments were not medically appropriate for the condition following a physical examination.

F. The provisions of this section shall not apply to a hospice patient as defined in Section 1-860.2 of ~~Title 63 of the Oklahoma Statutes~~ this title.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-890.8, as amended by Section 1, Chapter 248, O.S.L. 2013 (63 O.S. Supp. 2020, Section 1-890.8), is amended to read as follows:

Section 1-890.8 A. Residents of an assisted living center may receive home care services and intermittent, periodic, or recurrent nursing care through a home care agency under the provisions of the Home Care Act.

B. Residents of an assisted living center may receive hospice home services under the provisions of the Oklahoma Hospice Licensing Act.

C. Nothing in the foregoing provisions shall be construed to prohibit any resident of an assisted living center from receiving such services from any person who is exempt from the provisions of the Home Care Act.

D. The assisted living center shall monitor and assure the delivery of those services. All nursing services shall be in accordance with the written orders of the personal or attending physician of the resident.

E. A resident of an assisted living center or the family or legal representative of the resident shall be required to disclose any third-party provider of medical services or supplies prior to service delivery.

F. Any third-party provider of medical services or supplies shall comply with the provisions of subsection D of this section.

G. Notwithstanding the foregoing provisions, a resident of an assisted living center, or the family or legal representative of the resident, may privately contract or arrange for private nursing services under the orders and supervision of the personal or attending physician of the resident, private monitoring, private sitters or companions, personal domestic servants, or personal staff.

H. If a resident of an assisted living center develops a disability or a condition that is consistent with the facility's discharge criteria:

1. The personal or attending physician of a resident, a representative of the assisted living center, and the resident or the designated representative of the resident shall determine by and through a consensus of the foregoing persons any reasonable and necessary accommodations, in accordance with the current building codes, the rules of the State Fire Marshal, and the requirements of the local fire jurisdiction, and additional services required to permit the resident to remain in place in the assisted living center as the least restrictive environment and with privacy and dignity;

2. All accommodations or additional services shall be described in a written plan of accommodation, signed by the personal or attending physician of the resident, a representative of the assisted living center and the resident or the designated representative of the resident;

3. The person or persons responsible for performing, monitoring and assuring compliance with the plan of accommodation shall be expressly specified in the plan of accommodation and shall include the assisted living center and any of the following:

- a. the personal or attending physician of the resident,
- b. a home care agency,
- c. a hospice, or
- d. other designated persons.

The plan of accommodation shall be reviewed at least quarterly by a licensed health care professional;

4. If the parties identified in paragraph 1 of this subsection fail to reach a consensus on a plan of accommodation, the assisted living center shall give written notice to the resident, the legal representative ~~or~~ of the resident or such persons as are designated in the resident's contract with the assisted living center, of the termination of the residency of the resident in the assisted living center in accordance with the provisions of the resident's contract with the assisted living center. Such notice shall not be less than thirty (30) calendar days prior to the date of termination, unless the assisted living center or the personal or attending physician of the resident determines the resident is in imminent peril or the continued residency of the resident places other persons at risk of imminent harm;

5. If any party identified in paragraph 1 of this subsection determines that the plan of accommodation is not being met, such party shall notify the other parties and a meeting shall be held between the parties within ten (10) business days to re-evaluate the plan of accommodation; and

6. Any resident aggrieved by a decision to terminate residency may seek injunctive relief in the district court of the county in which the assisted living center is located. Such action shall be filed no later than ten (10) days after the receipt of the written notice of termination.

I. When an antipsychotic drug is prescribed for a resident, the assisted living center shall do all of the following:

1. Ensure the resident is reassessed by a physician, physician assistant, Advanced Practice Registered Nurse or registered nurse, as needed, but at least quarterly, for the effectiveness and possible side effects of the medication. The results of the assessments shall be documented in the resident's record and provided to the resident or the representative of the resident;

2. Ensure all resident care staff administering medications understand the potential benefits and side effects of the medications; and

3. When an antipsychotic drug is prescribed on an as-needed basis (PRN) for a resident, the assisted living center shall:

- a. document in the resident's record the rationale for use and a detailed description of the condition which indicates the need for administration of a PRN antipsychotic drug,
- b. monitor the use of PRN antipsychotic drugs for potential harm to the resident, including, but not limited to, the presence of significant adverse side effects, use of the drugs for inappropriate purposes such as discipline or staff convenience, or use contrary to the prescription. The monitoring required by this subparagraph shall be conducted by a licensed health care professional and shall occur at least monthly, and
- c. document in the resident's record the results of the monitoring required in subparagraph b of this paragraph, including, but not limited to, the effectiveness of the medication, the presence of any side effects, and any inappropriate use for each PRN antipsychotic drug given.

J. Nothing in this section shall be construed to abrogate an assisted living center's responsibility to provide care for and oversight of a resident.

SECTION 3. This act shall become effective November 1, 2021.



Passed the House of Representatives the 1st day of March, 2021.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 12th day of April, 2021.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_