

1 **SENATE FLOOR VERSION**

2 February 11, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 142

By: Bice of the Senate

and

West (Tammy) of the House

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9 An Act relating to long-term care; defining terms;
10 prohibiting prescribing and administration of certain
11 drugs to long-term care facility residents except
12 under certain conditions; requiring informed consent;
13 setting forth provisions related to prescriptions and
14 administration; setting forth certain patient
15 protections; specifying applicability of act;
16 providing for codification; and providing an
17 effective date.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-881 of Title 63, unless there
21 is created a duplication in numbering, reads as follows:

22 A. As used in this section:

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

1 2. "Long-term care facility" means:

2 a. a nursing facility as defined by Section 1-1902 of
3 Title 63 of the Oklahoma Statutes,

4 b. a continuum of care facility as defined under the
5 Continuum of Care and Assisted Living Act, or

6 c. the nursing care component of a life care community as
7 defined by the Long-term Care Insurance Act; and

8 3. "Prescribing clinician" means:

9 a. an allopathic or osteopathic physician licensed by and
10 in good standing with the State Board of Medical
11 Licensure and Supervision or the State Board of
12 Osteopathic Examiners, as appropriate,

13 b. a physician assistant licensed by and in good standing
14 with the State Board of Medical Licensure and
15 Supervision, or

16 c. an Advanced Practice Registered Nurse licensed by and
17 in good standing with the State Board of Nursing.

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

23 1. The resident has been examined by the prescribing clinician
24 and diagnosed with a psychiatric condition and the prescribed drug

1 is approved by the Food and Drug Administration for that condition
2 or prescribed in accordance with generally accepted clinical
3 practices;

4 2. The prescribing clinician, or a previous prescribing
5 clinician, has unsuccessfully attempted to accomplish the drug's
6 intended effect using contemporary and generally accepted
7 nonpharmacological care options, and has documented those attempts
8 and their results in the resident's medical record;

9 3. The facility has provided to the resident or resident's
10 legal representative a written explanation of applicable informed
11 consent laws. The explanation shall be written in language that the
12 resident or resident's legal representative can be reasonably
13 expected to understand;

14 4. The prescribing clinician has confirmed that written,
15 informed consent has been obtained from the resident or resident's
16 legal representative that meets the requirements of subsection C of
17 this section; and

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

23 C. The prescribing clinician shall confirm that written,
24 voluntary informed consent to authorize the administration of an

1 antipsychotic drug to a facility resident has been obtained from the
2 resident or the resident's legal representative prior to the initial
3 administration of the antipsychotic drug. Voluntary informed
4 consent shall, at minimum, consist of the following:

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

- 12 a. the reason for the drug's prescription and the
13 intended effect of the drug on the resident's
14 condition,
- 15 b. the nature of the drug and the procedure for its
16 administration, including dosage, administration
17 schedule, method of delivery and expected duration for
18 the drug to be administered,
- 19 c. the probable degree of improvement of the clinical
20 condition expected from the recommended administration
21 of the drug,
- 22 d. risks, common side effects and potential severe
23 adverse reactions associated with the administration
24 of the drug,

1 e. the resident's or resident's legal representative's
2 right to refuse the administration of the
3 antipsychotic drug and the medical consequences of
4 such refusal, and

5 f. an explanation of pharmacological and non-
6 pharmacological alternatives to the administration of
7 antipsychotic drugs and the resident's right to choose
8 such alternatives; and

9 2. The prescribing clinician shall inform the resident or the
10 resident's legal representative of the existence of the long-term
11 care facility's policies and procedures for compliance with informed
12 consent requirements and shall make these available to the resident
13 or resident's legal representative prior to administering any
14 antipsychotic drug upon request.

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

19 2. Throughout the duration of the administration of an
20 antipsychotic drug and at generally accepted intervals approved for
21 the resident's condition, the prescribing clinician or designee
22 shall monitor the resident's condition and evaluate drug performance
23 with respect to the condition for which the drug was prescribed.

24 The prescribing clinician shall provide documentation of the status

1 of the resident's condition to the resident or the resident's legal
2 representative upon request and without unreasonable delay.

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

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

14 2. Any care facility that alleges that the resident's refusal
15 to consent to the administration of antipsychotic drugs will place
16 the health and safety of the resident, the facility staff, other
17 residents or visitors at risk shall document the alleged risk in
18 detail, and shall present this documentation to the resident or the
19 resident's legal representative, to the State Department of Health
20 and to the Long-Term Care Ombudsman; and shall inform the resident
21 or their legal representative of the resident's or legal
22 representative's right to appeal to the Long-Term Care Ombudsman.
23 The documentation of the alleged risk shall include a description of
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1 all nonpharmacological or alternative care options attempted and why
2 they were unsuccessful.

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

6 SECTION 2. This act shall become effective November 1, 2019.

7 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
8 February 11, 2019 - DO PASS AS AMENDED
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