

An Act

ENROLLED SENATE
BILL NO. 142

By: Bice of the Senate

and

West (Tammy), Bush, Stark,
Blancett, Munson, Grego,
Dills, Provenzano,
Luttrell, Hill, Goodwin and
West (Josh) of the House

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

SUBJECT: Long-term care

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

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

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,
- b. 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;

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

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

Passed the Senate the 1st day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2019.

Presiding Officer of the House
of Representatives

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: _____