



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2265

Introduced 2/26/2021, by Sen. Dave Syverson

SYNOPSIS AS INTRODUCED:

210 ILCS 45/2-106.1

Amends the Nursing Home Care Act. In provisions requiring the Department of Public Health to adopt a protocol specifying how informed consent for psychotropic medication may be obtained or refused that requires a discussion between the resident or the resident's surrogate decision maker and the resident's physician, a registered pharmacist, or a licensed nurse about the possible risks and benefits of a recommended medication and the use of standardized consent forms designated by the Department, (i) removes language prohibiting the registered pharmacist from being a dispensing pharmacist for the facility where the resident lives and (ii) specifies that a licensed nurse includes a licensed practical nurse. Provides that specified forms shall be designated (rather than developed) by the Department and may be able to be downloaded from a website designated by the Department (other than the Department's official website). Provides that the maximum possible period for informed consent shall be until a change in the prescription occurs as to the change in the type of psychotropic medication or an increase in dosage (rather than a change in dosage), unless the physician's order for which informed consent was given provides for an increase in dosage. Effective immediately.

LRB102 13807 CPF 19157 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Nursing Home Care Act is amended by
5 changing Section 2-106.1 as follows:

6 (210 ILCS 45/2-106.1)

7 Sec. 2-106.1. Drug treatment.

8 (a) A resident shall not be given unnecessary drugs. An
9 unnecessary drug is any drug used in an excessive dose,
10 including in duplicative therapy; for excessive duration;
11 without adequate monitoring; without adequate indications for
12 its use; or in the presence of adverse consequences that
13 indicate the drugs should be reduced or discontinued. The
14 Department shall adopt, by rule, the standards for unnecessary
15 drugs contained in interpretive guidelines issued by the
16 United States Department of Health and Human Services for the
17 purposes of administering Titles XVIII and XIX of the Social
18 Security Act.

19 (b) Except in the case of an emergency, psychotropic
20 medication shall not be administered without the informed
21 consent of the resident or the resident's surrogate decision
22 maker. "Psychotropic medication" means medication that is used
23 for or listed as used for psychotropic, antidepressant,

1 antimanic, or antianxiety behavior modification or behavior
2 management purposes in the latest editions of the AMA Drug
3 Evaluations or the Physician's Desk Reference. "Emergency" has
4 the same meaning as in Section 1-112 of the Nursing Home Care
5 Act. A facility shall (i) document the alleged emergency in
6 detail, including the facts surrounding the medication's need,
7 and (ii) present this documentation to the resident and the
8 resident's representative. ~~The No later than January 1, 2021,~~
9 ~~the~~ Department shall adopt, by rule, a protocol specifying how
10 informed consent for psychotropic medication may be obtained
11 or refused. The protocol shall require, at a minimum, a
12 discussion between (i) the resident or the resident's
13 surrogate decision maker and (ii) the resident's physician, a
14 registered pharmacist ~~(who is not a dispensing pharmacist for~~
15 ~~the facility where the resident lives),~~ or a licensed nurse,
16 including, but not limited to, a licensed practical nurse,
17 about the possible risks and benefits of a recommended
18 medication and the use of standardized consent forms
19 designated by the Department. The protocol shall include
20 informing the resident, surrogate decision maker, or both of
21 the existence of a copy of: the resident's care plan; the
22 facility policies and procedures adopted in compliance with
23 subsection (b-15) of this Section; and a notification that the
24 most recent of the resident's care plans and the facility's
25 policies are available to the resident or surrogate decision
26 maker upon request. Each form designated ~~developed~~ by the

1 Department (i) shall be written in plain language, (ii) shall
2 be able to be downloaded from the Department's official
3 website or another website designated by the Department, (iii)
4 shall include information specific to the psychotropic
5 medication for which consent is being sought, and (iv) shall
6 be used for every resident for whom psychotropic drugs are
7 prescribed. The Department shall utilize the rules, protocols,
8 and forms developed and implemented under the Specialized
9 Mental Health Rehabilitation Act of 2013 in effect on the
10 effective date of this amendatory Act of the 101st General
11 Assembly, except to the extent that this Act requires a
12 different procedure, and except that the maximum possible
13 period for informed consent shall be until: (1) a change in the
14 prescription occurs, either as to type of psychotropic
15 medication or increase in dosage, unless the physician's order
16 for which informed consent was given provides for an increase
17 in dosage; or (2) a resident's care plan changes. The
18 Department may further amend the rules after January 1, 2021
19 pursuant to existing rulemaking authority. In addition to
20 creating those forms, the Department shall approve the use of
21 any other informed consent forms that meet criteria developed
22 by the Department. At the discretion of the Department,
23 informed consent forms may include side effects that the
24 Department reasonably believes are more common, with a
25 direction that more complete information can be found via a
26 link on the Department's website to third-party websites with

1 more complete information, such as the United States Food and
2 Drug Administration's website. The Department or a facility
3 shall incur no liability for information provided on a consent
4 form so long as the consent form is substantially accurate
5 based upon generally accepted medical principles and if the
6 form includes the website links.

7 Informed consent shall be sought from the resident. For
8 the purposes of this Section, "surrogate decision maker" means
9 an individual representing the resident's interests as
10 permitted by this Section. Informed consent shall be sought by
11 the resident's guardian of the person if one has been named by
12 a court of competent jurisdiction. In the absence of a
13 court-ordered guardian, informed consent shall be sought from
14 a health care agent under the Illinois Power of Attorney Act
15 who has authority to give consent. If neither a court-ordered
16 guardian of the person nor a health care agent under the
17 Illinois Power of Attorney Act is available and the attending
18 physician determines that the resident lacks capacity to make
19 decisions, informed consent shall be sought from the
20 resident's attorney-in-fact designated under the Mental Health
21 Treatment Preference Declaration Act, if applicable, or the
22 resident's representative.

23 In addition to any other penalty prescribed by law, a
24 facility that is found to have violated this subsection, or
25 the federal certification requirement that informed consent be
26 obtained before administering a psychotropic medication, shall

1 thereafter be required to obtain the signatures of 2 licensed
2 health care professionals on every form purporting to give
3 informed consent for the administration of a psychotropic
4 medication, certifying the personal knowledge of each health
5 care professional that the consent was obtained in compliance
6 with the requirements of this subsection.

7 (b-5) A facility must obtain voluntary informed consent,
8 in writing, from a resident or the resident's surrogate
9 decision maker before administering or dispensing a
10 psychotropic medication to that resident.

11 (b-10) No facility shall deny continued residency to a
12 person on the basis of the person's or resident's, or the
13 person's or resident's surrogate decision maker's, refusal of
14 the administration of psychotropic medication, unless the
15 facility can demonstrate that the resident's refusal would
16 place the health and safety of the resident, the facility
17 staff, other residents, or visitors at risk.

18 A facility that alleges that the resident's refusal to
19 consent to the administration of psychotropic medication will
20 place the health and safety of the resident, the facility
21 staff, other residents, or visitors at risk must: (1) document
22 the alleged risk in detail; (2) present this documentation to
23 the resident or the resident's surrogate decision maker, to
24 the Department, and to the Office of the State Long Term Care
25 Ombudsman; and (3) inform the resident or his or her surrogate
26 decision maker of his or her right to appeal to the Department.

1 The documentation of the alleged risk shall include a
2 description of all nonpharmacological or alternative care
3 options attempted and why they were unsuccessful.

4 (b-15) Within 100 days after the effective date of any
5 rules adopted by the Department under subsection (b) of this
6 Section, all facilities shall implement written policies and
7 procedures for compliance with this Section. When the
8 Department conducts its annual survey of a facility, the
9 surveyor may review these written policies and procedures and
10 either:

11 (1) give written notice to the facility that the
12 policies or procedures are sufficient to demonstrate the
13 facility's intent to comply with this Section; or

14 (2) provide written notice to the facility that the
15 proposed policies and procedures are deficient, identify
16 the areas that are deficient, and provide 30 days for the
17 facility to submit amended policies and procedures that
18 demonstrate its intent to comply with this Section.

19 A facility's failure to submit the documentation required
20 under this subsection is sufficient to demonstrate its intent
21 to not comply with this Section and shall be grounds for review
22 by the Department.

23 All facilities must provide training and education on the
24 requirements of this Section to all personnel involved in
25 providing care to residents and train and educate such
26 personnel on the methods and procedures to effectively

1 implement the facility's policies. Training and education
2 provided under this Section must be documented in each
3 personnel file.

4 (b-20) Upon the receipt of a report of any violation of
5 this Section, the Department shall investigate and, upon
6 finding sufficient evidence of a violation of this Section,
7 may proceed with disciplinary action against the licensee of
8 the facility. In any administrative disciplinary action under
9 this subsection, the Department shall have the discretion to
10 determine the gravity of the violation and, taking into
11 account mitigating and aggravating circumstances and facts,
12 may adjust the disciplinary action accordingly.

13 (b-25) A violation of informed consent that, for an
14 individual resident, lasts for 7 days or more under this
15 Section is, at a minimum, a Type "B" violation. A second
16 violation of informed consent within a year from a previous
17 violation in the same facility regardless of the duration of
18 the second violation is, at a minimum, a Type "B" violation.

19 (b-30) Any violation of this Section by a facility may be
20 enforced by an action brought by the Department in the name of
21 the People of Illinois for injunctive relief, civil penalties,
22 or both injunctive relief and civil penalties. The Department
23 may initiate the action upon its own complaint or the
24 complaint of any other interested party.

25 (b-35) Any resident who has been administered a
26 psychotropic medication in violation of this Section may bring

1 an action for injunctive relief, civil damages, and costs and
2 attorney's fees against any facility responsible for the
3 violation.

4 (b-40) An action under this Section must be filed within 2
5 years of either the date of discovery of the violation that
6 gave rise to the claim or the last date of an instance of a
7 noncompliant administration of psychotropic medication to the
8 resident, whichever is later.

9 (b-45) A facility subject to action under this Section
10 shall be liable for damages of up to \$500 for each day after
11 discovery of a violation that the facility violates the
12 requirements of this Section.

13 (b-55) The rights provided for in this Section are
14 cumulative to existing resident rights. No part of this
15 Section shall be interpreted as abridging, abrogating, or
16 otherwise diminishing existing resident rights or causes of
17 action at law or equity.

18 (c) The requirements of this Section are intended to
19 control in a conflict with the requirements of Sections 2-102
20 and 2-107.2 of the Mental Health and Developmental
21 Disabilities Code with respect to the administration of
22 psychotropic medication.

23 (Source: P.A. 101-10, eff. 6-5-19.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.