

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 about the possible risks and benefits of a recommended
17 medication and the use of standardized consent forms
18 designated by the Department. The protocol shall include
19 informing the resident, surrogate decision maker, or both of
20 the existence of a copy of: the resident's care plan; the
21 facility policies and procedures adopted in compliance with
22 subsection (b-15) of this Section; and a notification that the
23 most recent of the resident's care plans and the facility's
24 policies are available to the resident or surrogate decision
25 maker upon request. Each form designated or developed by the
26 Department (i) shall be written in plain language, (ii) shall

1 be able to be downloaded from the Department's official
2 website or another website designated by the Department, (iii)
3 shall include information specific to the psychotropic
4 medication for which consent is being sought, and (iv) shall
5 be used for every resident for whom psychotropic drugs are
6 prescribed. The Department shall utilize the rules, protocols,
7 and forms developed and implemented under the Specialized
8 Mental Health Rehabilitation Act of 2013 in effect on the
9 effective date of this amendatory Act of the 101st General
10 Assembly, except to the extent that this Act requires a
11 different procedure, and except that the maximum possible
12 period for informed consent shall be until: (1) a change in the
13 prescription occurs, either as to type of psychotropic
14 medication or an increase or decrease in dosage, dosage range,
15 or titration schedule of the prescribed medication that was
16 not included in the original informed consent; or (2) a
17 resident's care plan changes. The Department may further amend
18 the rules after January 1, 2021 pursuant to existing
19 rulemaking authority. In addition to creating those forms, the
20 Department shall approve the use of any other informed consent
21 forms that meet criteria developed by the Department. At the
22 discretion of the Department, informed consent forms may
23 include side effects that the Department reasonably believes
24 are more common, with a direction that more complete
25 information can be found via a link on the Department's
26 website to third-party websites with more complete

1 information, such as the United States Food and Drug
2 Administration's website. The Department or a facility shall
3 incur no liability for information provided on a consent form
4 so long as the consent form is substantially accurate based
5 upon generally accepted medical principles and if the form
6 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. When informed
11 consent is not required for a change in dosage, the facility
12 shall note in the resident's file that the resident was
13 informed of the dosage change prior to the administration of
14 the medication or that verbal, written, or electronic notice
15 has been communicated to the resident's surrogate decision
16 maker that a change in dosage has occurred.

17 (b-10) No facility shall deny continued residency to a
18 person on the basis of the person's or resident's, or the
19 person's or resident's surrogate decision maker's, refusal of
20 the administration of psychotropic medication, unless the
21 facility can demonstrate that the resident's refusal would
22 place the health and safety of the resident, the facility
23 staff, other residents, or visitors at risk.

24 A facility that alleges that the resident's refusal to
25 consent to the administration of psychotropic medication will
26 place the health and safety of the resident, the facility

1 staff, other residents, or visitors at risk must: (1) document
2 the alleged risk in detail; (2) present this documentation to
3 the resident or the resident's surrogate decision maker, to
4 the Department, and to the Office of the State Long Term Care
5 Ombudsman; and (3) inform the resident or his or her surrogate
6 decision maker of his or her right to appeal to the Department.
7 The documentation of the alleged risk shall include a
8 description of all nonpharmacological or alternative care
9 options attempted and why they were unsuccessful.

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

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

20 (2) provide written notice to the facility that the
21 proposed policies and procedures are deficient, identify
22 the areas that are deficient, and provide 30 days for the
23 facility to submit amended policies and procedures that
24 demonstrate its intent to comply with this Section.

25 A facility's failure to submit the documentation required
26 under this subsection is sufficient to demonstrate its intent

1 to not comply with this Section and shall be grounds for review
2 by the Department.

3 All facilities must provide training and education on the
4 requirements of this Section to all personnel involved in
5 providing care to residents and train and educate such
6 personnel on the methods and procedures to effectively
7 implement the facility's policies. Training and education
8 provided under this Section must be documented in each
9 personnel file.

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

19 (b-25) A violation of informed consent that, for an
20 individual resident, lasts for 7 days or more under this
21 Section is, at a minimum, a Type "B" violation. A second
22 violation of informed consent within a year from a previous
23 violation in the same facility regardless of the duration of
24 the second violation is, at a minimum, a Type "B" violation.

25 (b-30) Any violation of this Section by a facility may be
26 enforced by an action brought by the Department in the name of

1 the People of Illinois for injunctive relief, civil penalties,
2 or both injunctive relief and civil penalties. The Department
3 may initiate the action upon its own complaint or the
4 complaint of any other interested party.

5 (b-35) Any resident who has been administered a
6 psychotropic medication in violation of this Section may bring
7 an action for injunctive relief, civil damages, and costs and
8 attorney's fees against any facility responsible for the
9 violation.

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

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

19 (b-55) The rights provided for in this Section are
20 cumulative to existing resident rights. No part of this
21 Section shall be interpreted as abridging, abrogating, or
22 otherwise diminishing existing resident rights or causes of
23 action at law or equity.

24 (c) The requirements of this Section are intended to
25 control in a conflict with the requirements of Sections 2-102
26 and 2-107.2 of the Mental Health and Developmental

1 Disabilities Code with respect to the administration of
2 psychotropic medication.

3 (d) In this Section only, "licensed nurse" means an
4 advanced practice registered nurse, a registered nurse, or a
5 licensed practical nurse.

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

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.