HB4585

LRB09816957RPS52035b

98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4585

by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

210 ILCS 45/2-106 from Ch. 111 1/2, par. 4152-106
210 ILCS 45/2-106.1

Amends the Nursing Home Care Act. Provides that a restraint may only be used with the informed consent of the resident, the resident's guardian, or the resident's representative (rather than the resident, the resident's guardian, or other authorized representative). Provides that psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian, or the resident's representative (rather than the resident, the resident's guardian, or other authorized representative). Effective immediately.

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A BILL FOR

AN ACT concerning regulation.

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

Section 5. The Nursing Home Care Act is amended by changing Sections 2-106 and 2-106.1 as follows:

(210 ILCS 45/2-106) (from Ch. 111 1/2, par. 4152-106)

Sec. 2-106. (a) For purposes of this Act, (i) a physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to a resident's body that the resident cannot remove easily and restricts freedom of movement or normal access to one's body. Devices used for positioning, including but not limited to bed rails, gait belts, and cushions, shall not be considered to be restraints for purposes of this Section; (ii) a chemical restraint is any drug used for discipline or convenience and not required to treat medical symptoms. The Department shall by rule, designate certain devices as restraints, including at least all those devices which have been determined to be restraints by the United States Department of Health and Human Services in interpretive guidelines issued for the purposes of administering Titles XVIII and XIX of the Social Security Act.

(b) Neither restraints nor confinements shall be employed for the purpose of punishment or for the convenience of any

facility personnel. No restraints or confinements shall be employed except as ordered by a physician who documents the need for such restraints or confinements in the resident's clinical record.

(c) A restraint may be used only with the informed consent of the resident, the resident's guardian, or the resident's ~~other authorized~~ representative. A restraint may be used only for specific periods, if it is the least restrictive means necessary to attain and maintain the resident's highest practicable physical, mental or psychosocial well-being, including brief periods of time to provide necessary life-saving treatment. A restraint may be used only after consultation with appropriate health professionals, such as occupational or physical therapists, and a trial of less restrictive measures has led to the determination that the use of less restrictive measures would not attain or maintain the resident's highest practicable physical, mental or psychosocial well-being. However, if the resident needs emergency care, restraints may be used for brief periods to permit medical treatment to proceed unless the facility has notice that the resident has previously made a valid refusal of the treatment in question.

(d) A restraint may be applied only by a person trained in the application of the particular type of restraint.

(e) Whenever a period of use of a restraint is initiated, the resident shall be advised of his or her right to have a

person or organization of his or her choosing, including the Guardianship and Advocacy Commission, notified of the use of the restraint. A recipient who is under guardianship may request that a person or organization of his or her choosing be notified of the restraint, whether or not the guardian approves the notice. If the resident so chooses, the facility shall make the notification within 24 hours, including any information about the period of time that the restraint is to be used. Whenever the Guardianship and Advocacy Commission is notified that a resident has been restrained, it shall contact the resident to determine the circumstances of the restraint and whether further action is warranted.

(f) Whenever a restraint is used on a resident whose primary mode of communication is sign language, the resident shall be permitted to have his or her hands free from restraint for brief periods each hour, except when this freedom may result in physical harm to the resident or others.

(g) The requirements of this Section are intended to control in any conflict with the requirements of Sections 1-126 and 2-108 of the Mental Health and Developmental Disabilities Code.

(Source: P.A. 97-135, eff. 7-14-11.)

(210 ILCS 45/2-106.1)

Sec. 2-106.1. Drug treatment.

(a) A resident shall not be given unnecessary drugs. An

unnecessary drug is any drug used in an excessive dose, including in duplicative therapy; for excessive duration; without adequate monitoring; without adequate indications for its use; or in the presence of adverse consequences that indicate the drugs should be reduced or discontinued. The Department shall adopt, by rule, the standards for unnecessary drugs contained in interpretive guidelines issued by the United States Department of Health and Human Services for the purposes of administering Titles XVIII and XIX of the Social Security Act.

(b) Psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian, or the resident's ~~other authorized~~ representative. "Psychotropic medication" means medication that is used for or listed as used for antipsychotic, antidepressant, antimanic, or antianxiety behavior modification or behavior management purposes in the latest editions of the AMA Drug Evaluations or the Physician's Desk Reference. The Department shall adopt, by rule, a protocol specifying how informed consent for psychotropic medication may be obtained or refused. The protocol shall require, at a minimum, a discussion between (i) the resident or the resident's authorized representative and (ii) the resident's physician, a registered pharmacist (who is not a dispensing pharmacist for the facility where the resident lives), 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. Each form developed by the Department (i) shall be written in plain language, (ii) shall be able to be downloaded from the Department's official website, (iii) shall include information specific to the psychotropic medication for which consent is being sought, and (iv) shall be used for every resident for whom psychotropic drugs are prescribed. In addition to creating those forms, the Department shall approve the use of any other informed consent forms that meet criteria developed by the Department.

In addition to any other penalty prescribed by law, a facility that is found to have violated this subsection, or the federal certification requirement that informed consent be obtained before administering a psychotropic medication, shall thereafter be required to obtain the signatures of 2 licensed health care professionals on every form purporting to give informed consent for the administration of a psychotropic medication, certifying the personal knowledge of each health care professional that the consent was obtained in compliance with the requirements of this subsection.

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

(Source: P.A. 95-331, eff. 8-21-07; 96-1372, eff. 7-29-10.)

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