

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB526)

Received: **02/15/2010**

Received By: **tdodge**

Wanted: **Soon**

Companion to LRB:

For: **Dan Meyer (608) 266-7141**

By/Representing: **Laura Rose - LC**

May Contact: **Laura Rose - Leg. Council**

Drafter: **tdodge**

Subject: **Health - long-term care**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Meyer@legis.wisconsin.gov**

Carbon copy (CC:) to: **laura.rose@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes regarding powers of health care agent and right to refuse psychotropic medication.

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 02/17/2010	jdyer 02/18/2010		_____			
/1			rschluet 02/18/2010	_____	cduerst 02/18/2010	cduerst 02/18/2010	
/2	tdodge 02/26/2010	jdyer 02/26/2010	jfrantze 02/26/2010	_____	sbasford 02/26/2010	sbasford 02/26/2010	
/3	tdodge 03/29/2010	nmatzke 03/29/2010	phenry 03/29/2010	_____	mbarman 03/29/2010	mbarman 03/29/2010	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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/2	tdodge 02/26/2010	jdyer 02/26/2010	jfrantze 02/26/2010	_____	sbasford 02/26/2010	sbasford 02/26/2010	

1/3 nwn
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/1		<i>1/2</i> <i>2/26</i> <i>jd</i>	rschluet 02/18/2010	_____	cdurst 02/18/2010	cdurst 02/18/2010	

FE Sent For:

2/24
[Signature]
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/?

tdodge

1 2
18 jld
2/17/10

~~Proofed~~

~~Submitted~~
PH
2/18

FE Sent For:

<END>

Dodge, Tamara

From: Rose, Laura
Sent: Monday, February 15, 2010 2:57 PM
To: Dodge, Tamara
Cc: Western, Jennifer
Subject: Amendment to AB 526

Hi, Tami,

I am requesting an amendment to AB 526 on behalf of Rep. Meyer.

1. On Page 4, line 3, insert a more specific cross-reference to ss. 54.25(2)(d)2.ab. and ac. These provisions specifically describe the guardian's power to give informed consent to both voluntary and involuntary receipt of psychotropic medications.
2. On Page 4, after line 3, insert a new paragraph that provides that written informed consent by a health care agent must be consistent with the powers specified for the agent in the power of attorney for health care document.
3. Create a new subsection (5) on page 5 of the bill that cross-references the right of a resident to refuse psychotropic medication under s. 51.61(1)(g), Stats.

If you would like to discuss this request please feel free to give me a call or send an email. Jenny and I would be happy to meet with you if necessary. I believe the Assembly Aging Committee plans to take executive action on this bill on Tuesday, February 23rd.

Thank you very much!

Laura

Laura D. Rose, Deputy Director
Wisconsin Legislative Council
One East Main Street, Suite 401
PO Box 2536
Madison, WI 53701-2536
tel: 608.266.9791
fax: 608.266.3830
laura.rose@legis.wisconsin.gov

2/16/10
TTC w/ Laura Rose
3. Residents always have right to refuse. ~~Don't~~ Don't need to expand to all.
This section does not abridge rights under 51.61(1)(g).

Dodge, Tamara

From: Rose, Laura
Sent: Wednesday, February 17, 2010 3:39 PM
To: Dodge, Tamara
Cc: Western, Jennifer
Subject: RE: AB 526

Hi Tami

Please add a provision that the person administering the consent form must orally inform the person of the 15-month duration limit in s. 50.08(3)(b)5; and that informed consent may be revoked at any time.

that's it!

Thanks,

Laura

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

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fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Dodge, Tamara
Sent: Wednesday, February 17, 2010 11:47 AM
To: Rose, Laura
Subject: FW: AB 526

Laura,
I have completed drafting amendment and have added the language I indicated below. Is this ready to go then?
Tami

2/17/2010

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Dodge, Tamara
Sent: Tuesday, February 16, 2010 11:47 AM
To: Rose, Laura
Subject: RE: AB 526

Laura,

It will need to be specific. I propose adding the underlined language: "A physician, an advanced practice nurse prescriber certified under s. 441.16 (2), or a physician assistant licensed under ch. 448, who prescribes a psychotropic medication..."

If the author is okay with this, I will add it to the amendment.
Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Rose, Laura
Sent: Tuesday, February 16, 2010 11:27 AM
To: Western, Jennifer; Dodge, Tamara
Subject: RE: AB 526

Tami, they want to add the prescriber language to page 2 -- should it be "prescriber" or a more specific "physician or advanced practice nurse prescriber"?

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

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2/17/2010

fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Western, Jennifer
Sent: Tuesday, February 16, 2010 11:23 AM
To: Rose, Laura
Subject: RE: AB 526

Sorry, Laura

So, should it read:

"a prescriber who prescribes..." or
"a physician or advanced practice nurse prescriber who prescribes..."

From: Rose, Laura
Sent: Tuesday, February 16, 2010 11:13 AM
To: Western, Jennifer
Subject: FW: AB 526

Jenny, please see Tami's comment on the prescriber issue. She wants the go-ahead from your office to draft it.

Laura

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

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Madison, WI 53701-2536

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fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Dodge, Tamara
Sent: Tuesday, February 16, 2010 11:11 AM
To: Rose, Laura

2/17/2010

Subject: RE: AB 526

Laura,

Other prescribers probably should be added so that whoever prescribes the medication is responsible for informing the nursing home of the black box warning. My instinct is that most nursing home residents have a physician to oversee their care at least to some extent, and I think that is why it is only drafted with physicians. I think that the other health care professionals would only need to be added in sub. (2) because I think the other determination (on page 5 line 3) should probably be made by a physician.

If the author agrees, let me know who he would like added to sub. (2)
Tami

Tamara J. Dodge

Attorney

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

(608) 267 - 7380

tamara.dodge@legis.wisconsin.gov

From: Rose, Laura
Sent: Tuesday, February 16, 2010 10:53 AM
To: Dodge, Tamara
Cc: Western, Jennifer
Subject: AB 526

Hi Tami,

Another question on AB 526. Should other types of prescribers, such as advanced practice nurse prescribers, be covered under the requirement on page 2, l. 10-12?

thanks

Laura

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

PO Box 2536

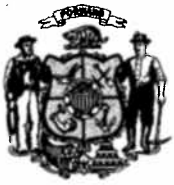
Madison, WI 53701-2536

tel: 608.266.9791

fax: 608.266.3830

Laura.rose@legis.wisconsin.gov

2/17/2010



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1558(?)

TJD:.....

In: 2/17/10 Due 2/18/10
if possible

JLD
RMNR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY AMENDMENT,
TO 2009 ASSEMBLY BILL 526

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 2, line 10: after "physician" insert ", an advanced practice nurse
- 3 prescriber certified under s. 441.16 (2), or a physician assistant licensed under ch.
- 4 448,".
- 5 **2.** Page 4, line 3: after "54.25" insert "(2) (d) 2. ab. and ac".
- 6 **3.** Page 4, line 3: after that line insert:
- 7 "(cm) If a health care agent is acting on behalf of a resident, the health care
- 8 agent shall give informed consent in accordance with the desires of the resident as
- 9 expressed in the power of attorney for health care instrument under ch. 155 or, if the
- 10 resident's desires are unknown, in accordance with s. 155.20 (5)."
- 11 **4.** Page 4, line 11: after that line insert:

Dodge, Tamara

From: Western, Jennifer
Sent: Friday, February 26, 2010 9:53 AM
To: Dodge, Tamara; Rose, Laura
Subject: RE: Language

Hi Tami and Laura:

Yes this looks good.

In anticipation of the question of whether this weakens or eliminates any current practices nursing homes would have to take in these situations, I want to ask:

The right of a patient in a nursing home to 50.09 (1) (n) "Be fully informed of the resident's treatment and care and participate in the planning of the resident's treatment and care." still apply, correct? (There are also federal laws similar to this.)

That is to say, just because we aren't requiring written informed consent in these situations when the patient arrives from a different location already on medication, the above requirement still applies. So, if a patient was just arriving at the nursing home from another location (already on a prescription for these medications) then the facility would still have to have the above discussion with the patient or guardian.

Can you confirm that for me?

Thanks,

Jennifer

From: Dodge, Tamara
Sent: Friday, February 26, 2010 9:09 AM
To: Western, Jennifer
Cc: Rose, Laura
Subject: RE: Language

So, to clarify, the amendment will look exactly as it does in the /1 version, including the addition to page 2, line 10, except that you want to add the additional provision.

For the additional paragraph, I am concerned that "residing" is vague as it suggests a "home base" and not a location of the person. I suggest something like this: "The nursing home is not required to obtain written informed consent before administering a psychotropic medication to a resident under sub. (3) if the prescription for the psychotropic medication was written or reauthorized while the resident was off of the nursing home's premises."

Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
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(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

2/26/2010

From: Western, Jennifer
Sent: Thursday, February 25, 2010 4:46 PM
To: Rose, Laura
Cc: Dodge, Tamara
Subject: RE: Language

I am also thinking we should keep the language on page 2, 10-12 (as amended) too, just so it looks *exactly* as Rep. Meyer conveyed. That requirement will apply even if the physician prescribes the drug to the resident who is living the nursing home.

You just never know what will bother people.

Jenny

From: Rose, Laura
Sent: Thursday, February 25, 2010 4:42 PM
To: Western, Jennifer
Subject: RE: Language

I think that is fine. I'm sorry I misunderstood! I think I went with the wrong alternative.

Laura

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

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fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Western, Jennifer
Sent: Thursday, February 25, 2010 4:36 PM
To: Rose, Laura
Cc: Dodge, Tamara
Subject: Language

Hi Laura,

As I read the language, it seems to take the physician out of it totally. But nursing homes will still contend that they

2/26/2010

have the situation in which a physician prescribes the drug at the hospital, then sends the person back to the nursing home — and then they have to get the informed consent. They will still say they have the predicament of having to get this consent after the person is already on the drug from the hospital.

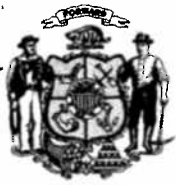
The solution that Rep. Meyer wants to pursue to to have the requirement to get written informed consent **only apply to situations where a prescription is initiated or reauthorized when the resident is on the premises of the nursing home. (ie: not at the hospital or other locations.)**

Would it be possible to have a subsection after line 6 on page 2 that says something like:

"The requirements under subsection 3 (to obtain written consent) only apply if the resident with degenerative brain disorder was prescribed a psychotropic medication that has a boxed warning under 21 CFR 201.57 or whose prescription for a psychotropic medication that has a boxed warning under 21 CFR 201.57 was reauthorized while the resident was residing at the nursing home."

This would get at those situations.

Jennifer
Office of Dan Meyer
State Representative
34th Assembly District



In: 2/26/10 son

RMR

**ASSEMBLY AMENDMENT ,
TO 2009 ASSEMBLY BILL 526**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 10: after "physician" insert ", an advanced practice nurse
3 prescriber certified under s. 441.16 (2), or a physician assistant licensed under ch.
4 448,".

Ins
1-5

5 **2.** Page 4, line 3: after "54.25" insert "(2) (d) 2. ab. and ac".

6 **3.** Page 4, line 3: after that line insert:

7 "(cm) If a health care agent is acting on behalf of a resident, the health care
8 agent shall give informed consent in accordance with the desires of the resident as
9 expressed in the power of attorney for health care instrument under ch. 155 or, if the
10 resident's desires are unknown, in accordance with s. 155.20 (5).".

11 **4.** Page 4, line 11: after that line insert:

1 “(fm) At the time a resident, or a person acting on behalf of the resident, signs
2 the informed consent form, the nursing home shall orally inform the resident, or the
3 person acting on behalf of the resident, of all of the following:

4 1. That the resident, or the person on behalf of the resident, may withdraw
5 consent, in writing, at any time.

6 2. That, unless consent is withdrawn sooner, the informed consent is valid for
7 the period specified on the informed consent form or for 15 months from the date on
8 which the resident, or the person acting on behalf of the resident, signs the form,
9 whichever is shorter.”

10 **5.** Page 5, line 17: after that line insert:

11 “(5) This section does not abridge any rights that a resident has under s. 51.61
12 (1) (g).”

13

(END)

INS ✓
2-10 →

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1558/2ins
TJD:.....

1 INSERT 1-5

2 1. Page 3, line 1: after "sub." insert "(3m) ^{or} and".

3

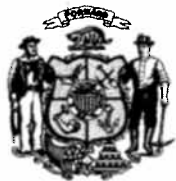
4 INSERT 2-10

5 2. Page 4, line 17: after that line insert:

6 "(3m) ^A The nursing home is not required to obtain written informed consent
7 before administering a psychotropic medication to a resident under sub. (3) if the
8 prescription for the psychotropic medication is written or reauthorized while the
9 resident is off of the nursing home's premises."

10

(END)
(end ins 2-10)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1558/2
TJD:jld:jf

3

In: 3/29/10

Due tomorrow (3/30)
by 10 am

RMR

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TO 2009 ASSEMBLY BILL 526**

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3 prescriber certified under s. 441.16 (2), or a physician assistant licensed under ch.
4 448,”.

5 **2.** Page 3, line 1: after “sub.” insert “(3m) or”.

6 **3.** Page 4, line 3: after “54.25” insert “(2) (d) 2. ab. and ac”.

7 **4.** Page 4, line 3: after that line insert:

8 “(cm) If a health care agent is acting on behalf of a resident, the health care
9 agent shall give informed consent in accordance with the desires of the resident as
10 expressed in the power of attorney for health care instrument under ch. 155 or, if the
11 resident’s desires are unknown, in accordance with s. 155.20 (5).”.

12 **5.** Page 4, line 11: after that line insert:

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1558/3ins
TJD:.....

1 INSERT 2-18

2 **SECTION 2m. Effective date.**

3 (1) This act takes effect on the first day of the 7th month beginning after
4 publication.”.

(End insert 2-18)