State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–4459/en
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2009 SENATE BILL 609

AN ACT ***to create*** 50.08 of the statutes; **relating to:** requiring informed consent before administration of psychotropic medication to a nursing home resident who has degenerative brain disorder.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.08 of the statutes is created to read:

50.08 Informed consent for psychotropic medications. (1) In this section:

(a) "Degenerative brain disorder" has the meaning given in s. 55.01 (1v).

(b) "Incapacitated" has the meaning given in s. 50.06 (1).

(c) "Person acting on behalf of the resident" means a guardian of the person, as defined in s. 54.01 (12), or a health care agent, as defined in s. 155.01 (4).

(d) "Psychotropic medication" means an antipsychotic, an antidepressant, lithium carbonate, or a tranquilizer.

(2) 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 to a nursing home resident who has degenerative brain disorder shall notify the nursing home if the prescribed medication has a boxed warning under 21 CFR 201.57.

(3) (a) Except as provided in sub. (3m) or (4), before administering a psychotropic medication that has a boxed warning under 21 CFR 201.57 to a resident who has degenerative brain disorder, a nursing home shall obtain written informed consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, on a form provided by the department under par. (b) or on a form that contains the same information as the form under par. (b).

(b) The department shall make available on its Web site or by mail multiple, drug−specific forms for obtaining informed consent under par. (a) for the administration of psychotropic medication that contain all of the following:

1. A space for a description of the benefits of the proposed treatment and the way the medication will be administered.

2. A description, using the most recently issued information from the federal food and drug administration, of the side effects or risks of side effects of the medication and any warnings about the medication.

3. A space for a description of any alternative treatment modes or medications.

4. A space for a description of the probable consequences of not receiving the medication.

5. A space for indicating the period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given.

6. A statement that the resident or a person acting on behalf of the resident may withdraw informed consent, in writing, at any time.

7. A declaration that the resident or the person acting on behalf of the resident has been provided with specific, complete, and accurate information, and time to study the information or to seek additional information concerning the medication.

8. A space for the signature of the resident or the person acting on behalf of the resident.

(c) Written informed consent provided by a guardian is subject to s. 54.25 (2) (d) 2. ab. and ac.

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

(d) Upon request, the nursing home shall give the resident, or a person acting on behalf of the resident, a copy of the completed informed consent form.

(e) Unless consent is withdrawn sooner, written informed consent obtained under this subsection is valid for the period specified on the informed consent form but not for longer than 15 months from the date the resident, or a person acting on behalf of the resident, signed the form.

(f) A resident, or a person acting on behalf of the resident, may withdraw consent, in writing, at any time.

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

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

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

(g) No person may retaliate against or threaten to retaliate against a resident or person acting on behalf of a resident for refusing to provide or withdrawing consent.

(h) The nursing home shall use the most current written informed consent forms available from the department or shall update its own forms with the most current information about the medications available from the department.

(3m) A 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 is written or reauthorized while the resident is off of the nursing home's premises.

(4) (a) A nursing home is not required to obtain written informed consent before administering a psychotropic medication to a resident under sub. (3) if all of the following apply:

1. The resident is not the subject of a court order to administer psychotropic medications under s. 55.14.

2. There is an emergency in which a resident is at significant risk of physical or emotional harm or the resident puts others at significant risk of physical harm and in which time and distance preclude obtaining written informed consent before administering psychotropic medication.

3. A physician has determined that the resident or others will be harmed if the psychotropic medication is not administered before written informed consent is obtained.

(b) If par. (a) applies, the nursing home shall obtain oral consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, before administering the psychotropic medication, except as provided in par. (c). The oral consent shall be entered in the resident's medical record. The oral consent shall be valid for 10 days, after which time the nursing home may not continue to administer the psychotropic medication unless it has obtained written informed consent under sub. (3).

(c) If par. (a) applies, the resident is incapacitated, and the nursing home has made a good faith effort to obtain oral consent, under par. (b), of a person acting on behalf of the resident but has been unable to contact such a person, the nursing home may administer the psychotropic medication to the resident for up to 24 hours before obtaining consent under par. (a) or sub. (3).

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

SECTION 2m. Effective date.

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

(END)