



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 526	Assembly Amendment 1
<i>Memo published: April 15, 2010</i>	<i>Contact: Laura Rose, Deputy Director (266-9791)</i>

2009 Assembly Bill 526

2009 Assembly Bill 526 does the following:

- Requires a **physician** who prescribes a psychotropic medication to a nursing home resident who has a degenerative brain disorder to notify the nursing home if the prescribed medication has a boxed warning under 21 C.F.R. s. 201.57 (hereafter, a “black box warning”).
- Requires a **nursing home** to obtain written informed consent from the nursing home resident, or the person acting on behalf of the resident if the resident is incapacitated, before administering a psychotropic medication that has a black box warning. The consent form must be provided by the Department of Health Services (DHS), or must be a form that contains the same information as the forms made available by DHS.
- Requires **DHS** to make available on its website or by mail, multiple drug-specific forms for obtaining the required informed consent. The form must contain several specific items of information.
- Provides that written informed consent provided by a guardian is subject to s. 54.25, Stats. That statute provides under what circumstances a guardian is authorized to consent to medication and treatment on behalf of the ward.
- Requires the nursing home to give the resident, or person acting on the resident’s behalf, a copy of the completed consent form.
- Provides that, unless withdrawn sooner, the written informed consent is valid for the period specified on the consent form, but for not longer than 15 months from the date the form was signed.

- Provides that a resident or person acting on the resident's behalf may withdraw consent in writing, at any time.
- Prohibits retaliation or threats to retaliate against a resident, or person acting on the resident's behalf, for refusing to provide consent, or for withdrawing consent.
- Requires the nursing home to use the most current written informed consent forms available from DHS, or to update its own forms with the most current information about the medications available from DHS.

A nursing home is not required to obtain written informed consent prior to administering a psychotropic medication to a resident in certain specific cases of emergency, where time and distance preclude obtaining written informed consent from the person acting on behalf of the resident. In this case, the resident must not be subject to a court order to administer psychotropic medications. In addition, there must be a determination by the physician that the resident or others will be harmed if the medication is not administered before the written informed consent is attained. In these cases, the nursing home must obtain oral consent from the resident or person acting on behalf of the resident. Documentation of this consent must be entered into the resident's medical record and shall be valid for 10 days. In these situations, if the person acting on behalf of the resident cannot be reached for oral consent, and the resident is incapacitated, the nursing home may administer the psychotropic medication to the resident for up to 24 hours before obtaining the oral consent, or the written informed consent.

Assembly Amendment 1

Assembly Amendment 1 does the following:

- Subjects advanced practice nurse prescribers and physician assistants with prescriptive authority to the requirements applicable to physicians under the bill.
- Makes the cross-references in ch. 54, Stats., more specific to the procedures in that section that apply to procedures for informed consent for administration of psychotropic medication.
- Specifies that if a health care agent is acting on behalf of a resident, the informed consent must be given within the authority expressed in the power of attorney for health care instrument, or in accordance with the requirements in s. 155.20 (5), Stats.
- Requires the nursing home to orally inform the resident or the person acting on the resident's behalf to orally inform the resident or person that informed consent may be withdrawn in writing at any time; and that unless the consent is withdrawn sooner, it is valid for the period specified on the form or for 15 months from the date the resident or person signs the form, whichever is shorter.
- Provides that a nursing home is not required to obtain written informed consent before administering a psychotropic medication with a boxed warning to a nursing home resident with degenerative brain disorder if the prescription is written or reauthorized while the resident is off the nursing home's premises.

- Provides that this newly created requirement in the bill does not abridge any rights the resident has under s. 51.61 (1) (g), Stats., relating to patients' rights to refuse medication or treatment.
- Provides a delayed effective date of six months after the Act is published.

Legislative History

On April 13, 2010, the Assembly adopted Assembly Amendment 1 on a voice vote, and passed the bill, as amended, on a voice vote.

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