



## 2015 ASSEMBLY BILL 791

January 22, 2016 - Introduced by Representatives ROHRKASTE, HESSELBEIN, BERNIER, NOVAK, KATZMA, TITTL, MACCO, SKOWRONSKI, KNODL, MILROY, PETRYK, SWEARINGEN, KLEEFISCH, QUINN, KITCHENS, KAHL, A. OTT, RIPP, ZEPNICK, SPIROS, SUBECK, MURPHY, E. BROOKS, SARGENT, KULP, BALLWEG and NYGREN, cosponsored by Senators OLSEN and CARPENTER. Referred to Committee on Mental Health Reform.

1     **AN ACT** *to renumber* 50.08 (3) (h); *to renumber and amend* 50.08 (3m); *to*  
2           *amend* 50.08 (2), 50.08 (3) (a), 50.08 (3) (c), 50.08 (3) (cm), 50.08 (3) (d), 50.08  
3           (3) (e), 50.08 (3) (f), 50.08 (3) (fm) (intro.), 50.08 (3) (fm) 1., 50.08 (3) (fm) 2., 50.08  
4           (3) (g), 50.08 (4) (a) (intro.), 50.08 (4) (a) 2., 50.08 (4) (a) 3., 50.08 (4) (b) and 50.08  
5           (4) (c); and *to create* 50.08 (3) (bg), 50.08 (3) (bh), 50.08 (3) (h) 2. and 50.08 (3m)  
6           (b) of the statutes; **relating to:** informed consent for psychotropic medications  
7           in nursing homes and community-based residential facilities.

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### ***Analysis by the Legislative Reference Bureau***

This bill requires a community-based residential facility to obtain a signed acknowledgment form for administration of psychotropic medications in a similar manner and for the same individuals as a nursing home is required to obtain informed consent for administration of psychotropic medications under current law. The bill also creates requirements for obtaining a signed acknowledgment form, for residents who are prescribed medications while off the premises of a community-based residential facility.

Current law prescribes the situations and procedures under which a guardian may consent to the voluntary or involuntary administration of psychotropic medications to his or her ward. Current law also requires that a nursing home obtain written informed consent before administering a psychotropic medication that

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contains a boxed warning to any resident who has degenerative brain disorder. A psychotropic medication is an antipsychotic, an antidepressant, lithium carbonate, or a tranquilizer. A boxed warning is a warning, described in federal regulations, the text of which is contained in a black outlined box on the drug's label and in the full prescribing information. Either the resident, or, if the resident is incapacitated, a person acting on behalf of the resident, may provide written informed consent. A nursing home is not required under current law to obtain written informed consent if there is an emergency in which the resident, who is not under a court order for administration of psychotropic medication, is at significant risk of physical or emotional harm or puts others at significant risk of physical harm; if time and distance preclude obtaining written informed consent; and if a physician has determined that the resident or others will be harmed if treatment is not initiated. In such an emergency situation, the nursing home must obtain oral consent and must obtain written consent within ten days. If the nursing home is unable to contact a person acting on behalf of an incapacitated resident to obtain oral consent but has made a good faith effort to do so, the nursing home may administer the psychotropic medication to the resident for up to 24 hours before it must obtain oral consent from the resident or a person acting on behalf of the resident. The bill imposes those same requirements on community-based residential facilities, except instead of written informed consent the bill requires a signed acknowledgment form from a resident of a community-based residential facility. The bill requires that the acknowledgment form acknowledges receipt of an informational form indicating that the resident has been prescribed a medication that has a boxed warning and information from the federal Food and Drug Administration for the specific psychotropic medication the resident has been prescribed. The acknowledgment form also notifies the resident, or person acting on behalf of the resident, that if he or she seeks more information that he or she should contact the prescriber of the medication. The community-based residential facility is required to include contact information for the prescriber on the acknowledgment form.

Under current law, a nursing home is not required to obtain written informed consent before administering a psychotropic medication to a resident if the prescription for the psychotropic medication is written or reauthorized while the resident is off of the nursing home's premises. Under the bill, if the prescription for the psychotropic medication is written or reauthorized while a resident of a community-based residential facility is off of the premises of the community-based residential facility and if the community-based residential facility has not previously obtained a signed acknowledgment form for administration of that psychotropic medication to that resident, the community-based residential facility must obtain written informed consent or a signed acknowledgment form within 72 hours after first administering that psychotropic medication to that resident before continuing to administer that psychotropic medication to that resident. The bill maintains current law for nursing homes when a prescription for a psychotropic medication for a nursing home resident is written or reauthorized while the resident is off of the nursing home's premises.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 50.08 (2) of the statutes is amended to read:

2           50.08 (2) A physician, an advanced practice nurse prescriber certified under  
3 s. 441.16 (2), or a physician assistant licensed under ch. 448, who prescribes a  
4 psychotropic medication to a nursing home or community-based residential facility  
5 resident who has degenerative brain disorder shall notify the nursing home or  
6 community-based residential facility if the prescribed medication has a boxed  
7 warning under 21 CFR 201.57.

8           **SECTION 2.** 50.08 (3) (a) of the statutes is amended to read:

9           50.08 (3) (a) Except as provided in sub. (3m) or (4), before administering a  
10 psychotropic medication that has a boxed warning under 21 CFR 201.57 to a resident  
11 of a nursing home who has degenerative brain disorder, a nursing home shall obtain  
12 written informed consent from the resident or, if the resident is incapacitated, a  
13 person acting on behalf of the resident, on a form provided by the department under  
14 par. (b) or on a form that contains the same information as the form under par. (b).

15           **SECTION 3.** 50.08 (3) (bg) of the statutes is created to read:

16           50.08 (3) (bg) Except as provided in sub. (3m) or (4), before administering a  
17 psychotropic medication that has a boxed warning under 21 CFR 201.57 to a resident  
18 of a community-based residential facility who has a degenerative brain disorder, a  
19 community-based residential facility shall obtain a signed acknowledgment form  
20 described in par. (bh) from the resident or, if the resident is incapacitated, a person  
21 acting on behalf of the resident.

**ASSEMBLY BILL 791****SECTION 4**

1           **SECTION 4.** 50.08 (3) (bh) of the statutes is created to read:

2           50.08 (3) (bh) 1. The department shall make available on its Internet site or  
3 by mail acknowledgment forms for obtaining a signature acknowledging receipt of  
4 all of the following:

5           a. An informational form, created by the department, indicating that the  
6 resident has been prescribed a medication that has a boxed warning under 21 CFR  
7 201.57.

8           b. Information created by the federal food and drug administration for the  
9 specific psychotropic medication the resident has been prescribed. The  
10 community-based residential facility shall obtain the information sheet from the  
11 federal food and drug administration or obtain information from the federal food and  
12 drug administration's Internet site.

13           2. The acknowledgment form under this paragraph shall contain a notification  
14 that if the resident, or person acting on behalf of the resident, if applicable, seeks  
15 more information the resident or person acting on behalf of the resident should  
16 contact the individual who prescribed the medication. The community-based  
17 residential facility shall indicate on the acknowledgment form contact information  
18 for the prescriber of the medication.

19           **SECTION 5.** 50.08 (3) (c) of the statutes is amended to read:

20           50.08 (3) (c) Written informed consent or a signed acknowledgment form  
21 provided by a guardian is subject to s. 54.25 (2) (d) 2. ab. and ac.

22           **SECTION 6.** 50.08 (3) (cm) of the statutes is amended to read:

23           50.08 (3) (cm) If a health care agent is acting on behalf of a resident, the health  
24 care agent shall give informed consent or sign an acknowledgment form in  
25 accordance with the desires of the resident as expressed in the power of attorney for

**ASSEMBLY BILL 791****SECTION 6**

1 health care instrument under ch. 155 or, if the resident's desires are unknown, in  
2 accordance with s. 155.20 (5).

3 **SECTION 7.** 50.08 (3) (d) of the statutes is amended to read:

4 50.08 (3) (d) Upon request, the nursing home or community-based residential  
5 facility shall give the resident, or a person acting on behalf of the resident, a copy of  
6 the completed informed consent form described under par. (a) or acknowledgment  
7 form described under par. (bg).

8 **SECTION 8.** 50.08 (3) (e) of the statutes is amended to read:

9 50.08 (3) (e) Unless consent or acknowledgment is withdrawn sooner, written  
10 informed consent or a signed acknowledgment obtained under this subsection is  
11 valid for the period specified on the informed consent form or acknowledgment form  
12 but not for longer than 15 months from the date the resident, or a person acting on  
13 behalf of the resident, signed the form.

14 **SECTION 9.** 50.08 (3) (f) of the statutes is amended to read:

15 50.08 (3) (f) A resident, or a person acting on behalf of the resident, may  
16 withdraw consent or acknowledgment, in writing, at any time.

17 **SECTION 10.** 50.08 (3) (fm) (intro.) of the statutes is amended to read:

18 50.08 (3) (fm) (intro.) At the time a resident, or a person acting on behalf of the  
19 resident, signs the informed consent form or acknowledgment form, the nursing  
20 home or community-based residential facility shall orally inform the resident, or the  
21 person acting on behalf of the resident, of all of the following:

22 **SECTION 11.** 50.08 (3) (fm) 1. of the statutes is amended to read:

23 50.08 (3) (fm) 1. That the resident, or the person on behalf of the resident, may  
24 withdraw consent or acknowledgment, in writing, at any time.

25 **SECTION 12.** 50.08 (3) (fm) 2. of the statutes is amended to read:

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1           50.08 (3) (fm) 2. That, unless consent or acknowledgment is withdrawn sooner,  
2 the informed consent or acknowledgment is valid for the period specified on the  
3 informed consent form or acknowledgment form or for 15 months from the date on  
4 which the resident, or the person acting on behalf of the resident, signs the form,  
5 whichever is shorter.

6           **SECTION 13.** 50.08 (3) (g) of the statutes is amended to read:

7           50.08 (3) (g) No person may retaliate against or threaten to retaliate against  
8 a resident or person acting on behalf of a resident for refusing to provide or  
9 withdrawing consent or acknowledgment.

10          **SECTION 14.** 50.08 (3) (h) of the statutes is renumbered 50.08 (3) (h) 1.

11          **SECTION 15.** 50.08 (3) (h) 2. of the statutes is created to read:

12          50.08 (3) (h) 2. The community-based residential facility shall use the most  
13 current information available from the federal food and drug administration under  
14 par. (bh) 1. b.

15          **SECTION 16.** 50.08 (3m) of the statutes is renumbered 50.08 (3m) (a) and  
16 amended to read:

17          50.08 (3m) (a) ~~—A—~~ Except as provided in par. (b), a nursing home or  
18 community-based residential facility is not required to obtain written informed  
19 consent or a signed acknowledgment form before administering a psychotropic  
20 medication to a resident under sub. (3) if the prescription for the psychotropic  
21 medication is written or reauthorized while the resident is off of the ~~nursing home's~~  
22 premises of the nursing home or community-based residential facility.

23          **SECTION 17.** 50.08 (3m) (b) of the statutes is created to read:

24          50.08 (3m) (b) If the prescription for the psychotropic medication is written or  
25 reauthorized while a resident of a community-based residential facility is off of the

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1 premises of the community-based residential facility and if the community-based  
2 residential facility has not previously obtained a signed acknowledgment form for  
3 administration of that psychotropic medication to that resident, the  
4 community-based residential facility shall obtain a signed acknowledgment form  
5 under sub. (3) within 72 hours after first administering that psychotropic medication  
6 to that resident before continuing to administer that psychotropic medication to that  
7 resident.

8 **SECTION 18.** 50.08 (4) (a) (intro.) of the statutes is amended to read:

9 50.08 (4) (a) (intro.) A nursing home or community-based residential facility  
10 is not required to obtain written informed consent or a signed acknowledgment form  
11 before administering a psychotropic medication to a resident under sub. (3) if all of  
12 the following apply:

13 **SECTION 19.** 50.08 (4) (a) 2. of the statutes is amended to read:

14 50.08 (4) (a) 2. There is an emergency in which a resident is at significant risk  
15 of physical or emotional harm or the resident puts others at significant risk of  
16 physical harm and in which time and distance preclude obtaining written informed  
17 consent or a signed acknowledgment before administering psychotropic medication.

18 **SECTION 20.** 50.08 (4) (a) 3. of the statutes is amended to read:

19 50.08 (4) (a) 3. A physician has determined that the resident or others will be  
20 harmed if the psychotropic medication is not administered before written informed  
21 consent or a signed acknowledgment form is obtained.

22 **SECTION 21.** 50.08 (4) (b) of the statutes is amended to read:

23 50.08 (4) (b) If par. (a) applies, the nursing home or community-based  
24 residential facility shall obtain oral consent or acknowledgment from the resident or,  
25 if the resident is incapacitated, a person acting on behalf of the resident, before

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1 administering the psychotropic medication, except as provided in par. (c). The oral  
2 consent or acknowledgment shall be entered in the resident's medical record. The  
3 oral consent or acknowledgment shall be valid for 10 days, after which time the  
4 nursing home or community-based residential facility may not continue to  
5 administer the psychotropic medication unless it has obtained written informed  
6 consent or a signed acknowledgment form under sub. (3).

7 **SECTION 22.** 50.08 (4) (c) of the statutes is amended to read:

8 50.08 (4) (c) If par. (a) applies, the resident is incapacitated, and the nursing  
9 home or community-based residential facility has made a good faith effort to obtain  
10 oral consent or acknowledgment, under par. (b), of a person acting on behalf of the  
11 resident but has been unable to contact such a person, the nursing home or  
12 community-based residential facility may administer the psychotropic medication  
13 to the resident for up to 24 hours before obtaining consent or acknowledgment under  
14 par. (a) or sub. (3).

15 (END)