LeadingAge New York OPPOSE

SENIOR HOUSING | ASSISTED LIVING | ADULT CARE FACILITIES | HOME CARE | RETIREMENT COMMUNITIES
ADULT DAY HEALTH CARE | PACE/MLTC | NURSING HOMES

MEMORANDUM

A.1033 (Gottfried)/S.5441 (Sepulveda)

AN ACT to amend the public health law, in relation to the use of psychotropic medications in nursing homes and adult care facilities

LeadingAge New York opposes A.1033 (Gottfried)/S.5441 (Sepulveda) which would require an enhanced level of informed consent before psychotropic medications can be prescribed for residents of nursing facilities (NFs) or adult care facilities (ACFs). While LeadingAge NY providers recognize the importance of informed consent, this bill has several provisions rendering it impractical and potentially harmful to residents of these facilities. Furthermore, much has changed in the regulatory environment and utilization of these medications since this legislation was first proposed in 2015.

This bill requires health care professionals to receive written consent from the resident or the resident's "lawful representative" before ordering or increasing the order of any psychotropic medication. Receiving formal written consent will be very challenging when family members live out of the area or representatives are unavailable due to vacations or work commitments or are uninvolved in the resident's care. For example, NF providers are required under federal regulations to assess, develop, and implement care plans through an interdisciplinary team (IDT) approach that includes the resident, their family and/or representative, and often find it difficult to engage residents, families and physicians in IDT meetings. Based on these experiences and mitigating factors, arranging for written consent before every change in medication order would be an obstacle in delivering necessary care to the resident.

The legislation would limit all orders for psychotropic medications to 14 days. Generally, the efficacy of any prescribed medication cannot be determined within only 14 days. The expectation for a professional to reorder medications every 14 days and receive written consent is unrealistic given the limited availability of physicians in many NFs (particularly in rural areas), and would create added burdens for residents and their families. The limited timeframe to re-order medications, receive written consent, and manage the outcomes could easily result in missed doses and associated adverse side effects.

In ACFs, residents retain their own physicians in the community. If the prescriber of these medications is not the resident's primary care physician, he/she may not be aware that the resident lives in an ACF unless the resident brings it to the prescriber's attention. Thus, the prescriber may fail to obtain written consent while the resident is in the office, and then would presumably have to obtain it in an additional encounter for which there is no reimbursement. Again, this could delay access to needed medications, and could require the ACF to spend a great deal of time and resources to obtain documentation for a requirement that is for the prescriber, not the ACF.

The federal Centers for Medicare & Medicaid Services (CMS) implemented a new regulation [42 CFR §483.45(d)] effective Nov. 28, 2017 requiring NFs to ensure that psychotropic drugs are not dispensed unless they are necessary to treat a specific condition diagnosed and documented in the clinical record. Residents who use psychotropic drugs must receive gradual dose reduction (GDR) and behavioral interventions, unless clinically contra-indicated, aimed at discontinuing these drugs. *Pro re nata* (PRN) orders for psychotropic drugs are limited to 14 days unless the attending physician or prescribing practitioner documents the rationale in the resident's medical record. The regulation encompasses antipsychotics, antidepressants, antianxiety and hypnotics. The survey inspection guidance provided by CMS on this regulation determines whether the facility's medication management supports and promotes involvement of the resident, his or her family, and/or the resident representative in the medication management process, as well as informed resident choice and supporting documentation to justify usage of such medications.

CMS created the 5-Star Quality Rating System to help consumers compare NFs more easily and decide which facilities to consider. The *Nursing Home Compare* website features a system that gives each NF a rating of between 1 and 5 stars. As part of 5-Star, CMS incorporates the following two quality measures (QMs) in the ratings: (1) *percentage of long-stay residents who received an antipsychotic medication*; and (2) *percentage of long-stay residents who received an antianxiety or hypnotic medication*. Based on concerted efforts, there have been significant reductions in usage rates of these medications. Between 2014 and 2018, the percentage of long-stay residents who received an antipsychotic medication declined by 25.5% nationally and by 35.2% in New York. Furthermore, the New York State average is 20.3% lower than the national average. Between 2015 and 2018, the percentage of long-stay residents who received an antianxiety or hypnotic medication fell by 11.4% nationally and by 14.5% in New York, with New York's average nearly a third less than that of the nation. Since these figures capture any use of these medications, they do not take into account GDRs that are already in process.

In addition to 5-Star (which affects payment), New York annually reduces Medicaid NF reimbursement by $50 million through its Nursing Home Quality Initiative (NHQI), which it redistributes to NFs based on measures of compliance, quality and avoidable hospital use. Among the measures used to determine NHQI funding distributions is the QM, *percent of long stay residents with dementia who received an antipsychotic medication*, which has fallen statewide by 28.9% between 2016 and 2018. State lawmakers also authorized in the 2018-19 budget an additional 2% Medicaid rate penalty on homes with the lowest NHQI scores.

In summary, due to concerns about the unintended impacts that frequent written consent could have on continuity of care, and taking into account revised federal regulations and survey guidance on the subject; public disclosure and use of relevant QMs in facility ratings and payment; and substantial reductions in the usage of these medications over time, LeadingAge NY opposes A.1033/S.5441 and urges that it be rejected.