

MEMORANDUM

A.7467-B (Paulin)/S.466-A (Sepulveda)

AN ACT to amend the public health law, in relation to the use of antipsychotic medications in nursing homes

LeadingAge New York supports the goal of this legislation – to further reduce the inappropriate use of antipsychotic medications in nursing homes. This bill seeks to achieve this goal by requiring an enhanced level of informed consent from nursing home residents who receive an initial prescription for an antipsychotic medication from the nursing home’s health care professional team. To facilitate the bill’s goal of further mitigating the use of unnecessary antipsychotics, while ensuring access to effective treatment for certain individuals, LeadingAge New York recommends an amendment to the bill.

This legislation requires an enhanced level of informed consent from nursing home residents or the resident’s “lawful representative” before initiating an antipsychotic medication. The legislation specifies that this enhanced consent *will not* be required for: residents who have been prescribed an antipsychotic medication prior to admission/readmission to the nursing home; residents who have previously provided informed consent within the last 12 months; residents receiving hospice care or admitted to certified behavioral intervention units; or residents with a primary diagnosis of Huntington’s disease. The bill also authorizes nursing homes and health care professionals to issue an order for an antipsychotic medication without informed consent in the case of an emergency that could cause an immediate threat to the life, health or safety of the resident or another person. Importantly, the legislation does not require the informed consent to be in writing – requiring written consent would impede access to necessary treatment and cause distress for residents and families because many residents have decision-makers who live long distances from the nursing home and cannot manage digital signature forms.

Overall, these elements of the bill support access to treatment and resident safety, while also protecting resident autonomy. They are critical to ensuring that access to medically necessary medications is not delayed or disrupted.

LeadingAge New York is, nevertheless, concerned that the bill’s requirement to renew informed consent every 12 months for certain residents will disrupt medication regimens and lead to adverse outcomes. LeadingAge New York believes that requiring nursing homes to renew a resident’s consent every 12 months is unnecessary given the many other measures in place to prevent inappropriate use of these medications.

For example, there are already ample Federal guardrails in place to safeguard against the unnecessary use of antipsychotics. Federal regulations (42 CFR §483.45(e)) require nursing homes 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 reductions (GDRs) and non-pharmacological interventions, unless clinically contraindicated, aimed at discontinuing these drugs. *Pro re nata* (PRN or as needed) orders for psychotropic drugs are limited to 14 days unless the attending physician or

LeadingAge New York

13 British American Blvd., Suite 2 | Latham, New York 12110 | P 518.867.8383 | F 518.867.8384 | www.leadingageny.org

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prescribing practitioner documents the rationale in the resident's medical record. These requirements are enforced through State and federal inspections (surveys) and associated penalties.

Further, the Center for Medicare and Medicaid Services' (CMS) *Nursing Home Compare* website publishes quality measures related to antipsychotic medication use for each nursing home and incorporates the results in their 5-Star ratings. They are: (1) *percentage of long-stay residents who received an antipsychotic medication*; (2) *percentage of short-stay residents who got antipsychotic medication for the first time*. In addition, CMS began auditing nursing homes to validate schizophrenia diagnoses beginning in 2023.

Based on concerted efforts, there have been significant reductions in usage rates of antipsychotic medications in nursing homes. Between 2014 and 2018, the percentage of long-stay nursing home 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 nursing home residents who received an anti-anxiety or hypnotic medication fell by 11.4% nationally and by 14.5% in New York, with New York's average nearly one-third less than that of the nation.

In addition to the federal 5-Star rating system, nursing homes in New York are incentivized through the State's Nursing Home Quality Initiative (NHQI) to minimize utilization of antipsychotic medications. Under the NHQI, the State annually reduces Medicaid nursing home reimbursement by \$50 million, which it redistributes to nursing homes based on measures of compliance, quality and avoidable hospital use. Among the measures used to determine NHQI funding distributions is the *percent of long stay residents with dementia who received an antipsychotic medication*. The poor performers (i.e., those with higher utilization rates based on this measure) do not receive funding back through the NHQI and instead see an overall reduction in funding.

In summary, LeadingAge New York supports the intent of this legislation, but would recommend that the requirement to renew informed consent for antipsychotic medications every 12 months for certain residents be removed, as it may interfere with access to necessary medication and lead to adverse outcomes. Existing federal and State initiatives aimed at controlling inappropriate antipsychotic use render repeated consents unnecessary, especially given the risks associated with disrupting medication regimens. **For these reasons, LeadingAge NY supports A.7467-B (Paulin)/S.466-A (Sepulveda), with recommendations.**

LeadingAge New York represents over 400 not-for-profit and public long term care providers, including nursing homes, home care agencies, senior housing, retirement communities, assisted living, adult care facilities, adult day health care and managed long term care.

Contact: Sarah Daly; sdaly@leadingageny.org