

HOUSE BILL No. 2344

By Committee on Children and Seniors

2-14

1 AN ACT concerning adult care homes; requiring written informed consent
2 before administering an antipsychotic medication to an adult care home
3 resident.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) (1) "Adult care home" means the same as defined in
7 K.S.A. 39-923, and amendments thereto.

8 (2) "Antipsychotic" means those medications included in the United
9 States pharmacopeia's antipsychotic therapeutic category.

10 (3) "Department" means the Kansas department for aging and
11 disability services.

12 (4) "Incapacitated" means being unable to receive and evaluate
13 information effectively or to communicate decisions to such an extent that
14 the resident lacks the capacity to manage such resident's healthcare
15 decisions.

16 (5) "Informed consent" means receiving permission from a resident
17 or a person acting on behalf of the resident, after such resident or person is
18 presented with:

- 19 (A) The specific issue;
20 (B) the recommended treatment;
21 (C) the resident's specific mental or physical status with regard to the
22 issue;
23 (D) any risks regarding treating or not treating the issue;
24 (E) acceptable alternatives of treatment to the issue;
25 (F) the right to refuse treatment; and
26 (G) possible consequences risked by refusal.

27 (6) "Person acting on behalf of the resident" means a guardian of the
28 resident, as defined in K.S.A. 59-3051, and amendments thereto, an agent
29 acting in accordance with a durable power of attorney for healthcare
30 decisions executed by the resident pursuant to K.S.A. 58-625 et seq., and
31 amendments thereto, or an individual acting in accordance with a living
32 will lawfully executed by the resident.

33 (7) "Prescriber" means the same as defined in K.S.A. 65-1626, and
34 amendments thereto.

35 (8) "Resident" means any individual kept, cared for, treated, boarded
36 or otherwise accommodated in any adult care home.

1 (b) Except in an emergency as described in subsection (e)(1)(B), no
2 adult care home resident shall be prescribed or administered an
3 antipsychotic medication that was not already prescribed to the resident
4 prior to admission to the adult care home unless:

5 (1) The resident has been examined by the prescriber of the
6 antipsychotic medication; and

7 (2) the resident has received a behavioral health diagnosis by such
8 prescriber of a condition that such antipsychotic medication has been
9 specifically approved to treat by the United States food and drug
10 administration.

11 (c) Any prescriber who prescribes an antipsychotic medication to an
12 adult care home resident shall notify the adult care home if the prescribed
13 medication has a boxed warning under 21 C.F.R. 201.57.

14 (d) (1) Except as provided below, before an antipsychotic medication
15 that has a boxed warning under 21 C.F.R. 201.57 is administered to a
16 resident of an adult care home, a prescriber shall obtain written informed
17 consent from the resident or, if the resident is incapacitated, a person
18 acting on behalf of the resident, on a form provided by the department or
19 on a form that contains the same information as the form described below.

20 (2) The department shall make available on its website or by mail
21 multiple, drug-specific forms for obtaining informed consent under this
22 section for the administration of antipsychotic medications that contain all
23 of the following:

24 (A) A space for a description of the benefits of the proposed
25 treatment and the way the medication will be administered;

26 (B) a description, using the most recently issued information from the
27 United States food and drug administration, of the side effects or risks of
28 side effects of the medication and any warnings about the medication;

29 (C) a space for a description of any alternative treatment modes or
30 medications;

31 (D) a space for a description of the probable consequences of not
32 receiving the medication;

33 (E) a space for indicating the specific time period, if any, when the
34 resident or the person acting on behalf of the resident wishes the informed
35 consent to be effective;

36 (F) a statement that the resident or a person acting on behalf of the
37 resident may withdraw informed consent, in writing, at any time;

38 (G) a declaration that the resident or a person acting on behalf of the
39 resident has been provided with specific, complete and accurate
40 information and time to study the information or to seek additional
41 information concerning the medication;

42 (H) a space for the signature of the prescriber and the date of signing;
43 and

1 (1) a space for the signature of the resident or a person acting on
2 behalf of the resident and the date of signing.

3 (3) Written informed consent provided by a guardian is subject to the
4 requirements of K.S.A. 59-3075, and amendments thereto.

5 (4) Upon receiving written informed consent from a resident or a
6 person acting on behalf of the resident, a prescriber shall send a copy of
7 the completed informed consent form to the adult care home. The adult
8 care home shall place a copy of the resident's completed informed consent
9 form in such resident's chart. Upon request, the adult care home shall give
10 the resident or a person acting on behalf of the resident a copy of the
11 completed informed consent form.

12 (5) Written informed consent obtained under this subsection is valid
13 until withdrawn or until any specific time period listed on the informed
14 consent form by the resident or a person acting on behalf of the resident
15 has passed.

16 (6) The resident or a person acting on behalf of the resident may
17 withdraw consent, in writing, at any time.

18 (7) At the time the resident or a person acting on behalf of the
19 resident signs the informed consent form, the prescriber shall verbally
20 inform the resident or the person acting on behalf of the resident of all of
21 the following:

22 (A) That the resident or a person acting on behalf of the resident may
23 withdraw consent, in writing, at any time; and

24 (B) that written informed consent obtained under this subsection is
25 valid until withdrawn or until any specific time period indicated on the
26 informed consent form by the resident or a person acting on behalf of the
27 resident has passed.

28 (8) No person shall retaliate against the resident or a person acting on
29 behalf of the resident for refusing to provide or withdrawing consent. As
30 used in this paragraph, "retaliate" means: Increasing charges; decreasing
31 services, rights or privileges; taking or threatening to take any action to
32 coerce or compel the resident to leave the home; or abusing or threatening
33 to harass or abuse the resident in any manner.

34 (9) The prescriber shall use the most current written informed consent
35 forms available from the department or shall update such prescriber's own
36 forms with the most current information about the medications available
37 from the department.

38 (e) (1) The prescriber shall not be required to obtain written informed
39 consent before an antipsychotic medication is administered to a resident
40 under subsection (d) if the following apply:

41 (A) The resident is subject to court-ordered treatment that includes
42 the administration of antipsychotic medications; or

43 (B) (i) there is an emergency in which the resident is at significant

1 risk of physical or emotional harm or the resident puts any other individual
2 at significant risk of physical or emotional harm and time and distance
3 preclude obtaining written informed consent before administering an
4 antipsychotic medication; and

5 (ii) the physician, advanced practice registered nurse or physician
6 assistant caring for the resident has determined, after an in-person
7 evaluation of the resident, that the resident or others will be harmed if the
8 antipsychotic medication is not administered before written informed
9 consent is obtained.

10 (2) Any verbal consent obtained during an emergency as described in
11 paragraph (1)(B) shall be entered in the resident's medical record and shall
12 be valid for 72 hours, after which time the adult care home may not
13 continue to administer the antipsychotic medication, unless the prescriber
14 has obtained a copy of the written informed consent form according to
15 subsection (d).

16 (3) The prescriber or an adult care home shall document in the
17 resident's medical record the reason or reasons why administering an
18 antipsychotic medication before written informed consent could be
19 obtained during an emergency as described in paragraph (1)(B) was
20 necessary.

21 (4) If an antipsychotic medication is prescribed due to an emergency
22 as described in paragraph (1)(B), the quantity prescribed and dispensed
23 shall be limited to the amount that is adequate to treat the resident during
24 the emergency period.

25 (f) Nothing in this section shall be construed to otherwise limit:

26 (1) A prescriber's authority to prescribe or provide treatment to a
27 patient in accordance with applicable standards of care or licensing
28 provisions found in the Kansas Statutes Annotated, and amendments
29 thereto, or any rules and regulations adopted thereunder; or

30 (2) a resident's right of access to an antipsychotic drug prescribed by
31 a licensed prescriber and administered for the purpose of treating a
32 diagnosed behavioral health condition.

33 Sec. 2. This act shall take effect and be in force from and after its
34 publication in the statute book.