

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3463

6 By: West (Tammy)

7 COMMITTEE SUBSTITUTE

8 An Act relating to assisted living centers; amending
9 Section 1, Chapter 311, O.S.L. 2019 (63 O.S. Supp.
10 2019, Section 1-881), which relates to prescribing
11 antipsychotic drugs to long-term care facility
12 residents; modifying definition; amending 63 O.S.
13 2011, Section 1-890.8, as amended by Section 1,
14 Chapter 248, O.S.L. 2013 (63 O.S. Supp. 2019, Section
15 1-890.8), which relates to the plan of accommodation
16 for certain disabled residents; modifying criteria
17 for prescription of an antipsychotic drug for
18 residents; requiring reassessments; listing
19 requirements; requiring documentation; and providing
20 an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY Section 1, Chapter 311, O.S.L.
23 2019 (63 O.S. Supp. 2019, Section 1-881), is amended to read as
24 follows:

Section 1-881. A. As used in this section:

1. "Antipsychotic drug" means a drug, sometimes called a major
tranquilizer, used to treat symptoms of severe psychiatric

1 disorders, including, but not limited to, schizophrenia and bipolar
2 disorder;

3 2. "Long-term care facility" means:

4 a. a nursing facility as defined by Section 1-1902 of
5 ~~Title 63 of the Oklahoma Statutes~~ this title,

6 b. the nursing facility component of a continuum of care
7 facility as defined under the Continuum of Care and
8 Assisted Living Act, or

9 c. the nursing care component of a life care community as
10 defined by the Long-term Care Insurance Act;

11 3. "Resident" means a resident as defined by Section 1-1902 of
12 ~~Title 63 of the Oklahoma Statutes~~ this title;

13 4. "Representative of a resident" means a representative of a
14 resident as defined by Section 1-1902 of ~~Title 63 of the Oklahoma~~
15 ~~Statutes~~ this title; and

16 5. "Prescribing clinician" means:

17 a. an allopathic or osteopathic physician licensed by and
18 in good standing with the State Board of Medical
19 Licensure and Supervision or the State Board of
20 Osteopathic Examiners, as appropriate,

21 b. a physician assistant licensed by and in good standing
22 with the State Board of Medical Licensure and
23 Supervision, or

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1 c. an Advanced Practice Registered Nurse licensed by and
2 in good standing with the Oklahoma Board of Nursing.

3 B. Except in case of an emergency in which the resident poses
4 harm to the resident or others, no long-term care facility resident
5 shall be prescribed or administered an antipsychotic drug that was
6 not already prescribed to the resident prior to admission to the
7 facility unless each of the following conditions has been satisfied:

8 1. The resident has been examined by the prescribing clinician
9 and diagnosed with a psychiatric condition and the prescribed drug
10 is approved by the United States Food and Drug Administration for
11 that condition or prescribed in accordance with generally accepted
12 clinical practices;

13 2. The prescribing clinician, or a previous prescribing
14 clinician, has unsuccessfully attempted to accomplish the drug's
15 intended effect using contemporary and generally accepted
16 nonpharmacological care options, and has documented those attempts
17 and their results in the resident's medical record or has deemed
18 that those attempts would not be medically appropriate based upon a
19 physical examination by the prescribing clinician and documented the
20 rationale in the resident's medical record;

21 3. The facility has provided to the resident or representative
22 of a resident a written explanation of applicable informed consent
23 laws. The explanation shall be written in language that the
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1 resident or representative of a resident can be reasonably expected
2 to understand;

3 4. The prescribing clinician has confirmed with the nursing
4 facility verbally or otherwise that written, informed consent has
5 been obtained from the resident or representative of the resident
6 that meets the requirements of subsection C of this section; and

7 5. In the event a long-term care facility resident is
8 prescribed an antipsychotic medication in the case of an emergency,
9 the prescribing physician shall prescribe the minimum dosage and
10 duration that is prudent for the resident's condition and shall
11 examine the patient in person within thirty (30) days.

12 C. Except in the case of an emergency as provided for in
13 subsection B of this section, the prescribing clinician shall
14 confirm that written, voluntary informed consent to authorize the
15 administration of an antipsychotic drug to a facility resident has
16 been obtained from the resident or the representative of the
17 resident prior to the initial administration of the antipsychotic
18 drug. Voluntary informed consent shall, at minimum, consist of the
19 following:

20 1. The prescribing clinician has confirmed that a signed,
21 written affirmation has been obtained from the resident or the
22 representative of the resident that the resident has been informed
23 of all pertinent information concerning the administration of an
24 antipsychotic drug in language that the signer can reasonably be

1 expected to understand. Pertinent information shall include, but
2 not be limited to:

- 3 a. the reason for the drug's prescription and the
4 intended effect of the drug on the resident's
5 condition,
- 6 b. the nature of the drug and the procedure for its
7 administration, including dosage, administration
8 schedule, method of delivery and expected duration for
9 the drug to be administered,
- 10 c. risks, common side effects and potential severe
11 adverse reactions associated with the administration
12 of the drug,
- 13 d. the right of the resident or representative of the
14 resident to refuse the administration of the
15 antipsychotic drug and the medical consequences of
16 such refusal, and
- 17 e. an explanation of pharmacological and
18 nonpharmacological alternatives to the administration
19 of antipsychotic drugs and the resident's right to
20 choose such alternatives; and

21 2. Except in the case of an emergency as provided for in
22 subsection B of this section, the prescribing clinician shall inform
23 the resident or the representative of the resident of the existence
24 of the long-term care facility's policies and procedures for

1 compliance with informed consent requirements. The facility shall
2 make these available to the resident or representative of the
3 resident prior to administering any antipsychotic drug upon request.

4 D. 1. Antipsychotic drug prescriptions and administration
5 shall be consistent with standards for dosage, duration and
6 frequency of administration that are generally accepted for the
7 resident's condition.

8 2. Throughout the duration of the administration of an
9 antipsychotic drug and at generally accepted intervals approved for
10 the resident's condition, the prescribing clinician or designee
11 shall monitor the resident's condition and evaluate drug performance
12 with respect to the condition for which the drug was prescribed.
13 The prescribing clinician shall provide documentation of the status
14 of the resident's condition to the resident or the representative of
15 the resident upon request and without unreasonable delay.

16 3. Any change in dosage or duration of the administration of an
17 antipsychotic drug shall be justified by the prescribing clinician
18 with documentation on the resident's record of the clinical
19 observations that warranted the change.

20 E. 1. No long-term care facility shall deny admission or
21 continued residency to a person on the basis of the person's or his
22 or her representative's refusal to the administration of
23 antipsychotic drugs, unless the prescribing clinician or care
24 facility can demonstrate that the resident's refusal would place the

1 health and safety of the resident, the facility staff, other
2 residents or visitors at risk.

3 2. Any care facility that alleges that the resident's refusal
4 to consent to the administration of antipsychotic drugs will place
5 the health and safety of the resident, the facility staff, other
6 residents or visitors at risk shall document the alleged risk in
7 detail and shall present this documentation to the resident or the
8 representative of the resident, to the State Department of Health
9 and to the Long-Term Care Ombudsman⁷, and shall inform the resident
10 or the representative of the resident of the resident's right to
11 appeal to the State Department of Health. The documentation of the
12 alleged risk shall include a description of all nonpharmacological
13 or alternative care options attempted and why they were unsuccessful
14 or why the prescribing clinician determined alternative treatments
15 were not medically appropriate for the condition following a
16 physical examination.

17 F. The provisions of this section shall not apply to a hospice
18 patient as defined in Section 1-860.2 of ~~Title 63 of the Oklahoma~~
19 ~~Statutes~~ this title.

20 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-890.8, as
21 amended by Section 1, Chapter 248, O.S.L. 2013 (63 O.S. Supp. 2019,
22 Section 1-890.8), is amended to read as follows:

23 Section 1-890.8 A. Residents of an assisted living center may
24 receive home care services and intermittent, periodic, or recurrent

1 nursing care through a home care agency under the provisions of the
2 Home Care Act.

3 B. Residents of an assisted living center may receive hospice
4 home services under the provisions of the Oklahoma Hospice Licensing
5 Act.

6 C. Nothing in the foregoing provisions shall be construed to
7 prohibit any resident of an assisted living center from receiving
8 such services from any person who is exempt from the provisions of
9 the Home Care Act.

10 D. The assisted living center shall monitor and assure the
11 delivery of those services. All nursing services shall be in
12 accordance with the written orders of the personal or attending
13 physician of the resident.

14 E. A resident of an assisted living center or the family or
15 legal representative of the resident shall be required to disclose
16 any third-party provider of medical services or supplies prior to
17 service delivery.

18 F. Any third-party provider of medical services or supplies
19 shall comply with the provisions of subsection D of this section.

20 G. Notwithstanding the foregoing provisions, a resident of an
21 assisted living center, or the family or legal representative of the
22 resident, may privately contract or arrange for private nursing
23 services under the orders and supervision of the personal or
24 attending physician of the resident, private monitoring, private

1 sitters or companions, personal domestic servants, or personal
2 staff.

3 H. If a resident of an assisted living center develops a
4 disability or a condition that is consistent with the facility's
5 discharge criteria:

6 1. The personal or attending physician of a resident, a
7 representative of the assisted living center, and the resident or
8 the designated representative of the resident shall determine by and
9 through a consensus of the foregoing persons any reasonable and
10 necessary accommodations, in accordance with the current building
11 codes, the rules of the State Fire Marshal, and the requirements of
12 the local fire jurisdiction, and additional services required to
13 permit the resident to remain in place in the assisted living center
14 as the least restrictive environment and with privacy and dignity;

15 2. All accommodations or additional services shall be described
16 in a written plan of accommodation, signed by the personal or
17 attending physician of the resident, a representative of the
18 assisted living center and the resident or the designated
19 representative of the resident;

20 3. The person or persons responsible for performing, monitoring
21 and assuring compliance with the plan of accommodation shall be
22 expressly specified in the plan of accommodation and shall include
23 the assisted living center and any of the following:

24 a. the personal or attending physician of the resident,

- 1 b. a home care agency,
- 2 c. a hospice, or
- 3 d. other designated persons.

4 The plan of accommodation shall be reviewed at least quarterly
5 by a licensed health care professional;

6 4. If the parties identified in paragraph 1 of this subsection
7 fail to reach a consensus on a plan of accommodation, the assisted
8 living center shall give written notice to the resident, the legal
9 representative or the resident or such persons as are designated in
10 the resident's contract with the assisted living center, of the
11 termination of the residency of the resident in the assisted living
12 center in accordance with the provisions of the resident's contract
13 with the assisted living center. Such notice shall not be less than
14 thirty (30) calendar days prior to the date of termination, unless
15 the assisted living center or the personal or attending physician of
16 the resident determines the resident is in imminent peril or the
17 continued residency of the resident places other persons at risk of
18 imminent harm;

19 5. If any party identified in paragraph 1 of this subsection
20 determines that the plan of accommodation is not being met, such
21 party shall notify the other parties and a meeting shall be held
22 between the parties within ten (10) business days to re-evaluate the
23 plan of accommodation; and

1 6. Any resident aggrieved by a decision to terminate residency
2 may seek injunctive relief in the district court of the county in
3 which the assisted living center is located. Such action shall be
4 filed no later than ten (10) days after the receipt of the written
5 notice of termination.

6 I. When an antipsychotic drug is prescribed for a resident, the
7 assisted living center shall do all of the following:

8 1. Ensure the resident is reassessed by a physician, physician
9 assistant, Advanced Practice Registered Nurse or registered nurse,
10 as needed, but at least quarterly, for the effectiveness and
11 possible side effects of the medication. The results of the
12 assessments shall be documented in the resident's record and
13 provided to the resident or the representative of the resident;

14 2. Ensure all resident care staff administering medications
15 understand the potential benefits and side effects of the
16 medications; and

17 3. When an antipsychotic drug is prescribed on an as-needed
18 basis (PRN) for a resident, the assisted living center shall:

19 a. include in the resident's record the rationale for use
20 and a detailed description of the condition which
21 indicate the need for administration of PRN
22 antipsychotic drug,

23 b. monitor at least monthly the use of PRN antipsychotic
24 drugs, including, but not limited to, presence of

1 significant adverse side effects, use for discipline
2 or staff convenience, or contrary to the prescribed
3 use. The monitoring required by this subparagraph
4 shall be conducted by the licensed health care
5 professional, and

6 c. document in the resident's record the rationale for
7 use, description of condition requiring the PRN
8 antipsychotic drug, the effectiveness of the
9 medication, the presence of any side effects, and
10 monitoring for inappropriate use for each PRN
11 antipsychotic drug given.

12 J. Nothing in this section shall be construed to abrogate an
13 assisted living center's responsibility to provide care for and
14 oversight of a resident.

15 SECTION 3. This act shall become effective November 1, 2020.

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