

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3463

By: West (Tammy), **Stark** and
Dills of the House

and

Coleman of the Senate

11 COMMITTEE SUBSTITUTE

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

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

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

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

2 1. "Antipsychotic drug" means a drug, sometimes called a major
3 tranquilizer, used to treat symptoms of severe psychiatric
4 disorders, including, but not limited to, schizophrenia and bipolar
5 disorder;

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

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

9 b. the nursing facility component of a continuum of care
10 facility as defined under the Continuum of Care and
11 Assisted Living Act, or

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

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

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

19 5. "Prescribing clinician" means:

20 a. an allopathic or osteopathic physician licensed by and
21 in good standing with the State Board of Medical
22 Licensure and Supervision or the State Board of
23 Osteopathic Examiners, as appropriate,
24

1 b. a physician assistant licensed by and in good standing
2 with the State Board of Medical Licensure and
3 Supervision, or

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

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

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

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

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

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

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

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

23 1. The prescribing clinician has confirmed that a signed,
24 written affirmation has been obtained from the resident or the

1 representative of the resident that the resident has been informed
2 of all pertinent information concerning the administration of an
3 antipsychotic drug in language that the signer can reasonably be
4 expected to understand. Pertinent information shall include, but
5 not be limited to:

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

1 2. Except in the case of an emergency as provided for in
2 subsection B of this section, the prescribing clinician shall inform
3 the resident or the representative of the resident of the existence
4 of the long-term care facility's policies and procedures for
5 compliance with informed consent requirements. The facility shall
6 make these available to the resident or representative of the
7 resident prior to administering any antipsychotic drug upon request.

8 D. 1. Antipsychotic drug prescriptions and administration
9 shall be consistent with standards for dosage, duration and
10 frequency of administration that are generally accepted for the
11 resident's condition.

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

20 3. Any change in dosage or duration of the administration of an
21 antipsychotic drug shall be justified by the prescribing clinician
22 with documentation on the resident's record of the clinical
23 observations that warranted the change.

1 E. 1. No long-term care facility shall deny admission or
2 continued residency to a person on the basis of the person's or his
3 or her representative's refusal to the administration of
4 antipsychotic drugs, unless the prescribing clinician or care
5 facility can demonstrate that the resident's refusal would place the
6 health and safety of the resident, the facility staff, other
7 residents or visitors at risk.

8 2. Any care facility that alleges that the resident's refusal
9 to consent to the administration of antipsychotic drugs will place
10 the health and safety of the resident, the facility staff, other
11 residents or visitors at risk shall document the alleged risk in
12 detail and shall present this documentation to the resident or the
13 representative of the resident, to the State Department of Health
14 and to the Long-Term Care Ombudsman⁺1, and shall inform the resident
15 or the representative of the resident of the resident's right to
16 appeal to the State Department of Health. The documentation of the
17 alleged risk shall include a description of all nonpharmacological
18 or alternative care options attempted and why they were unsuccessful
19 or why the prescribing clinician determined alternative treatments
20 were not medically appropriate for the condition following a
21 physical examination.

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

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

4 Section 1-890.8 A. Residents of an assisted living center may
5 receive home care services and intermittent, periodic, or recurrent
6 nursing care through a home care agency under the provisions of the
7 Home Care Act.

8 B. Residents of an assisted living center may receive hospice
9 home services under the provisions of the Oklahoma Hospice Licensing
10 Act.

11 C. Nothing in the foregoing provisions shall be construed to
12 prohibit any resident of an assisted living center from receiving
13 such services from any person who is exempt from the provisions of
14 the Home Care Act.

15 D. The assisted living center shall monitor and assure the
16 delivery of those services. All nursing services shall be in
17 accordance with the written orders of the personal or attending
18 physician of the resident.

19 E. A resident of an assisted living center or the family or
20 legal representative of the resident shall be required to disclose
21 any third-party provider of medical services or supplies prior to
22 service delivery.

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

1 G. Notwithstanding the foregoing provisions, a resident of an
2 assisted living center, or the family or legal representative of the
3 resident, may privately contract or arrange for private nursing
4 services under the orders and supervision of the personal or
5 attending physician of the resident, private monitoring, private
6 sitters or companions, personal domestic servants, or personal
7 staff.

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

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

20 2. All accommodations or additional services shall be described
21 in a written plan of accommodation, signed by the personal or
22 attending physician of the resident, a representative of the
23 assisted living center and the resident or the designated
24 representative of the resident;

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

- 5 a. the personal or attending physician of the resident,
- 6 b. a home care agency,
- 7 c. a hospice, or
- 8 d. other designated persons.

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

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

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

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

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

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

19 2. Ensure all resident care staff administering medications
20 understand the potential benefits and side effects of the
21 medications; and

22 3. When an antipsychotic drug is prescribed on an as-needed
23 basis (PRN) for a resident, the assisted living center shall:
24

- 1 a. include in the resident's record the rationale for use
2 and a detailed description of the condition which
3 indicate the need for administration of PRN
4 antipsychotic drug,
- 5 b. monitor at least monthly the use of PRN antipsychotic
6 drugs, including, but not limited to, presence of
7 significant adverse side effects, use for discipline
8 or staff convenience, or contrary to the prescribed
9 use. The monitoring required by this subparagraph
10 shall be conducted by the licensed health care
11 professional, and
- 12 c. document in the resident's record the rationale for
13 use, description of condition requiring the PRN
14 antipsychotic drug, the effectiveness of the
15 medication, the presence of any side effects, and
16 monitoring for inappropriate use for each PRN
17 antipsychotic drug given.

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

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

23 COMMITTEE REPORT BY: COMMITTEE ON HEALTH SERVICES AND LONG-TERM
24 CARE, dated 02/12/2020 - DO PASS, As Amended and Coauthored.