

MEDICAL SOCIETY of the STATE OF NEW YORK

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MEMORANDUM IN OPPOSITION

ON SENATE HEALTH COMMITTEE AGENDA

S.466 (SEPULVEDA)

ON ASSEMBLY FLOOR

A.7467 (PAULIN)

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

This measure would require physicians to obtain written, informed consent before the initial order or increase in dosage or duration of an order of psychotropic medication in nursing homes and adult care facilities. **The Medical Society of the State of New York opposes this bill.**

Psychotropic medications serve a vital purpose in maintaining the health and safety of many patients in nursing homes and adult care facilities. They are prescribed according to rigorous guidelines and in some instances may be used as a last resort when a patient must be restrained in order to prevent harm to the patient and/or those providing care. Physicians and those regularly caring for these patients best understand the complexities of the conditions necessitating psychotropic medication and are uniquely suited to make decisions about their prescription.

Furthermore, NY Public Health Law Section 2805-D(1) states that *“Lack of informed consent means the failure of the person providing the professional treatment or diagnosis to disclose to the patient such alternatives thereto and the reasonably foreseeable risks and benefits involved as a reasonable medical, dental or podiatric practitioner under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation.”* Moreover, federal laws already limit the use of chemical restraints in nursing homes to circumstances where the safety of the resident or other individuals is at risk. As such, physicians are already required to ensure that their patients are properly informed about their options. Requiring increased regulation regarding provision of psychotropics or further involving family members in the decision-making process will provide no discernable benefit for patients and could instead represent a harmful barrier in the patient-care process.

This proposal does allow for an unconsented order for a psychotropic medication in an “emergency” to protect the patient or others, with the prescriber to immediately record the reason for the emergency use. We are very concerned that this requirement could open physicians up to second-guessing by government officials and others who were not present and do not understand the complex and urgent circumstances that gave rise to the perceived “emergency”. This could become the basis for legal action against them by the OPMC or by a private lawsuit. In turn, this dynamic could cause physicians and other nursing home staff to potentially delay providing these needed medications and put the resident and the staff at risk of injury.

For all of the reasons set forth above, the Medical Society of the State of New York opposes the bill and urges its defeat.

Respectfully Submitted,

5/6/24

MMA- OPPOSE

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS