HOUSE DOCKET, NO. 3163 FILED ON: 1/20/2017

HOUSE . . . . . No. 3250

The Commonwealth of Massachusetts

PRESENTED BY:

Shaunna L. O'Connell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to informed written consent for use of psychotropic drugs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Shaunna L. O'Connell	*3rd Bristol*	*1/20/2017*
Arlene Germain	*Massachusetts Advocates for Nursing Home Reform; 24 Boston Ave, Medford, MA 02155*	*1/19/2017*
Nancy Sylvester	*13 Pinckney Street, Taunton Ma 02780*	*1/19/2017*
Toby S. Edelman	*Center for Medicare Advocacy; 1025 Connecticut Ave NW, Suite 709, Washington, DC 20036*	*1/19/2017*
Patricia McGinnis	*California Advocates for Nursing Home Reform (CANHR); 650 Harrison Street, 2nd Floor, San Francisco, CA 94107*	*1/20/2017*
Richard J. Mollot	*The LTC Community Coalition; One Penn Plaza, Suite 6252, New York, NY 10119*	*1/20/2017*
Lori Smetanka	*National Consumer Voice for Quality Long-Term Care; 1001 Connecticut Avenue, NW Suite 632, Washington, DC 20036*	*1/20/2017*

Michael D. Brady	*Second Plymouth and Bristol*	*2/3/2017*
David F. DeCoste	*5th Plymouth*	*1/24/2017*
Geoff Diehl	*7th Plymouth*	*2/3/2017*
Bruce E. Tarr	*First Essex and Middlesex*	*2/3/2017*

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HOUSE . . . . . No. 3250

By Mrs. O'Connell of Taunton, a petition (accompanied by bill, House, No. 3250) of Shaunna L. O'Connell and others relative to informed written consent for use of psychotropic drugs for certain patients. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to informed written consent for use of psychotropic drugs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 111 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking section 72BB in its entirety and inserting in place thereof the following section:—

Section 72BB. (a) For the purposes of this section, the following terms shall have the following meanings:--

"Appropriate authorizer" is the patient or, if the patient is incapacitated, a legal representative of the patient.

"Behavioral interventions" are individualized, non-pharmacological approaches to care that are provided as part of a supportive environment, directed towards stabilizing or improving a patient's mental, physical or psychosocial well-being.

"Facility", includes the following facilities under Chapter 111 of the General Laws: hospitals under section 51, rehabilitation facilities under section 51, and nursing homes, rest homes, and other long-term care facilities under section 71.

"Incapacitated person", an individual who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

"Legal representative", for any patient adjudged incompetent under the laws of the commonwealth, the person duly appointed by a court of competent jurisdiction to act on the patient's behalf, and, for any patient who has not been adjudged incompetent by a state court, any legal-surrogate designated in accordance with state law.

"Prescribed medication", a psychotropic medication or any medication that is used in the treatment of a psychiatric diagnosis or symptom, whether or not it is a psychotropic medication. Refer to prescriber order for determination of indication for use.

"Prescriber" includes licensed healthcare practitioners duly authorized to prescribe medications (e.g. physicians, physician assistants, advanced practice registered nurses with prescriptive authority, etc.).

"Psychotropic medication", any medication that affects brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories: anti-psychotic, anti-depressant, anti-anxiety, and hypnotic.

(b) Except as provided in subsection (g), before administering a prescribed medication to a patient, the prescriber shall obtain informed written consent from the appropriate authorizer on a form provided by the department under subsection (d).

(c) The prescriber shall obtain a new informed written consent from the appropriate authorizer no later than 3 consecutive calendar days upon increasing the dosage of a prescribed medication under a current informed written consent. If a new informed written consent is not obtained within this timeframe, then the change in dosage shall be tapered to the current informed written consent approved dosage.

(d) The form approved by the department shall include, at a minimum, the following information:

(1) Purpose for administering the prescribed medication, including patient diagnosis, prognosis, and predominant symptoms.

(2) Prescribed medication dosage, covering size, frequency, and duration.

(3) Benefits and risks of the proposed medication, including any known effect or side effect, risks of other conditions, boxed warnings, potential drug interactions with other medications of the patient.

(4) How the patient will be monitored for the effects or side effects of the prescribed medication, including who will do the monitoring, how often it will occur, and how often the prescribed medication will be monitored for its continued need.

(5) Plan for a gradual dose reduction plan, unless clinically contraindicated.

(6) Alternative treatments, including behavioral interventions and other medications, their risks, side effects, and benefits, as well as previously used treatments and their outcomes.

(7) Description of the possible consequences or benefits, if any, of not receiving the medication.

(8) Period for which the informed consent is effective, which shall be no longer than 6 months from the time the consent is given.

(9) The form shall contain the following statements:

i. The appropriate authorizer has the right to accept or refuse the prescribed medication in nonemergency situations.

ii. The appropriate authorizer may withdraw informed consent at any time.

iii. Withdrawal or refusal of treatment shall not relieve a facility of its duty to provide reasonable treatment to the patient.

iv. A declaration that the appropriate authorizer has been provided with specific, complete, and accurate information, and sufficient time to study the information or to seek additional information, including outside advice, concerning the medication.

(10) Signature of prescriber and the appropriate authorizer, and date and time.

(e) The prescriber or facility shall give the appropriate authorizer a copy of the executed informed consent form. The original shall be included in the patient file.

(f) Unless consent is withdrawn sooner, informed written consent obtained under this subsection is valid for the period specified on the informed consent form; that consent shall not exceed 6 months from the date the appropriate authorizer signed the form.

(g) A prescribed medication may be administered without prior informed written consent in the following situations; provided that in (1) New admissions, the prescriber shall obtain verbal informed consent prior to administration and in (1) New admissions and (3) Emergencies, a prescriber shall obtain informed written consent as soon as practicable, but no later than 3 consecutive calendar days, following administration of the prescribed medication. If informed written consent cannot be obtained within this three-day period, the dosage shall be reduced in a clinically appropriate manner and documented to terminate the prescribed medication.

(1) New admissions: In the case of an admission of a patient to a facility when a patient was already receiving a prescribed medication(s), and the facility is not able to obtain an informed written consent prior to or at the time of admission to the facility.

(2) Hospice: A patient may be treated without informed written consent to prevent extreme distress, discomfort, and/or pain for a patient on hospice care.

(3) Emergencies:

(a) A prescribed medication may be administered without prior informed written consent if a patient is at imminent and serious risk of physical or emotional harm or the patient puts others at imminent and serious risk of physical harm; provided that there is no clinically appropriate alternative, including behavioral interventions, unless clinically contraindicated.

(b) In rare circumstances, a prescribed medication may be administered without prior written informed consent, even though no threat of violence exists. A patient may be treated without written informed consent to prevent the "immediate, substantial, and irreversible deterioration of a serious medical condition in cases in which even the smallest of avoidable delays would be intolerable.

(c) A facility, involving the prescriber, shall engage in continued evaluation of emergency need following emergency administration of a prescribed medication. Emergency administration rationale and subsequent consent shall be documented in the medical record.

(h) Rogers Guardianships shall be exempted from any requirement of this law which is in conflict with Rogers Guardianship statutes and Court rules.

(i) The department shall adopt regulations to implement this section on or before June 30, 2018.