



Memorandum in Support

ELDER LAW AND SPECIAL NEEDS SECTION

Elder #14

June 1, 2022

S. 2103-B

By: Senator Sepulveda

A. 5841-B

By: M. of A. Gottfried

Senate Committee: Health

Assembly Committee: Passed

Effective Date: Immediately

AN ACT to amend the public health law, in relation to the use of psychotropic medications in nursing homes and adult care facilities.

THE ELDER LAW AND SPECIAL NEEDS SECTION SUPPORTS THIS LEGISLATION

The Elder Law & Special Needs Section supports **A.5841B (Gottfried)/S.2103B (Sepulveda) Relating to the Use of Psychotropic Medications in Nursing Homes and Adult Care Facilities**. Our section represents clients who are elderly, many of whom have dementia or other mental conditions. We support this legislation aimed at protecting the many seniors and people with disabilities who live in New York's nursing homes and adult care facilities (ACFs) and are treated with psychotropic drugs that pose special health risks.

Nursing homes administer antipsychotic drugs to approximately 20 percent of residents nationwide. Nearly one in five of New York's nursing home residents received antipsychotics from April-June of 2021, with the majority of them (84.8%) receiving them daily.¹ Often, nursing homes use these to drugs to subdue residents exhibiting the behavioral symptoms of dementia,² a highly risky and off-label use of such drugs. The Food and Drug Administration (FDA) has issued a "black box" warning against the use of all antipsychotic drugs on elderly patients with dementia. The FDA warns that the use of these drugs on elderly patients with dementia is associated with increased mortality, as well as significantly increased risk of Parkinsonism, falls, heart attacks, and strokes.

Federal regulations provide that nursing home residents have the right to be informed of and participate in their care, as well as the right to refuse care if they so choose.³ The

¹ Long Term Care Community Coalition, "Alert: Nearly 1 in 5 NY Residents Receive Antipsychotic Drugs," <https://nursinghome411.org/ny-ap-drugs-2021/>.

² Tanja Richter et al., "Psychosocial Interventions for Reducing Antipsychotic Medication in Care Home Residents," *Cochrane Database of Systematic Reviews* 12 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6492452/pdf/CD008634.pdf>.

³ 42 C.F.R. § 483.10(c)(2).

New York legislation builds upon federal consent requirements by ensuring that the resident, or resident's representative, provide *written* informed consent to treatment. This will ensure documentation of this important process, which is especially critical in the case of risky treatments. It will ensure that the reasons for treatments are explained, the alternatives discussed and weighed, and that risks are fully disclosed to the resident or the resident's representative.

Risks to residents are not limited to the use of antipsychotic drugs. The FDA has also issued a black box warning concerning antidepressants, which can lead to increased suicidality. The FDA recommends that all patients starting antidepressant therapies be monitored closely for worsening, and for emergence of, suicidal thoughts and behaviors. This legislation also addresses the need to protect adult care facility (ACF) residents from inappropriate psychotropic drug prescriptions. Both nursing homes and ACFs are home to residents with dementia, and both settings use psychoactive medications to control residents' behaviors. However, ACFs are not subject to any federal regulation whatsoever. In a sample of 250 assisted living communities that included New York ACF's, the rate of potentially inappropriate prescribing was 15% for antipsychotics (a low estimate) and 21% for anti-anxiety medications.⁴ Further, there are risks from long-term antipsychotic use⁵ and inappropriate dosing. Risky drugging should not substitute for critical, non-pharmacologic interventions, such as psychosocial interventions, to reduce behaviors associated with dementia.⁶

This legislation will reduce the risks of inappropriate and harmful drugging of nursing home and ACF residents who are vulnerable to the risks of poor patient care in these low staffing environments. It requires health care professionals (HCP) employed by, or contracted with, nursing homes and ACFs to obtain written informed consent from the patient or patient's representative before prescribing or increasing the prescription of a psychotropic medication. It requires the HCP to disclose the reason for the medication, the nature and seriousness of the patient's condition, the anticipated benefits of the medication, the probability of side effects, and significant risks of the medication. The HCP must also discuss the reasonable alternative treatments to the proposed medication and the reason that the HCP prefers to prescribe the medication in this instance.

The widespread inappropriate use of psychotropic drugs in nursing homes and ACFs carries serious risks of harm and is costly to residents, their families, and tax-payers (who

⁴ Kali S. Thomas et al., "To What Extent Do Local Nursing Home Prescribing Patterns Relate to Psychotropic Prescribing in Assisted Living?" *JAMDA* 22 (2021): 1813-1818, [https://www.jamda.com/article/S1525-8610\(20\)31023-9/pdf](https://www.jamda.com/article/S1525-8610(20)31023-9/pdf). This is a low estimate for inappropriate antipsychotic use because it excludes residents with schizophrenia and does not address potential problems with dosage and long-term antipsychotic drugging.

⁵ Such risks include tardive dyskinesia, cardiovascular disease, and metabolic disturbances. Christopher Cornell, Rubio, and Kane, "What is the risk-benefit ratio of long-term antipsychotic treatment in people with schizophrenia?" *World Psychiatry* 17, no.2 (June 2018): 149-160, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5980517/>.

⁶ Tanja Richter et al., "Psychosocial Interventions for Reducing Antipsychotic Medication."

pay for most nursing home care). This legislation is an important step toward ensuring the appropriate prescription of these powerful and dangerous medications.

Based on the forgoing, the Section **SUPPORTS** this legislation.