AN ACT concerning adult care homes; requiring written informed consent before administering an antipsychotic medication to an adult care home resident.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) (1) "Adult care home" means the same as defined in K.S.A. 39-923, and amendments thereto.

(2) "Antipsychotic" means those medications included in the United States pharmacopeia's antipsychotic therapeutic category.

(3) "Department" means the Kansas department for aging and disability services.

(4) "Incapacitated" means being unable to receive and evaluate information effectively or to communicate decisions to such an extent that the resident lacks the capacity to manage such resident's healthcare decisions.

(5) "Informed consent" means receiving permission from a resident or a person acting on behalf of the resident, after such resident or person is presented with:

(A) The specific issue;

(B) the recommended treatment;

(C) the resident's specific mental or physical status with regard to the issue;

(D) any risks regarding treating or not treating the issue;

(E) acceptable alternatives of treatment to the issue;

(F) the right to refuse treatment; and

(G) possible consequences risked by refusal.

(6) "Person acting on behalf of the resident" means a guardian of the resident, as defined in K.S.A. 59-3051, and amendments thereto, an agent acting in accordance with a durable power of attorney for healthcare decisions executed by the resident pursuant to K.S.A. 58-625 et seq., and amendments thereto, or an individual acting in accordance with a living will lawfully executed by the resident.

(7) "Prescriber" means the same as defined in K.S.A. 65-1626, and amendments thereto.

(8) "Resident" means any individual kept, cared for, treated, boarded or otherwise accommodated in any adult care home.
(b) Except in an emergency as described in subsection (e)(1)(B), no adult care home resident shall be prescribed or administered an antipsychotic medication that was not already prescribed to the resident prior to admission to the adult care home unless:

(1) The resident has been examined by the prescriber of the antipsychotic medication; and

(2) the resident has received a behavioral health diagnosis by such prescriber of a condition that such antipsychotic medication has been specifically approved to treat by the United States food and drug administration.

(c) Any prescriber who prescribes an antipsychotic medication to an adult care home resident shall notify the adult care home if the prescribed medication has a boxed warning under 21 C.F.R. 201.57.

(d) (1) Except as provided below, before an antipsychotic medication that has a boxed warning under 21 C.F.R. 201.57 is administered to a resident of an adult care home, a prescriber shall obtain written informed consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, on a form provided by the department or on a form that contains the same information as the form described below.

(2) The department shall make available on its website or by mail multiple, drug-specific forms for obtaining informed consent under this section for the administration of antipsychotic medications that contain all of the following:

(A) A space for a description of the benefits of the proposed treatment and the way the medication will be administered;

(B) a description, using the most recently issued information from the United States food and drug administration, of the side effects or risks of side effects of the medication and any warnings about the medication;

(C) a space for a description of any alternative treatment modes or medications;

(D) a space for a description of the probable consequences of not receiving the medication;

(E) a space for indicating the specific time period, if any, when the resident or the person acting on behalf of the resident wishes the informed consent to be effective;

(F) a statement that the resident or a person acting on behalf of the resident may withdraw informed consent, in writing, at any time;

(G) a declaration that the resident or a person acting on behalf of the resident has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the medication;

(H) a space for the signature of the prescriber and the date of signing; and
(I) a space for the signature of the resident or a person acting on behalf of the resident and the date of signing.

(3) Written informed consent provided by a guardian is subject to the requirements of K.S.A. 59-3075, and amendments thereto.

(4) Upon receiving written informed consent from a resident or a person acting on behalf of the resident, a prescriber shall send a copy of the completed informed consent form to the adult care home. The adult care home shall place a copy of the resident's completed informed consent form in such resident's chart. Upon request, the adult care home shall give the resident or a person acting on behalf of the resident a copy of the completed informed consent form.

(5) Written informed consent obtained under this subsection is valid until withdrawn or until any specific time period listed on the informed consent form by the resident or a person acting on behalf of the resident has passed.

(6) The resident or a person acting on behalf of the resident may withdraw consent, in writing, at any time.

(7) At the time the resident or a person acting on behalf of the resident signs the informed consent form, the prescriber shall verbally inform the resident or the person acting on behalf of the resident of all of the following:

(A) That the resident or a person acting on behalf of the resident may withdraw consent, in writing, at any time; and

(B) that written informed consent obtained under this subsection is valid until withdrawn or until any specific time period indicated on the informed consent form by the resident or a person acting on behalf of the resident has passed.

(8) No person shall retaliate against the resident or a person acting on behalf of the resident for refusing to provide or withdrawing consent. As used in this paragraph, "retaliate" means: Increasing charges; decreasing services, rights or privileges; taking or threatening to take any action to coerce or compel the resident to leave the home; or abusing or threatening to harass or abuse the resident in any manner.

(9) The prescriber shall use the most current written informed consent forms available from the department or shall update such prescriber's own forms with the most current information about the medications available from the department.

(e) (1) The prescriber shall not be required to obtain written informed consent before an antipsychotic medication is administered to a resident under subsection (d) if the following apply:

(A) The resident is subject to court-ordered treatment that includes the administration of antipsychotic medications; or

(B) (i) there is an emergency in which the resident is at significant
risk of physical or emotional harm or the resident puts any other individual
at significant risk of physical or emotional harm and time and distance
preclude obtaining written informed consent before administering an
antipsychotic medication; and
(ii) the physician, advanced practice registered nurse or physician
assistant caring for the resident has determined, after an in-person
evaluation of the resident, that the resident or others will be harmed if the
antipsychotic medication is not administered before written informed
consent is obtained.
(2) Any verbal consent obtained during an emergency as described in
paragraph (1)(B) shall be entered in the resident's medical record and shall
be valid for 72 hours, after which time the adult care home may not
continue to administer the antipsychotic medication, unless the prescriber
has obtained a copy of the written informed consent form according to
subsection (d).
(3) The prescriber or an adult care home shall document in the
resident's medical record the reason or reasons why administering an
antipsychotic medication before written informed consent could be
obtained during an emergency as described in paragraph (1)(B) was
necessary.
(4) If an antipsychotic medication is prescribed due to an emergency
as described in paragraph (1)(B), the quantity prescribed and dispensed
shall be limited to the amount that is adequate to treat the resident during
the emergency period.
(f) Nothing in this section shall be construed to otherwise limit:
(1) A prescriber's authority to prescribe or provide treatment to a
patient in accordance with applicable standards of care or licensing
provisions found in the Kansas Statutes Annotated, and amendments
thereto, or any rules and regulations adopted thereunder; or
(2) a resident's right of access to an antipsychotic drug prescribed by
a licensed prescriber and administered for the purpose of treating a
diagnosed behavioral health condition.
Sec. 2. This act shall take effect and be in force from and after its
publication in the statute book.