

## HOUSE BILL No. 2704

By Representatives Gallagher, Baker, Curtis, Deere, Good, Judd-Jenkins, Markley, Mastroni, Ousley and Resman

2-7

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

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

6 Section 1. (a) (1) "Adult care home" means the same as defined in  
7 K.S.A. 39-923, and amendments thereto, but does not include nursing  
8 facilities for mental health or intermediate care facilities for people with  
9 intellectual disability.

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

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

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

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

21 (A) The specific issue;

22 (B) the recommended treatment;

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

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

26 (E) acceptable alternatives of treatment to the problem issue;

27 (F) the right to refuse treatment; and

28 (G) possible consequences risked by refusal.

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

35 (6) "Prescriber" means the same as defined in K.S.A. 65-1626, and

1 amendments thereto.

2 (7) "Resident" means any individual kept, cared for, treated, boarded  
3 or otherwise accommodated in any adult care home.

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

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

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

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

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

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

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

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

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

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

35 (H) a space for the signature of the prescriber and the date of signing;  
36 and

37 (I) a space for the signature of the resident, or a person acting on  
38 behalf of the resident, and the date of signing.

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

41 (4) Upon receiving written informed consent from a resident or a  
42 person acting on behalf of the resident, a prescriber shall send a copy of  
43 the completed informed consent form to the adult care home. The adult

1 care home shall place a copy of the resident's completed informed consent  
2 form in such resident's chart. Upon request, the adult care home shall give  
3 the resident or a person acting on behalf of the resident a copy of the  
4 completed informed consent form.

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

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

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

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

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

21 (8) No person may retaliate against or threaten to retaliate against the  
22 resident or a person acting on behalf of the resident for refusing to provide  
23 or withdrawing consent.

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

28 (d) (1) An adult care home shall not be required to obtain written  
29 informed consent before administering an antipsychotic medication to a  
30 resident under subsection (c) if the following apply:

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

33 (B) (i) there is an emergency in which the resident is at significant  
34 risk of physical or emotional harm or the resident puts any other individual  
35 at significant risk of physical or emotional harm and when time and  
36 distance preclude obtaining written informed consent before administering  
37 an antipsychotic medication; and

38 (ii) the physician, advanced practice registered nurse or physician  
39 assistant caring for the resident has determined that the resident or others  
40 will be harmed if the antipsychotic medication is not administered before  
41 written informed consent is obtained.

42 (2) Any verbal consent obtained under subparagraph (B) shall be  
43 entered in the resident's medical record and shall be valid for 10 days, after

1 which time the adult care home may not continue to administer the  
2 antipsychotic medication, unless the adult care home has obtained a copy  
3 of the written informed consent form according to subsection (c).

4 (3) If subparagraph (B) applies, the resident is incapacitated and the  
5 adult care home has made a good faith effort to obtain verbal consent  
6 under paragraph (2) from a person acting on behalf of the resident but has  
7 been unable to contact such a person, the adult care home may administer  
8 the antipsychotic medication to the resident for up to 24 hours before  
9 obtaining consent under paragraph (1) or subsection (c).

10 (e) Nothing in this section shall be construed to otherwise limit:

11 (1) A prescriber's authority to prescribe or provide treatment to a  
12 patient in accordance with applicable standards of care or licensing  
13 provisions found in the Kansas Statutes Annotated, and amendments  
14 thereto, or any rules and regulations adopted thereunder; or

15 (2) a resident's right of access to an antipsychotic drug prescribed by  
16 a licensed prescriber and administered for the purpose of treating a  
17 diagnosed behavioral health condition.

18 Sec. 2. This act shall take effect and be in force from and after its  
19 publication in the statute book.