



AB 48 – Nursing Facility Resident Informed Consent Protection Act of 2023

SUMMARY

Some nursing homes in the United States, including California, routinely give psychotherapeutic drugs to residents with dementia to control their behavior, despite rules against the misuse of such drugs as “chemical restraints.” However, administering these drugs to dementia patients can have dangerous side effects and increase the risk of death. AB 48 will help stem this practice in California by giving residents and their families the right to informed consent.

BACKGROUND

Psychotherapeutic drugs were developed to treat mental health disorders, but are routinely misused to subdue nursing home residents with dementia. The United States Food and Drug Administration (US FDA) has never approved most psychotherapeutic drugs as safe and effective for treatment of dementia symptoms, but some nursing homes inappropriately use these drugs to manage patients with dementia. Studies have shown that antipsychotic drugs that are meant to treat schizophrenia can have dangerous side effects and nearly double the risk of death in older people with dementia. The US FDA requires manufacturers to label them with the strongest “black box” warning about the risks they pose to people with dementia.

In 2012, the federal Centers for Medicare & Medicaid Services announced an initiative to reduce the misuse of antipsychotic medications, but providers have switched to using other psychotherapeutic drugs. A [2022 report by the Unites States Department of Health and Human Services](#) found that 80% of long-stay nursing home residents are now receiving psychotherapeutic drugs. The report also found that this disproportionately impacts residents in nursing homes with higher percentages of residents with low-income subsidies. Facilities administer these drugs in many cases without obtaining informed consent from residents or their families, so residents and families may be unaware of the potential side effects.

PROBLEM

Despite dangerous side effects, condemnation by care providers, and a decade-long national campaign, the misuse of psychotherapeutic drugs remains a persistent problem in nursing homes. Drug misuse is often due to a lack of meaningful and enforceable informed consent standards. Eleven years after a [California Department of Public Health initiative](#) found that 63% of surveyed facilities violated residents’ informed consent rights, informed consent violations remain routine and pervasive.

THIS BILL:

AB 48 builds on existing protections for nursing home residents in state law and regulations. This bill:

- Codifies and expands rules that establish a nursing home resident’s right to provide or withhold written informed consent pertaining to the use of psychotherapeutic drugs and the right to be free from chemical restraint.
- Specifies that residents and their representatives must be informed in writing about the content of black box warnings for proposed drugs and whether the drug’s proposed use has been approved by the FDA.
- Requires nursing homes to provide written notice to residents and their representatives of their right to revoke consent every six months.
- Provides for increased enforcement of informed consent requirements.

SUPPORT

California Advocates for Nursing Home Reform (CANHR, sponsor)

AARP California

A Voice For Choice Advocacy

Alzheimer’s Los Angeles

Alzheimer’s Orange County

Alzheimer’s San Diego

California Alliance for Retired Americans (CARA)

California Commission on Aging

California Health Coalition Advocacy

California Long-Term Care Ombudsman Association

California Office of the State Long-Term Care
Ombudsman Association
California Retired Teachers Association
Consumer Attorneys of California
Educate. Advocate.
Elder Law & Advocacy
Essential Caregivers Coalition
Geriatric Circle
Gray Panthers of San Francisco
Justice in Aging
Kate Harrison, Vice Mayor, City of Berkeley
Long Term Care Services of Ventura County, Inc.
National Association of Social Workers – CA Chapter
Oakland Privacy
Retired Public Employees Association (RPEA)

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