

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3) Section Number: 330.1156 Proposed Action:
New
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A Complete Description of the Subjects and Issues Involved: The Sheltered Care Facilities Code regulates the administration of medications to residents, including psychotropic medication.

Public Act 96-1372, passed by the General Assembly in 2010, overhauled many elements of care in the Nursing Home Care Act [210 ILCS 45]. Among the changes was a new requirement that the Department "adopt, by rule, a protocol specifying how informed consent for psychotropic medication may be obtained or refused."

The addition of new Section 330.1156 (Administration of Psychotropic Medications) implements this portion of PA 96-1372.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the Illinois Register.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers: Proposed Action: Illinois Register Citation:

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330.120	Amend	34 Ill. Reg. 18201; November 29, 2010
330.165	Amend	34 Ill. Reg. 18201; November 29, 2010
330.170	Amend	34 Ill. Reg. 18201; November 29, 2010
330.175	Amend	34 Ill. Reg. 18201; November 29, 2010
330.180	Amend	34 Ill. Reg. 18201; November 29, 2010
330.220	Amend	34 Ill. Reg. 18201; November 29, 2010
330.274	Amend	34 Ill. Reg. 18201; November 29, 2010
330.277	Amend	34 Ill. Reg. 18201; November 29, 2010
330.278	Amend	34 Ill. Reg. 18201; November 29, 2010
330.282	Amend	34 Ill. Reg. 18201; November 29, 2010
330.284	Repeal	34 Ill. Reg. 18201; November 29, 2010
330.286	Amend	34 Ill. Reg. 18201; November 29, 2010
330.330	Amend	34 Ill. Reg. 18201; November 29, 2010
330.715	Amend	34 Ill. Reg. 18201; November 29, 2010
330.724	Repeal	34 Ill. Reg. 18201; November 29, 2010
330.725	Amend	34 Ill. Reg. 18201; November 29, 2010
330.726	Amend	34 Ill. Reg. 18201; November 29, 2010
330.727	Amend	34 Ill. Reg. 18201; November 29, 2010
330.761	New	34 Ill. Reg. 18201; November 29, 2010
330.930	Amend	34 Ill. Reg. 18201; November 29, 2010
330.1140	New	34 Ill. Reg. 18201; November 29, 2010
330.4300	Amend	34 Ill. Reg. 18201; November 29, 2010

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister
 Division of Legal Services
 Illinois Department of Public Health
 535 West Jefferson St., 5th Floor
 Springfield, Illinois 62761

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217/782-2043

e-mail: dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Type of small businesses, small municipalities and not-for-profit corporations affected: Sheltered care facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: Yes
 - C) Types of professional skills necessary for compliance: Nursing, medical
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2010

The full text of the Proposed Amendment begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 330
SHELTERED CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
330.110	General Requirements
330.120	Application for License
330.130	Licensee
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.163	Alzheimer's Special Care Disclosure
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
330.175	Denial of Renewal of License
330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
330.210	Filing an Annual Attested Financial Statement
330.220	Information to be Made Available to the Public By the Department
330.230	Information to be Made Available to the Public By the Licensee
330.240	Municipal Licensing
330.250	Ownership Disclosure
330.260	Issuance of Conditional Licenses
330.270	Monitoring and Receivership
330.271	Presentation of Findings
330.272	Determination to Issue a Notice of Violation or Administrative Warning
330.274	Determination of the Level of a Violation
330.276	Notice of Violation
330.277	Administrative Warning
330.278	Plans of Correction
330.280	Reports of Correction
330.282	Conditions for Assessment of Penalties
330.284	Calculation of Penalties

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330.286	Determination to Assess Penalties
330.288	Reduction or Waiver of Penalties
330.290	Quarterly List of Violators (Repealed)
330.300	Alcoholism Treatment Programs In Long-Term Care Facilities
330.310	Department May Survey Facilities Formerly Licensed
330.315	Supported Congregate Living Arrangement Demonstration
330.320	Waivers
330.330	Definitions
330.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
330.510	Administrator

SUBPART C: POLICIES

Section	
330.710	Resident Care Policies
330.715	Request for Resident Criminal History Record Information
330.720	Admission and Discharge Policies
330.724	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006
330.725	Identified Offenders
330.726	Discharge Planning for Identified Offenders
330.727	Transfer of an Identified Offender
330.730	Contract Between Resident and Facility
330.740	Residents' Advisory Council
330.750	General Policies
330.760	Personnel Policies
330.765	Initial Health Evaluation for Employees
330.770	Disaster Preparedness
330.780	Incidents and Accidents
330.785	Contacting Local Law Enforcement
330.790	Infection Control
330.795	Language Assistance Services

SUBPART D: PERSONNEL

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Section

330.910	Personnel
330.911	Health Care Worker Background Check
330.913	Nursing and Personal Care Assistants (Repealed)
330.916	Student Interns (Repealed)
330.920	Consultation Services
330.930	Personnel Policies

SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section

330.1110	Medical Care Policies
330.1120	Personal Care
330.1125	Life Sustaining Treatments
330.1130	Communicable Disease Policies
330.1135	Tuberculin Skin Test Procedures
330.1140	Behavior Emergencies (Repealed)
330.1145	Restraints
330.1150	Emergency Use of Physical Restraints
330.1155	Unnecessary, Psychotropic, and Antipsychotic Drugs
330.1156	Administration of Psychotropic Medications
330.1160	Vaccinations

SUBPART F: RESTORATIVE SERVICES

Section

330.1310	Activity Program
330.1320	Work Programs
330.1330	Written Policies for Restorative Services
330.1340	Volunteer Program

SUBPART G: MEDICATIONS

Section

330.1510	Medication Policies
330.1520	Administration of Medication
330.1530	Labeling and Storage of Medications

SUBPART H: RESIDENT AND FACILITY RECORDS

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Section

- 330.1710 Resident Record Requirements
- 330.1720 Content of Medical Records
- 330.1730 Records Pertaining to Residents' Property
- 330.1740 Retention and Transfer of Resident Records
- 330.1750 Other Resident Record Requirements
- 330.1760 Retention of Facility Records
- 330.1770 Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

- 330.1910 Director of Food Services
- 330.1920 Dietary Staff in Addition to Director of Food Services
- 330.1930 Hygiene of Dietary Staff
- 330.1940 Diet Orders
- 330.1950 Meal Planning
- 330.1960 Therapeutic Diets (Repealed)
- 330.1970 Scheduling of Meals
- 330.1980 Menus and Food Records
- 330.1990 Food Preparation and Service
- 330.2000 Food Handling Sanitation
- 330.2010 Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section

- 330.2210 Maintenance
- 330.2220 Housekeeping
- 330.2230 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

- 330.2410 Furnishings
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SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

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Section

330.2610	Codes
330.2620	Water Supply
330.2630	Sewage Disposal
330.2640	Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS
FOR NEW SHELTERED CARE FACILITIES

Section

330.2810	Applicable Requirements (Repealed)
330.2820	Applicability of These Standards
330.2830	Submission of a Program Narrative
330.2840	New Constructions, Additions, Conversions, and Alterations
330.2850	Preparation and Submission of Drawings and Specifications
330.2860	First Stage Drawings
330.2870	Second Stage Drawings
330.2880	Architectural Drawings
330.2890	Structural Drawings
330.3000	Mechanical Drawings
330.3010	Electrical Drawings
330.3020	Additions to Existing Structures
330.3030	Specifications
330.3040	Building Codes
330.3050	Site
330.3060	General Building Requirements
330.3070	Administration
330.3080	Corridors
330.3090	Bath and Toilet Rooms
330.3100	Living, Dining, Activity Rooms
330.3110	Bedrooms
330.3120	Special Care Room
330.3130	Kitchen
330.3140	Laundry
330.3150	Housekeeping, Service, and Storage
330.3160	Plumbing
330.3170	Heating
330.3180	Electrical

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SUBPART N: FIRE PROTECTION STANDARDS FOR
NEW SHELTERED CARE FACILITIES

Section

330.3310	Applicable Requirements (Repealed)
330.3320	Applicability of These Standards
330.3330	Fire Protection
330.3340	Fire Department Service and Water Supply
330.3350	General Building Requirements
330.3360	Exit Facilities and Subdivision of Floor Areas
330.3370	Stairways, Vertical Openings, and Doorways
330.3380	Corridors
330.3390	Exit Lights and Directional Signs
330.3400	Hazardous Areas and Combustible Storage
330.3410	Fire Alarm and Detection System
330.3420	Fire Extinguishers, Electric Wiring, and Miscellaneous
330.3430	Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS FOR
EXISTING SHELTERED CARE FACILITIES

Section

330.3610	Site
330.3620	General Building Requirements
330.3630	Administration
330.3640	Corridors
330.3650	Bath and Toilet Rooms
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330.3680	Special Care Room
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330.3700	Laundry Room
330.3710	Housekeeping and Service Rooms and Storage Space
330.3720	Plumbing and Heating
330.3730	Electrical

SUBPART P: FIRE PROTECTION STANDARDS FOR
EXISTING SHELTERED CARE FACILITIES

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Section

330.3910	Fire Protection
330.3920	Fire Department Service and Water Supply
330.3930	Occupancy and Fire Areas
330.3940	Exit Facilities and Subdivision of Floor Areas
330.3950	Stairways, Vertical Openings, and Doorways
330.3960	Exit and Fire Escape Lights and Directional Signs
330.3970	Hazardous Areas and Combustible Storage
330.3980	Fire Alarm and Detection System
330.3990	Fire Extinguishers, Electric Wiring, and Miscellaneous
330.4000	Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART Q: RESIDENT'S RIGHTS

Section

330.4210	General
330.4220	Medical and Personal Care Program
330.4230	Restraints (Repealed)
330.4240	Abuse and Neglect
330.4250	Communication and Visitation
330.4260	Resident's Funds
330.4270	Residents' Advisory Council
330.4280	Contract With Facility
330.4290	Private Right of Action
330.4300	Transfer or Discharge
330.4310	Complaint Procedures
330.4320	Confidentiality
330.4330	Facility Implementation

SUBPART R: DAY CARE PROGRAMS

Section

330.4510	Day Care in Long-Term Care Facilities
330.APPENDIX A	Interpretation, Components, and Illustrative Services for Sheltered Care Facilities (Repealed)
330.APPENDIX B	Classification of Distinct Part of a Facility For Different Levels of Service (Repealed)

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330.APPENDIX C	Forms for Day Care in Long-Term Care Facilities
330.APPENDIX D	Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
330.APPENDIX E	Guidelines for the Use of Various Drugs
330.TABLE A	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6973, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg. 19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 4, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. 1475, effective January 14, 1994; amended at 18 Ill. Reg. 15851, effective October 15, 1994; amended at 19 Ill. Reg. 11567, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 552, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 10125, effective July 15, 1996; amended at 20 Ill. Reg. 12160, effective September 10, 1996; amended at 22 Ill. Reg. 4078, effective February 13, 1998; amended at 22 Ill. Reg. 7203, effective April 15, 1998; amended at 22 Ill. Reg. 16594, effective September 18, 1998; amended at 23 Ill. Reg. 1085, effective January 15, 1999; amended at 23 Ill. Reg. 8064, effective July 15, 1999; amended at 24

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Ill. Reg. 17304, effective November 1, 2000; amended at 25 Ill. Reg. 4901, effective April 1, 2001; amended at 26 Ill. Reg. 4859, effective April 1, 2002; amended at 26 Ill. Reg. 10559, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2202, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5473, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5886, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14218, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15880, effective September 25, 2003; amended at 27 Ill. Reg. 18130, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3541, effective November 15, 2003; amended at 28 Ill. Reg. 11195, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11879, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15156, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12891, effective August 2, 2005; amended at 30 Ill. Reg. 1439, effective January 23, 2006; amended at 30 Ill. Reg. 5260, effective March 2, 2006; amended at 31 Ill. Reg. 6072, effective April 3, 2007; amended at 31 Ill. Reg. 8828, effective June 6, 2007; amended at 33 Ill. Reg. 9371, effective June 17, 2009; amended at 34 Ill. Reg. 19199, effective November 23, 2010; amended at 35 Ill. Reg. 3415, effective February 14, 2011; amended at 35 Ill. Reg. _____, effective _____.

Section 330.1156 Administration of Psychotropic Medications

This Section addresses the use of psychotropic medications in the treatment of residents.

- a) For the purpose of this Section, the following definitions shall apply:

Code – the Mental Health and Developmental Disabilities Code [405 ILCS 5].

Guardianship – the legal relationship between a resident or ward and a court-appointed guardian, including a public guardian such as the Office of State Guardian. Illinois guardians may make legally binding decisions on behalf of wards in personal or financial affairs, or both. For the purposes of this Part, the guardian must have court authority to make personal decisions for the ward. Guardians with personal decision-making authority will typically act under a plenary guardianship. A plenary guardian is one who has full decision-making authority over the person as provided under Section 11(a)-17 of the Illinois Probate Act of 1975 [755 ILCS 5/11a-17]. However, a guardian may also legitimately act under a

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temporary or a limited guardianship in which the guardian has clearly defined medical decision-making authority. A parent or an adult child of an adult resident without guardianship is not legally authorized to make binding decisions on behalf of a resident. When doubt exists as to the decision-making authority of a guardian, the guardian shall supply either letters of office or a copy of a court order documenting legal authority to act on behalf of the ward.

Informed consent – the voluntary and knowing choice by a resident or his/her legal guardian.

Lack of competency – the inability, due to diagnosed and documented mental impairment, to make reasoned decisions regarding treatment/habilitation alternatives, including the taking of psychotropic medication, by evaluating, among other factors, information about the likelihood of therapeutic benefits and the risk of side effects.

Legally and clinically competent resident – an individual who is not under guardianship and has the capacity to make reasoned decisions and give informed consent.

Legally and clinically incompetent resident – an individual under guardianship or who lacks the capacity to make reasoned decisions and give informed consent.

Long-acting psychotropic medication – psychotropic medications, including but not limited to Haldol Decanoate and Prolixin Decanoate, that are designed so that a single dose will have an intended clinical effect for a period of at least 48 hours. [Section 1-113.5 of the Code]

Psychotropic medication – medication that is used for or listed as used for antipsychotic, antidepressant, antimanic, or antianxiety behavior modification or behavior management purposes in the latest editions of the AMA Drug Evaluations or the Physician's Desk Reference. (Section 2-106.1(b) of the Act)

Substitute decision maker – a person who possesses the authority to make decisions under the Powers of Attorney for Health Care Law [755 ILCS

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45/Art. IV] or under the Mental Health Treatment Preference Declaration Act [755 ILCS 43]. [Section 1-110.5 of the Code]

b) Drug Treatment

- 1) A resident shall not be given unnecessary drugs. An unnecessary drug is any drug used in an excessive dose, including in duplicative therapy; for excessive duration; without adequate monitoring; without adequate indications for its use; or in the presence of adverse consequences that indicate the drugs should be reduced or discontinued. (Section 2-106.1(a) of the Act)
- 2) Facilities shall comply with Appendix E in the use of psychotropic medication.

c) Evaluation

- 1) No new psychotropic medication shall be prescribed for a resident unless examinations have been conducted in accordance with Section 330.720 or Section 330.1110. A physician shall conduct the examinations personally within the 30 days prior to the resident being given the psychotropic medication. The prescribing physician shall record, sign, and date the prescription. The prescribing physician shall also document appropriate clinical information related to the need for the psychotropic medication in the resident's medical record at the time of the prescription. This subsection (c)(1) does not apply to a dosage adjustment of existing psychotropic medications.
- 2) When psychotropic medication is administered in an emergency (see subsection (e)), the requirements of subsection (c)(1) need not be met if the prescribing physician has determined, either by personal observation or with information supplied by the attending physician, facility medical director, nurse practitioner, physician assistant or registered nurse with thorough knowledge of the resident's current clinical condition, that the resident is in need of immediate psychotropic medication to prevent the resident from causing serious and imminent physical harm to self or others.

d) Informed Consent

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Psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian, or other legally authorized representative. (Section 2-106.1(b) of the Act) Prior to the first treatment review, the multidisciplinary team shall assess the resident's ongoing capability to give informed consent. This assessment process shall also include providing information to the resident to improve the resident's understanding of all psychotropic medications prescribed, including written information that describes risks, potential benefits, and alternatives, if alternatives are available. At the time of the first treatment review, the clinical team shall make a determination of the resident's apparent competency or lack of competency to give informed consent, and this determination shall be entered into the treatment plan. If a guardian is needed and if no guardian is known to be appointed, the facility shall initiate the process of application for guardianship by contacting the resident's family or, if no family member is able to serve as guardian or initiate guardianship proceedings, the State Guardianship and Advocacy Commission. Psychotropic medications may continue to be prescribed to a non-objecting resident until a court hearing can be held to make a formal determination of competency, and a guardian can be appointed.

1) Legally and Clinically Competent Residents

A) If the resident is able to give informed consent, the physician, a registered pharmacist, or a licensed nurse shall communicate the following information to the resident:

- i) The nature and purpose of the proposed treatment;
- ii) Whether the proposed treatment requires periodic testing/procedures to ensure safety/efficacy;
- iii) Side effects, risks, and benefits of the proposed treatment;
- iv) Prognosis and risks without the proposed treatment;
- v) Complementary treatments not previously tried and their risks, side effects, benefits, and efficacy;
- vi) The right to refuse the proposed treatment; and

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- vii) A copy of the written informed consent for each psychotropic medication currently prescribed or newly proposed to be prescribed, or if the resident refuses to sign but gives verbal consent, signed documentation by two licensed professionals who witnessed the verbal consent. The form used for documentation shall be a duplicate of the signed written informed consent. When possible, in accordance with State and federal law concerning release of medical information, and with the resident's permission, the resident's family or resident's representative should also be provided a copy of the written informed consent form for each psychotropic medication.
- B) The required information shall be given to the resident in a manner consistent with Section 330.795 and with his or her ability to understand, including the regular use of sign language for any deaf or hard of hearing individual for whom sign language is a primary mode of communication.
- C) Informed written consent shall be obtained from the resident for all new psychotropic medication no later than the initial care planning meeting.
- D) If the resident has previously executed a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act or a health care power of attorney under the Power of Attorney for Health Care Law, the facility shall act in accordance with that declaration or power of attorney.
- E) Residents newly admitted from home or hospital and those returned to the facility from an acute hospital stay may continue psychotropic medications previously prescribed to them until the multidisciplinary team can complete a competency assessment.
- 2) Legally and Clinically Incompetent Residents
- A) Prior to prescribing new psychotropic medications in non-emergency situations, a physician or licensed nurse shall discuss

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the following information with the resident and the resident's guardian or substitute decision maker:

- i) The nature and purpose of the proposed treatment;
 - ii) Whether the proposed treatment requires periodic testing/procedures to ensure safety/efficacy;
 - iii) Side effects and risks of the proposed treatment;
 - iv) Prognosis and risks without the proposed treatment;
 - v) Complementary treatments not previously tried and their risks, side effects, benefits, and efficacy; and
 - vi) The right to refuse the proposed treatment.
- B) A copy of the written informed consent form for each psychotropic medication currently prescribed or newly proposed to be prescribed shall be given to the resident and guardian or substitute decision maker. This form is a duplicate of the signed written informed consent, which is to be kept in the resident's medical record.
- C) Adequate time for the resident and the guardian or substitute decision maker to review the written information shall be allowed and any questions answered prior to signing the written informed consent. Consent forms for psychotropic medication shall be provided to guardians or substitute decision makers for review prior to the initial care planning meeting.
- D) The required information shall be given to the resident and the resident's guardian or substitute decision maker in a manner consistent with Section 330.795 and with his or her ability to understand, including the regular use of sign language for any deaf or hard of hearing individual for whom sign language is a primary mode of communication.

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- E) The resident shall be asked if he/she agrees to receive the proposed treatment. If the resident does not object, written informed consent shall be obtained from the resident's guardian or substitute decision maker and shall be documented in the resident's medical record. If the resident has no guardian or substitute decision maker or if the guardian or substitute decision maker does not provide written informed consent, any treatment shall proceed in accordance with subsection (e) (Treatment in Emergencies).
- F) If the resident objects to the proposed treatment, any treatment shall proceed in accordance with subsection (e) (Treatment in Emergencies).
- G) If the resident has previously executed a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act or a health care power of attorney under the Powers of Attorney for Health Care Law, the facility shall act in accordance with that declaration or power of attorney.
- H) If a court orders the involuntary administration of psychotropic medication, the psychotropic medication shall be administered in accordance with both the order and accepted clinical practice.
- e) Treatment in Emergencies
- 1) In an emergency when treatment is necessary to prevent a resident from causing serious and imminent physical harm to self or others, a member of the treatment/habilitation team shall document, in the resident's medical record, the complementary treatments that the staff implemented that were unsuccessful in addressing the emergency. The documentation shall include a written explanation of the reasons why complementary treatments were not successful.
- 2) For administration of psychotropic medications, the prescribing physician, or a nurse in consultation with a physician, shall document his or her determination that an emergency exists based on a personal examination of the individual. Administration of the psychotropic medication shall be accompanied by a physician's order.

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- 3) In prescribing psychotropic medication in an emergency, the prescribing physician, or a nurse with the consultation of a physician, shall examine the resident and document his/her determination of the initial emergency and response, including the circumstances leading up to the need for emergency treatment, in the resident's medical record as soon as possible, but within 24 hours after the emergency. Psychotropic medication shall not be continued unless the need for the psychotropic medication is predetermined at least every 24 hours and the circumstances demonstrating that need are set forth in the resident's medical record. A redetermination is based on a personal examination of the resident by a physician or by a nurse with the consultation of a physician.
- 4) Psychotropic medication shall not be administered over a resident's refusal under Section 2-107 of the Code for a period in excess of 72 hours, excluding Saturdays, Sundays and holidays, unless the treating physician, with the support of the treatment/habilitation team, files a petition for a court order under Section 2-107.1 of the Code and the administration of psychotropic medication continues to be necessary to prevent the resident from causing serious and imminent physical harm to self or others. If no petition is filed, administration of psychotropic medication shall be discontinued.
- 5) A restriction of rights form shall be completed for each emergency administration of psychotropic medication.
- 6) Upon commencement of services, or as soon thereafter as the condition of the resident permits and the guardian or substitute decision-maker consents, the facility shall advise the resident as to the circumstances under which the use of emergency forced psychotropic medication is permitted under Section 2-107(a) of the Code [Section 2-200(d) of the Code]. This information shall be provided no later than 72 hours after the determination to administer emergency forced psychotropic medication is made. The facility shall ask the resident which form of intervention he or she would prefer if any of the circumstances set forth in Section 2-107(a) of the Code arises. The resident's preference shall be documented in the medical record and communicated by the facility to the resident's guardian or substitute decision maker, if any. If any circumstances set forth in Section 2-107(a) of the Code arise, the facility shall consider the preferences of the resident regarding which form of intervention to use as

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communicated to the facility by the resident or as stated in the resident's advance directive.

7) Long-acting psychotropic medications shall not be administered under Section 2-107 of the Code under any circumstances.

f) Treatment Monitoring

1) Documentation

A) The attending physician, or a nurse in consultation with a physician, shall examine and document the status of the resident's condition in the resident's medical record as often as the resident's clinical condition warrants, but not less than every 30 calendar days. Documentation of the rationale for administration of psychotropic medication, including type, dosage or frequency of administration of the proposed psychotropic medication as applicable, shall be included. Beneficial effects and significant side effects, as well as their treatment and management or the absence of treatment and management, shall also be noted.

B) Facility staff shall document in the resident's medical record additional clinical information, such as assessments, evaluations or laboratory results, as it becomes available.

2) Treatment Review

A) If a resident has been receiving psychotropic medication continuously or regularly for a period of three months and the treatment is continued, every three months thereafter for as long as the treatment continues the facility medical director or other physician designated by the facility director shall, along with the facility's pharmaceutical advisory committee, review the psychotropic treatment regimen.

B) At least seven days prior to the treatment review meeting, the resident, guardian or substitute decision maker, if any, and any person designated under Section 2-200(b) of the Code shall be given written notification of the time and place of the treatment

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review meeting. The notice shall also advise the resident of his/her right to designate a person to attend the meeting and assist the resident in accordance with Section 2-107.2 of the Code.

C) A written recommendation concerning the suitability of continued treatment with psychotropic medication shall be prepared after each meeting.

D) If, during the course of the treatment review meeting, the resident advises the committee that he/she no longer agrees to continue receiving psychotropic medication, or if the resident's guardian or substitute decision maker refuses psychotropic medication for the resident, the treatment shall be discontinued, except when the resident is receiving treatment pursuant to subsections (d)(1) and (d)(2) of this Section.

i) If the resident is determined to be receiving appropriate treatment and the benefit to the resident outweighs the risk of harm to the resident, treatment shall be continued, provided that the resident does not object and the guardian or substitute decision maker, if any, does not refuse. (See Section 2-107.2 of the Code.)

ii) If the findings of the treatment review meeting are not in agreement with the current treatment plan, the treatment/habilitation team shall consider and implement a revision to the plan.

iii) If there is disagreement on the implementation of the recommendations, the facility medical director or lead physician (designated by the facility director) shall review the case and make a final decision. The facility medical director (or lead physician) may seek medical consultation from others prior to making a final determination. The basis shall be documented in the medical record.

E) The participation of the resident and guardian or substitute decision maker, if any, and the recommendations from the

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treatment review meeting shall be recorded in the resident's
medical record.

(Source: Added at 35 Ill. Reg. _____, effective _____)