



TEXAS & NEW MEXICO HOSPICE ORGANIZATION

FAQ: Consent to Antipsychotic or Neuroleptic Medication in the Nursing Facility (NF)

August 28, 2025

Disclaimer: The answers provided in this document are the result of the Texas and New Mexico Hospice Organization's research and analysis. If you have specific questions on rules and interpretation, contact the Texas Health and Human Services Commission Regional or State Offices.

Question: How does this apply to individuals who are contracting to provide home health or hospice services for residents in the Nursing Facility? What about a home health coming in to provide psychoactive services and neuroleptic medications? This is a common thing, so the PL may need to be revised to who it references to include home health, contractors and hospice.

Answer: 26 Texas Administrative Code Rule §554.1207 requires written consent for all NF residents who are prescribed anti-psychotic and neuroleptic medications, via Form 3713 (form prescribed by HHSC). While Form 3713 is not required for other psychoactive medications that are not considered anti-psychotic or neuroleptic medications, the rule still requires consent for all psychoactive medications. This requirement includes residents in the NF who receive home health or hospice services as they are still residing in the NF.

Question: Who completes the Form 3717?

Answer: There are options for who may complete the form. The rules indicate that the person prescribing the medication, their designee, or the facility's medical director must provide the resident (and if applicable, the person authorized to consent on behalf of the resident) with a form containing the purpose of consent to treatment. Therefore, the form could be completed by the hospice or home health doctor if they are the ones prescribing the anti-psychotic or neuroleptic OR the NF's medical director. Additionally, Form 3713 requires the provider to include information on the resident's condition being treated, expected beneficial effects, side effects and associated risks, and the proposed course of medication. prescribing the anti-psychotic or neuroleptic OR the NF's medical director. It is signed by the resident or the person authorized by law to consent on behalf of the resident.

Question: What if there is no person authorized by law? Does the NF have a protocol they follow in these cases?

Answer: If a resident is not able to provide consent themselves AND has no person authorized by law to provide consent for them, Texas Health and Safety Code Chapter 313 Consent to

Medical Treatment Act lists the following adult surrogates, in order of priority, who may provide consent to medical treatment on behalf of the resident, as long as they have decision making capacity and are available and willing to consent to medical treatment on behalf of the resident:

- the patient's spouse;
- an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;
- a majority of the patient's reasonably available adult children;
- the patient's parents; or
- the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

While the statute states “patient”, this chapter applies to all health facilities and residents in a nursing facility.

Question: Where does the form get filed?

Answer: The form is filed (original or copy) in the patient’s facility medical record.

Question: There is no timeline in rule. What is the due date for the form to be completed or placed in the patient’s chart?

Answer: For residents with existing anti-psychotic or neuroleptic medications AND for residents who are admitted or readmitted to the facility from the hospital, they must have written consent (Form 3713) to be treated with an antipsychotic or neuroleptic medication as soon as possible. In the time it takes to obtain and complete Form 3713 for the resident, the facility must have documented communication with all parties involved, including the medical providers from the hospital and the facility, the resident, resident’s representative discussing whether or not the medication should continue. This documentation may include notes from nurses or other healthcare providers.

If the anti-psychotic or neuroleptic is a new medication, being prescribed to the resident at the nursing facility for the first time, Form 3713 must be completed before the first dose is administered.

Question: If there are no new antipsychotics and there is already a consent form on file for the patient, then theoretically, HOET would not need to do one; is the NH is expecting HOET to complete one each time a patient comes onto hospice services or would it be best to always do one to cover the NH.

Answer: 26 TAC Rule §554.1207 requires written consent for all NF residents who are prescribed anti-psychotic and neuroleptic medications, via Form 3713 (form prescribed by HHSC). While Form 3713 is not required for other psychoactive medications that are not considered anti-psychotic or neuroleptic medications, the rule still requires consent for all psychoactive medications. This requirement includes residents in the NF who receive home health or hospice services as they are still residing in the NF.

Resources:

- Provider Letter 2022-11 Consent for Antipsychotic and Neuroleptic Medications
<https://www.hhs.texas.gov/sites/default/files/documents/pl2022-11.pdf>

- Texas Health and Safety Code Chapter 313 Consent to Medical Treatment Act
<https://statutes.capitol.texas.gov/docs/HS/htm/HS.313.htm>
- Texas Health and Safety Code Chapter 166 Subchapter D Medical Power of Attorney:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm?msclid=3524d6a7ba6611ebb2b801d7918cb544>.
- 26 Texas Administrative Code Rule §554.1207 Prescription of Psychoactive Medication
https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=554&interface=VIEW_TAC&part=1&subchapter=M&title=26
- Form 3713 Consent for Antipsychotic or Neuroleptic Medication Treatment
<https://www.hhs.texas.gov/regulations/forms/3000-3999/form-3713-nursing-facility-consent-antipsychotic-or-neuroleptic-medication-treatment>
- Texas Health and Safety Code Chapter 242.501 Resident Rights and Chapter 242.505 Prescription of Psychoactive Medication:
<https://statutes.capitol.texas.gov/docs/HS/htm/HS.242.htm>.