

Mental Health Legal Advisors Committee
Navigating the Clinical and Legal Choices of Elders with Mental Health Issues - February 27, 2015
Nursing Home Hot Topics Panel

Advocacy Resources – Misuse of Antipsychotics and Other Psychoactive Drugs

Federal Law

11/26/14 Update-CMS State Operations Manual, Appendix PP: Quality of Care, Unnecessary Drugs, and Other Revisions to State Operations Manual (SOM), Appendix PP – “Guidance to Surveyors for Long Term Care Facilities”

11/26/14 revisions to guidelines and protocols for state nursing home surveyors. Guidance on F309/§483.25 Quality of Care and F329/§483.25(l) Unnecessary Drugs provides valuable information on surveyor standards for holding nursing homes accountable for quality dementia care and responsible use of psychoactive drugs. You can use the CMS Manual as guidelines to do the same.

Federal Requirements & Regulatory Provisions Relevant to Dementia Care & the Use of Antipsychotic Drugs, Long Term Care Community Coalition, Released October 2012.

<http://www.ltccc.org/publications/documents/ltccc-antipsychotic-drugs-oversight-ftags-mar2013.pdf>

Overview of federal regulations that may be relevant when antipsychotic and other psychoactive medications are used. Includes: summary and citation to applicable federal regulation; “F-Tags” that apply to each of the regulations used by state and federal surveyors to code deficiencies; and comments to facilitate understanding of the relevant standards and requirements when antipsychotic drugs are used on people with dementia.

Massachusetts Law

Dementia Special Care Unit Law:

Regulations: 105 CMR 150.001 Definition of Direct Care Worker, and 105 CMR 150.022-150.029

[105 CMR 150.000 - Licensing of Long Term Care Facilities \(LTCFs\)](#)

5/22/14 DPH Circular Letter DHCQ – 14-5-615

[#14-5-615 Guidelines for Dementia Special Care Unit Regulations – 5/22/2014](#)

Example of Disclosure Form (see 105CMR 150.028) for annual DSCU renewal is the last two pages of the Circular Letter. The form contains important information, such as staffing ratios by shift, and is available to the public. Ask for a copy if your client lives in a DSCU.

FY15 Budget Section 140 - Written Informed Consent before the administration psychotropic medications to nursing home, rest home, or other long-term care facility resident: <https://malegislature.gov/Budget/FinalBudget/2015>

Law included in FY15 Budget as Section 140. Discussions for regulations underway, including clarifying these 2 areas:

1. Suggested language correction to (c): “written informed consent should be obtained from the resident, or if the resident is incapacitated, a legal representative of the resident”. This would ensure that only the resident’s consent is required when the resident is able/competent, and that consent from the proxy or guardian only be given when a resident is incapacitated/deemed incompetent.
2. Suggested language addition: “Rogers Guardianships shall be exempted from any requirement of this law which is in conflict with Rogers Guardianship statutes and Court rules”.

SECTION 140. Said chapter 111 is hereby further amended by inserting after section 72AA the following section:-
Section 72BB. (a) For the purposes of this section, the term “facility” shall mean a nursing home, rest home or other long-term care facility.

(b) The department shall establish a schedule of psychotropic medications that shall not be administered to a resident by a facility without informed written consent.

(c) Prior to administering psychotropic medication listed on the schedule created under subsection (b), a facility shall obtain the informed written consent of the resident, the resident’s health care proxy or the resident’s guardian. Informed written consent shall be obtained on a form approved by the department, which shall include, at a minimum, the following information: (i) the purpose for administering the listed psychotropic drug; (ii) the prescribed dosage; and (iii) any known effect or side effect of the psychotropic medication. The written consent form shall be kept in the resident’s medical record.

Advocacy

California Advocates for Nursing Home Reform www.canhr.org

Campaign to Stop Drugging <http://www.canhr.org/stop-drugging/>

Toxic Medicine – What You Should Know to Fight the Misuse of Psychoactive Drugs in Nursing Homes
<http://www.canhr.org/stop-drugging/download-the-guide>

Includes questions to ask before administration of a psychoactive drug; also helps with follow-up and care plans.

Center for Medicare Advocacy <http://www.medicareadvocacy.org/>

Antipsychotic Drugs <http://www.medicareadvocacy.org/medicare-info/antipsychotic-drugs/> (Articles and Updates at end)

Long-Term Care Community Coalition www.ltccc.org

Antipsychotic Drugs & Dementia Care: Resources and Information
<http://www.nursinghome411.org/articles/?category=antipsychotic>

National Consumer Voice For Quality Long-Term Care www.theconsumervoic.org

!!! Take Action !!! Go To --- Nursing Home Staffing Campaign <http://theconsumervoic.org/betterstaffing>

Two-year campaign to urge Congress to increase nurse and CNA daily resident care from current law of “sufficient” level to a minimum of 4.1 hours per resident every day, as recommended by 2001 federal government study.

Enforcement

Twelfth Largest U.S. Nursing Home Company Sued for Inadequate Staffing

http://www.lcsun-news.com/las_cruces-news/ci_27076287/new-mexico-sues-nursing-home-chain-care-staff

New Mexico, the Attorney General sued seven nursing homes claiming that insufficient staffing made proper care impossible. The lawsuit alleges that low staffing levels made it mathematically unfeasible to deliver sufficient care. According to reports, the facilities had below average staffing levels. Many are watching the lawsuit closely as its tactics could be duplicated in cases in other states.

Examining Inappropriate Use of Antipsychotic Drugs: How Surveyors Describe How, When and Why They Cite

Antipsychotic Drug Deficiencies: Toby Edelman and Dean Lerner, 2013. <http://www.medicareadvocacy.org/cma-report-examining-inappropriate-use-of-antipsychotic-drugs-in-nursing-facilities/>

In cooperation with CMS, 2013/14 study of federal deficiencies cited against nursing facilities for antipsychotic drugs.

Part One reviews all antipsychotic drug deficiencies cited in 7 states, **including MA**, over 2-year period: 95% of deficiencies described as “no harm,” meaning, facilities unlikely to be sanctioned, regardless of effects on residents.

Part One: How Seven States Cite Antipsychotic Drug Deficiencies <http://www.medicareadvocacy.org/examining-inappropriate-use-of-antipsychotic-drugs-part-one-how-seven-states-cite-antipsychotic-drug-deficiencies/>

Parts Two and Three, involved, respectively, results of surveyor questionnaire in 10 states, **including MA**, about how they cite antipsychotic deficiencies and recommendations to improve oversight/enforcement.

Part Two: What the Surveyors Say <http://www.medicareadvocacy.org/cma-report-on-inappropriate-use-of-antipsychotic-drugs-in-nursing-homes-part-two-what-the-surveyors-say/>

Part Three – Recommendations to Improve the Citing of Deficiencies <http://www.medicareadvocacy.org/cma-report-inappropriate-use-of-antipsychotic-drugs-in-nursing-homes-part-three-recommendations-to-improve-the-citing-of-deficiencies/>

National Partnership to Improve Dementia Care

National Partnership to Improve Dementia Care exceeds goal to reduce use of antipsychotic medications in nursing homes: CMS announces new goal CMS Press Release September 19, 2014

<http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2014-Press-releases-items/2014-09-19.html>

Left Behind: The Impact Of The Failure To Fulfill The Promise of The National Campaign To Improve Dementia Care

Long Term Care Community Coalition, December 2014

<http://www.ltccc.org/publications/documents/LTCCCRpt-LEFTBEHIND-ImpactoftheFailureoftheFederalCampaignToImproveDementiaCare.pdf>

Assesses the effectiveness of the National Partnership to Improve Dementia Care in reducing the dangerous and unnecessary drugging of nursing home residents.

MANHR

Massachusetts Advocates for Nursing Home Reform
Promoting quality care for life

POB 560224

Medford, Massachusetts 02156

800.988.4450

info@manhr.org www.manhr.org