



policy break

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March 18, 2019

CMS Update on the National Partnership to Improve Dementia Care in Nursing Homes

On March 1, 2019, the Centers for Medicare and Medicaid Services (CMS) released a [memo](#) (QSO-19-07-NH) providing updates and outlining a new enforcement approach related to the [National Partnership to Improve Dementia Care in Nursing Homes](#). Key points are highlighted below.

Identifying Late Adopters

The memo notes that since 2011, National Partnership data has shown a reduction of 38.9% in the number of nursing home residents receiving antipsychotic medication; at the end of 2018, the rate was 14.6%. However, CMS has identified 1,500 nursing homes, or “late adopters,” that have not improved their antipsychotic medication usage rate for nursing home residents since Quarter 4 of 2011. CMS notified these facilities of their identification in December 2017 and has set a goal for the facilities to decrease usage of antipsychotic medications by 15% for long-stay residents by the end of 2019.

As of January 2019, there are 235 late adopters that have been cited for noncompliance with federal regulations related to unnecessary medications or psychotropic medications two or more times since January 1, 2016. These late adopters have also not shown improvement in their long-term antipsychotic medication rates. CMS has divided these facilities into two groups:

- **Group One:** There are 41 facilities in this group. Each facility has had three or more prior deficiency citations for unnecessary medications or inappropriate use of psychotropic medications since January 1, 2016.

- **Group Two:** There are 194 facilities in this group. All of them have had two prior deficiency citations for unnecessary medications or inappropriate use of psychotropic medications since January 1, 2016.

Enforcement Remedies

CMS is initiating a new enforcement approach for Group One and Group Two facilities.

Group One:

If any survey (e.g. recertification, revisit, focused dementia/schizophrenia, and complaint) results in a citation of one of the three tags below, the CMS Regional Offices (ROs) will impose a discretionary Denial of Payment for New Admission (DPNA) remedy. The three tags that apply are:

1. F605 – Chemical Restraints
2. F744 – Dementia Care
3. F758 – Psychotropic Medications

For citations at the Immediate Jeopardy (IJ) level, the ROs will impose a discretionary DPNA with two-days notice; and will provide a 15-day notice of DPNA for any non-IJ level deficiencies or if the IJ is removed before the end of the survey.

In addition to the discretionary DPNA, a per-day Civil Monetary Penalty (CMP) will be imposed starting on the first day of the survey in which any of the three tags listed above were cited.

Group Two:

The same remedies that are outlined in Group One above apply to Group Two facilities with one exception: no CMPs will be imposed.

Both Groups:

When Group One and Group Two facilities are cited for noncompliance with F605, F744 or F758 at a scope/severity level of D and above, the State Agency must transfer the case to the RO for enforcement.

Any time F758 – Psychotropic Medications – is cited only because of noncompliance with the PRN requirements (483.45(e)(3)-(5)), the current moratorium on certain enforcement actions will apply. This means that ROs must impose a directed plan of correction or directed in-service training, instead of a DPNA or CMP. The moratorium will be lifted on May 28, 2019. To read Consumer Voice's statement about the moratorium, click [here](#).

Monitoring

State Agencies are directed to monitor Group One and Group Two facilities and conduct on-site revisits to confirm if deficiencies under tags F605, F744, or F758 have been corrected.

The CMS ROs can also survey the facilities as part of the new oversight effort.

Corporations

CMS is seeking ways to engage with corporations that have a substantial number of late-adopter facilities.

Consumer Voice Perspective

Consumer Voice welcomes the steps CMS is taking to increase its enforcement actions related to the use of antipsychotic medications (AP). From the start of the National Partnership to Improve Dementia Care, we, along with other advocates, have pushed for stronger enforcement. Had such an approach been taken earlier, many residents would not be subject to the dangers and harmful effects of antipsychotic medications today. In fact, Consumer Voice and other advocates, though pleased to see a decrease in the prevalence of AP use, believe that the numbers of residents still on these drugs is higher than those reported by CMS due to a variety of factors, such as drug substitution, increased reporting of exclusionary diagnoses (e.g. schizophrenia), and lower nursing home occupancy rates.

While we appreciate the enforcement actions CMS is initiating, CV is concerned that they are too limited in scope. By focusing on only 235 of 1,500 facilities that have not reduced their antipsychotic usage rates, CMS is essentially giving a “free pass” to 1,265 nursing homes whose antipsychotic rates have not decreased. CMS’s approach is to encourage these facilities “to continue focusing on reducing use of antipsychotic medications.” Considering that seven years of “encouragement” have not been successful in reducing utilization rates, it seems that a different approach is necessary to effectuate change.

This memo also illustrates the negative impact of the moratorium on full enforcement for certain Phase 2 requirements. Because any violation of F758 (Psychotropic Medications) related to PRN orders is subject to the moratorium, neither a CMP nor DPNA can be imposed.

What Can Advocates Do?

- Document information/observations/complaints about the use of psychotropic medications. Ombudsmen can share that information with surveyors, including during the ROs' surveys; other advocates can share it with the state survey agency.
- Encourage residents and families to also observe and document use of unnecessary and psychotropic medications and share that information with surveyors during a survey, or with the ROs during their surveys.
- Ombudsmen can review a facility's survey record since January 2016 to determine if it is considered a late adopter and/or member of Group One or Group Two. They can then talk with the administrator and staff about the facility's plans to reduce antipsychotic use and provide educational resources if necessary.
- Ombudsmen and other advocates can educate residents and their families about the dangers of antipsychotic medications and the questions to ask if such medications are proposed or already administered.