

## **Consumer Advocates' Response to Karen Tritz, CMS Director of Nursing Home Survey and Certification, Regarding CMS's Request to Endorse New Antipsychotic Reduction Goals**

July 28, 2014

By E-mail

Dear Karen:

This email is in response to your request to endorse CMS's proposed goals to reduce nursing home antipsychotic use 25% by the end of 2015 and 30% by the end of 2016. These reductions are from the 2011 baseline, and given the initial 15% reduction by the end of 2013, they amount to 5 percent per year for each of the next three years.

We do not endorse the proposed goals. On the contrary, we feel the proposed goals do much too little to protect nursing home residents from overuse of antipsychotic medications and will not meaningfully improve current drugging practices, which place too many nursing home residents at risk of harmful treatment.

In May 2011, HHS Inspector General Daniel Levinson said consumers should be outraged by the rampant misuse of antipsychotic drugs in nursing homes and take action. And all of us were outraged. Almost three years after our meeting with Acting Administrator Donald Berwick in September 2011, which launched CMS's antipsychotic reduction campaign, we find insufficient change in the vast numbers of residents who are drugged for the convenience of the staff - and ultimately, the owners of the facilities. We cannot endorse a proposal that promotes paltry, numerical goals that many nursing homes ignore with impunity and that allow thousands of people residing in these facilities to continue to live with their needs unmet and to die prematurely. Current conditions raise serious human rights and medical rights issues which we must address aggressively and that CMS cannot perpetuate.

In short, we are still outraged by what is still rampant misuse of antipsychotic drugs.

As you may recall, we disagreed with the original 15% reduction proposed by CMS for the end of 2012. Misuse of antipsychotics is resident abuse, and we have always wondered how it could be tolerated by the federal agency charged with ensuring there is no abuse in our nation's nursing homes. The nexus between CMS's enforcement role and compliance with regulatory standards could not be more direct, and even nursing home industry leaders recognize that regulatory standards do not permit the use of psychotropic drugs in the ways that we have been observing for years:

“if all nursing home providers and prescribers would adhere to the current regulations, as described in the Federal Register regarding avoiding unnecessary drugs and the adherence to gradual dose reductions, we would see a dramatic reduction in the use of these drugs.” 1/4/12 Statement of LeadingAge on Antipsychotic Drug Use in Nursing Homes

While CMS was setting its initial 15% reduction goal and later extending it by a full year, we feared for the 85% of residents receiving antipsychotics who were expressly ignored. Again, we felt the 15% reduction goal inherently sent a message that a great deal of misuse was necessary or at best unavoidable.

We are familiar with your reasons for setting such low reduction goals: you want the goal to be achievable. In fact, however, even the extraordinarily low first-year goal of the campaign was not achieved until the end of the following year; and CMS and the nursing home industry celebrated the delayed, minimal reduction in harmful drugging as if it had been transformational.

Pushing for 5% reductions each year is an abdication of CMS's responsibility, endangering potentially all nursing home patients and creating a pattern of tolerance signaling that indiscriminate use of antipsychotics may be tolerated in all long-term care settings. We are talking about inordinately important quality of care and quality of life concerns; failure to adhere to federal care standards means that residents are going to be mistreated and die. Facilities have had nearly three extra years to train their staff, as required by the Affordable Care Act, and integrate better dementia care practices. The Requirements of Participation became effective in 1992 and have been unchanged since then. How much more time do nursing home facilities need to learn how to provide basic nursing care to residents? Every day we go without significantly greater antipsychotic reductions is a failure to the hundreds of thousands of residents whose lives are diminished and curtailed by the continued, well-documented overuse of antipsychotics.

We have monitored antipsychotic use rates (and three other psychotropic drug classes) nationwide since the CMS campaign began. Antipsychotic rates at individual facilities show two types of nursing homes. One type has clearly responded to CMS's call for better dementia care and reduced antipsychotic use dramatically. The other type of nursing home has antipsychotic rates that have barely budged or even worse, increased substantially. For residents in these homes, tiny reductions achieved at a glacial pace are not a meaningful goal.

Beyond the statistics and numerical goals, we are disappointed that CMS has no goals that speak to the quality of dementia care or antipsychotic administration. Some of us recommended looking hard at PRN use of antipsychotics and anxiolytics, polypharmacy, and hospitals, but none of those recommendations appears to have been adopted. Instead, we have goals set on autopilot - 5% each year - and by the end of 2016, we will still have more than 250,000 nursing home

residents receiving antipsychotics, inappropriately and at tremendous personal cost to them and their families, not to mention tremendous financial cost to taxpayers.

Since the misuse of antipsychotics and other drugs for behavioral control is still rampant and leads to harm and even death for a number of nursing home residents, we cannot endorse any goals that implicitly accept a high level of misuse and abuse. We feel that the proposed goals and the standards of practice they implicitly support raise serious human rights and medical rights issues, concerns we are prepared to raise publicly and pursue.

While we are committed to our collaboration with CMS and steadfastly support the efforts to reduce antipsychotic use in nursing homes, we will not endorse the very limited goals you have proposed.

Sincerely,

Mike Connors, Advocate  
Pat McGinnis, Executive Director  
Tony Chicotel, Staff Attorney  
Janet Wells, Consultant  
California Advocates for Nursing Home Reform

Toby S. Edelman  
Senior Policy Attorney  
Center for Medicare Advocacy, Inc.

Robyn Grant, MSW  
Director of Public Policy & Advocacy  
The National Consumer Voice for Quality Long-Term Care

Richard Mollot  
Executive Director  
Long Term Care Community Coalition