



LONG TERM CARE (LTC) E- NEWSLETTER – July - August 2013: Volume 11, Number 6

The [LTC E-Newsletter](#) is a monthly electronic newsletter of the [Long Term Care Community Coalition](#). Note to Readers: To go directly to an article, click on its page number in the Table of Contents. Once you are at the article, click on any underlined text for a link to more information or to send a message in “Spotlight on Advocacy.”

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Dementia Care Without Drugs: A Symposium on Comfort Care & the Reduction of Antipsychotic Medications in Nursing Homes
[Click here for more information and invitation to the program](#)

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[GAO Includes Medicaid & Medicare on “High Risk” List](#)

The Government Accountability Office (GAO) “maintains a program to focus attention on government operations that it identifies as high risk due to their greater vulnerabilities to fraud, waste, abuse, and mismanagement or the need for transformation to address economy, efficiency, or effectiveness challenges.” In June the GAO released a report updating this list.

For the Medicaid program, the GAO found that “stronger federal oversight of Medicaid is warranted as the program continues to grow in size and spending.” In addition to growth in the nation’s elderly population, expected program growth due to expansions resulting from the Affordable Care Act, will, according to GAO estimates, result in “about 7 million additional individuals in 2014, growing to 11 million in 2022.” With the federal government “responsible for paying more than 90 percent of the increased costs associated with this expansion... CMS will need new tools and resources as the law is implemented, including more reliable data for assessing expenditures, measuring performance, and preventing improper payments. Medicaid remains high risk due to concerns about the adequacy of fiscal oversight of this large, diverse, and growing program.”

[\[http://www.gao.gov/assets/660/652133.pdf\]](http://www.gao.gov/assets/660/652133.pdf)

AR Attorney General Sues “Broad, Bipartisan” National Support in Antipsychotic Drug Case

On June 18, 2013, Arkansas Attorney General Dustin McDaniel announced that the attorneys general of 35 states “ have joined him in asking the Arkansas Supreme Court to uphold a \$1.2 billion judgment against Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals Inc. for defrauding the state’s Medicaid system and deceiving Arkansas consumers about the safety risks of the antipsychotic drug Risperdal.” In addition, [AARP](#), [Public Citizen](#) and former FDA Commissioner Dr. Donald Kennedy also submitted *amicus* briefs in support of the judgment.

According to Attorney General McDaniel’s press release,

McDaniel maintains that a Pulaski County jury’s April 2012 verdict was consistent with Arkansas law; and the \$1.2 billion in penalties assessed by Pulaski County Circuit Judge Timothy Fox were proper, based on the company’s serial violations of state law.

“This company lied to our medical providers and put profits ahead of people,” McDaniel said. “As state Attorney General, it is my responsibility to prevent actions like those, which defrauded our Medicaid program and jeopardized the health of our elderly and our children.

“My colleagues across the country realize the significance of this case to state attorneys general who are also responsible for protecting the citizens of their state, and that is why they are taking the rare step of seeking to be heard on an issue in the Arkansas Supreme Court. This extraordinary coalition of AGs, lawmakers and consumer-advocacy groups has come together to support the important policy behind this case. To deter this type of fraudulent, harmful behavior, states must have the ability to pursue penalties against the wrongdoers.”

The case is Ortho-McNeil-Janssen Pharmaceuticals Inc. v. Arkansas, 12-1058.

[<http://arkansasag.gov/news-and-consumer-alerts/details/broad-bipartisan-coalition-supports-state-in-janssen-case>]

CMS Updates Guidelines & Training for Surveyors on Antipsychotic Drugs and Dementia Care

On May 24, CMS issued a memo to the states: “Advanced Copy: Dementia Care in Nursing Homes: Clarification to Appendix P State Operations Manual (SOM) and Appendix PP in the SOM for F309 – Quality of Care and F329 – Unnecessary Drugs” and published its third (of three) nursing home surveyor trainings on dementia care and antipsychotic drugging. These on-line trainings, which are mandatory for all state and federal surveyors, can be freely viewed by the public and provide excellent illustrations of how surveyors are expected to approach dementia care and drugging issues when they encounter them in a nursing home.

Importantly, CMS’s memo makes clear that the legal and regulatory standards which nursing homes agree to meet “already require a number of essential elements to be in place in order for facilities to be in compliance with federal requirements on quality of care and quality of life. This revised CMS guidance and surveyor training highlight and re-emphasize a number of those key principles....”

Following are the key principles from CMS’s memo, edited as noted in brackets:

1. **Person–Centered Care.** CMS requires nursing homes to provide a supportive environment that promotes comfort and recognizes individual needs and preferences.
2. **Quality and Quantity of Staff.** The nursing home must provide staff, both in terms of quantity (direct care as well as supervisory staff) and quality to meet the needs of the residents as determined by resident assessments and individual plans of care.
3. **Thorough Evaluation of New or Worsening Behaviors.** Residents who exhibit new or worsening BPSD [behavioral or psychological symptoms of dementia] should have an evaluation by the interdisciplinary team, including the physician, in order to identify and address treatable medical, physical, emotional, psychiatric, psychological, functional, social, and environmental factors that may be contributing to behaviors.
4. **Individualized Approaches to Care.** Current guidelines from the United States, United Kingdom, Canada and other countries recommend use of individualized approaches as a first line intervention (except in documented

emergency situations or if clinically contraindicated) for BPSD. [Footnotes omitted.] Utilizing a consistent process that focuses on a resident's individual needs and tries to understand behavior as a form of communication may help to reduce behavioral expressions of distress in some residents.

5. **Critical Thinking Related to Antipsychotic Drug Use.** In certain cases, residents may benefit from the use of medications. The resident should only be given medication if clinically indicated and as necessary to treat a specific condition and target symptoms as diagnosed and documented in the record. Residents who use antipsychotic drugs must receive gradual dose reductions and behavioral interventions, unless clinically contraindicated, in an effort [to] discontinue these drugs. [Note on also citing for F222 omitted.]
6. **Interviews with Prescribers.** None of the guidance to surveyors should be construed as evaluating the practice of medicine. Surveyors are instructed to evaluate the process of care. Surveyors interview the attending physician or other primary care provider (NP, PA), behavioral health specialist, pharmacist and other team members to better understand the reasons for using a psychopharmacological agent or any other interventions for a specific resident.
7. **Engagement of Resident and/or Representative in Decision-Making.** In order to ensure judicious use of psychopharmacological medications, residents (to the extent possible) and/or family or resident representatives must be involved in the discussion of potential approaches to address behavioral symptoms. These discussions with the resident and/or family or representative should be documented in the medical record.

[For the CMS memo, go to <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-35.pdf>. To view the free surveyor trainings, go to <http://surveyortraining.cms.hhs.gov/pubs/AntiPsychoticMedHome.aspx>. [Please note that this site was temporarily down at time of publication.] For more information and resources, visit LTCCC's webpage, Antipsychotic Drugs & Dementia Care, at <http://www.nursinghome411.org/?articleid=10042>.]

[Report From Canada: Many Nursing Home Deaths Avoidable](#)

It is widely acknowledged (by GAO and others) that deaths of the elderly in general, and nursing home residents in particular, are under-investigated and that nursing home abuse and neglect, including that which may result in the death of a resident, may be frequently undetected due to “well-documented oversight weaknesses.” Thus, we were interested to see this article published in the [Montreal Gazette](#) on June 14, 2013, which looked at 12 of the 27 “suspicious deaths in nursing homes between 2006 and 2011” that were investigated by Quebec coroners.

The incidences surrounding these suspicious deaths are, unfortunately, familiar to those who have experience with or knowledge of common patterns of nursing home abuse and neglect. They include medication errors, such as inadvertent overdose (including one instance that was fatal, but the cause not uncovered until a drug count was undertaken by the nursing home days after the resident died), bed sores (wherein the coroner ruled that death was avoidable) and several cases of asphyxiation due to entrapment in bed rails and other physical restraints.

[\[http://www.montrealgazette.com/news/Many+nursing+home+deaths+avoidable+coroners/8529121/story.html\]](http://www.montrealgazette.com/news/Many+nursing+home+deaths+avoidable+coroners/8529121/story.html)

[New Report From Kaiser Family Foundation: Improving the Financial Accountability of Nursing Facilities](#)

The Kaiser Commission on Medicaid and the Uninsured issued this report on nursing home financial accountability on June 28, 2012. The following description is excerpted from the abstract on the Commission’s website.

This report examines nursing facility expenditures by cost category to assess relative spending increases in areas such as nursing services, administrative costs, and profits. The report first provides a short background on nursing facility financing, expenditures and profit margins. It then analyzes California nursing facility expenditure data by cost category from 2007 to 2010 and profit margins from 2003 to 2010 as a case study to describe nursing facility expenditure patterns. Finally, the report explores two financial policy options designed to improve nursing facility financial accountability and care quality: (1) reimbursement by cost category and (2) a standard medical loss ratio (MLR) option. The analysis of California nursing facility profits, administrative costs, and other service costs is used to illustrate the feasibility of both options.

[\[http://kff.org/medicaid/report/improving-the-financial-accountability-of-nursing-facilities/\]](http://kff.org/medicaid/report/improving-the-financial-accountability-of-nursing-facilities/)

[LTCCC To Hold Symposium on Dementia Care Without Drugs in NY City](#)

LTCCC, with funding from the Fan Fox and Leslie R. Samuels Foundation, will be holding a special program for nursing home care and administrative staff, LTC ombudsmen, family members, consumer representatives (lawyers, geriatric care managers, etc...) to create change in dementia care and antipsychotic drug use in nursing homes in New York City.

Program Highlights:

Legal & Regulatory Requirements for Dementia Care & the Use of Antipsychotic Drugs

Palliative Care for Dementia Patients: Creating a Culture of Comfort

Implementing Change in Your Nursing Home: Administrator Perspectives & Insights

The symposium will be held in New York City in November. To receive an invitation or for more information, please email info@ltccc.org or call 212-385-0355.

[Spotlight on Advocacy: Sign-on to the National Petition to End Federal Sequestration](#)

Elderly and disabled people in nursing homes and the community are at serious risk. Budget cutbacks due to sequestration are forcing cutbacks in needed federal and state monitoring of care for our most vulnerable citizens. Please [click here](#) to sign our petition to Congress and President Obama!

[We're on the Web!](#)

www.ltccc.org: Our main website, with access to all of our issues, policy briefs and research.

www.assisted-living411.org: For information on assisted living, including consumer issues and policies.

www.nursinghome411.org: For information on developments in nursing home care, regulation and policy issues.

[LTCCC Links of Interest](#)

[View](#) the latest enforcement actions against nursing homes in New York State.

[Read](#) the latest edition of LTCCC's quarterly newsletter, *The Monitor*.

LTCCC's dedicated [webpage on antipsychotic drugs and dementia care](#).

NEW!: [*Piecing Together Quality Long-Term Care: A Consumer's Guide to Choices and Advocacy in New York*](#).

Long term care information booklet in [Chinese](#) and [English](#) for Chinese consumers: What You Need to Know about Long Term Care.

[SIGN-UP FOR THE LTC E-NEWSLETTER \(OR UNSUBSCRIBE\)](#)!