

ELDER JUSTICE

What “No Harm” Really Means for Residents

Center for Medicare Advocacy & Long Term Care Community Coalition

Volume 5, Issue 1

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What is a “No Harm” Deficiency?

Nursing homes that voluntarily participate in the Medicare and Medicaid programs must adhere to minimum standards of care established by the federal Nursing Home Reform Law and its implementing regulations. These standards ensure that every nursing home resident is provided services that help attain and maintain their “highest practicable physical, mental, and psychosocial well-being.” Under the Reform Law, nursing homes that fail to meet the federal requirements are subject to various penalties, based on the scope and severity of the violation(s).

In the absence of a financial penalty, nursing homes may have little incentive to correct the underlying causes of substandard nursing home quality and safety.

Centers for Medicare & Medicaid Services (CMS) data indicate that most health violations (more than 95%) are cited as causing “no harm” to residents. The failure to recognize resident pain, suffering, and humiliation when it occurs too often means nursing homes are not held accountable for violations through financial penalties. In the absence of a financial penalty, nursing homes may have little incentive to correct the underlying causes of resident abuse, neglect, and other forms of harm.

How to Use this Newsletter

The *Elder Justice* newsletter provides examples of health violations in which surveyors (nursing home inspectors) identified neither harm nor immediate jeopardy to resident health, safety, or well-being. These examples were taken directly from Statement of Deficiencies (SoDs) on CMS's [Care Compare](#) website.

Our organizations encourage residents, families, ombudsmen, law enforcement, and others to use these cases to help identify potential instances of resident harm in their own communities. When state enforcement agencies and CMS fail to properly identify and penalize nursing homes for health violations, it is important for the public to be aware of nursing home safety concerns in their communities. Fundamentally, from our perspective, every suspected case of resident harm should be reported, investigated, and (if confirmed), appropriately sanctioned.

“Nursing home industry representatives often state that their industry is one of the most regulated in the country. But if those regulations are not enforced, what does that actually mean?”

– [Broken Promises: An Assessment of Nursing Home Oversight](#)

CMS and state survey agencies use the Scope and Severity Grid for rating the seriousness of nursing home deficiencies. For each deficiency identified, the surveyor is charged with indicating the level of harm to the resident(s) involved and the scope of the problem within the nursing home. The *Elder Justice* Newsletter covers “no harm” deficiencies cited from D-F on the grid. The following chart is from the [CMS Nursing Home Data Compendium 2015 Edition](#).

	Isolated	Pattern	Widespread
Immediate Jeopardy to Resident Health or Safety	J	K	L
Actual Harm that is Not Immediate Jeopardy	G	H	I
No Actual Harm with Potential for More than Minimal Harm that is Not Immediate Jeopardy	D	E	F
No Actual Harm with Potential for Minimal Harm	A	B	C

Note: In 2012, the federal Centers for Medicare and Medicaid Services launched the National Partnership to Improve Dementia Care to reduce the use of dangerous antipsychotic (AP) drugs in nursing homes. Ten years after the launch LTCCC released a report, "[A Decade of Drugging](#)," which examines how dementia care has – and hasn't – changed since the start of the Partnership and finds that a once-promising campaign has sputtered and fallen short of its goals to curb AP drug use.

In November 2022, the Office of Inspector General (OIG) released a report, [Long-Term Trends of Psychotropic Drug Use in Nursing Homes](#), which shows how ineffective the antipsychotic drug campaign has been. The OIG found that from 2011-2019, antipsychotic use declined, but the use of another category of psychotropic drug – anticonvulsants – increased. Overall, 80 percent of long-stay residents were prescribed some type of psychotropic drug.

This issue of the Elder Justice Newsletter is dedicated to nursing home residents receiving dangerous and unnecessary antipsychotic drugs across the United States.

Extencicare Health Center (Alabama)

Black box warning: Unnecessary psychotropics given to resident living with dementia.

The surveyor determined that the nursing home failed to ensure a resident's medication regimen was free of unnecessary antipsychotic and antianxiety medications ([F758](#)). Though the medication box warned that elderly dementia patients were at an increased risk of death, the surveyor cited the violation as no harm.¹ The citation was based, in part, on the following findings from the [SoD](#):

- According to the citation, a resident had active diagnoses of dementia, anxiety, and depression. Per the resident's medical records, the resident received antianxiety, antidepressant, and antipsychotic medications on seven consecutive days of a lookback period.
- The facility did not attempt a gradual dose reduction (GDR) prior to continuing the psychotropic medications, despite federal regulations requiring GDR.
- The facility also failed to monitor the resident's behavior consistently and document any behaviors to determine the effectiveness and continued necessity of the AP and antianxiety medications.
- From January 2022 to June 2022, the resident's behavioral progress notes did not reveal behaviors of combativeness, aggressiveness, refusing care, or verbally abusing staff or others. In the resident's monitoring drug therapy forms, a nurse noted the medications were not to be tapered. The nurse also noted that the resident was sleeping more and eating less.
- A review of the resident's medication box revealed a warning indicating that treating elderly dementia patients with AP drugs put them at an increased risk of death. Additionally, the medication was an atypical AP for the treatment of manic and depressive episodes.

Each resident's drug regimen **must** be free from unnecessary drugs.

- **Know Your Rights:** Based on a comprehensive assessment of a resident, a nursing home must ensure that residents who receive psychotropic drugs receive gradual dose reductions, unless clinically contraindicated, and behavioral interventions, in an effort to discontinue these drugs. To learn more, check out [LTCCC's fact sheet on dementia care and psychotropic drugs](#).

Countryview Care Center-Macomb (Illinois)

Why am I so tired all the time?: Residents drugged without consent.

The surveyor determined that the nursing home (a one-star facility with an [abuse icon](#)) failed to identify and track resident behaviors, obtain consent for specific medications, and initiate a medical evaluation upon admission ([F758](#)). Although these deficient practices can lead to unnecessary drugging of residents, the surveyor cited the violation as no harm.² The citation was based, in part, on the following findings from the [SoD](#):

- A resident's care plan did not indicate documentation of behaviors or interventions to justify the resident's use of a certain medication. Despite the absence of justification, a physician prescribed daily use for the resident.
- In an interview, the nurse stated everyone who is on that type of medication should have behavior monitoring in place.
- A second resident's medical record did not contain documentation of signed consent for a certain medication, a medical evaluation/assessment, or behavior tracking to justify the medications.
- A third resident stated she does not know what medications she takes or why she is so tired all the time. The nursing home administered multiple medications to the resident, but consent was obtained for only one of those medications.
 - **Note:** According to federal regulations, residents have the right to be informed in advance, by the physician or other practitioner or professional, of the risks and benefits of proposed care, of treatment and treatment alternatives or treatment options and to choose the alternative or option they prefer.
- **Know Your Rights:** Residents have the right to be informed of, and participate in, their treatment, including: 1) the right to be fully informed of their health status; 2) the right to be informed, in advance, of the care to be furnished; and 3) the right to be informed, in advance, of treatment and treatment alternatives or treatment options. To learn more about the importance of informed consent, check out [LTCCC's fact sheet](#).

Checklist for Informed Consent

The physician should disclose and discuss:

- ✓ Diagnosis, if known
- ✓ Nature and purpose of proposed treatment
- ✓ Risks and benefits of proposed treatment
- ✓ Alternatives and the risks & benefits of such
- ✓ Risks and benefits of not receiving treatments

Shawnee Care Center (Oklahoma)

Improper diagnosis: Resident receives antipsychotic without clinical indication for its use.

The surveyor determined that a resident did not have a clinical indication for the use of an antipsychotic medication ([F758](#)). Though psychotropic drugs should not be administered unless necessary to treat a specific condition as diagnosed and documented in the resident's clinical record, the surveyor cited the violation as no harm.³ The citation was based, in part, on the following findings from the [SoD](#):

- According to the survey, a resident had diagnoses which included Alzheimer's, depression, and anxiety. A physician prescribed an antipsychotic medication for that resident for generalized anxiety disorder in May 2022.
- In July 2022, the resident had no documented behaviors of yelling, hitting, spitting, cursing, false accusations, or rejecting care.
- In August 2022, the director of nursing stated the resident did not have behavioral problems and further stated the resident did not have a proper diagnosis for the medication the physician prescribed.
- **Note:** AP drugs can put residents at risk of serious physical and emotional harm to residents. Studies have found that AP drugs are associated with significant adverse outcomes in the elderly, including heart attacks, strokes, Parkinsonism, falls, and death. AP drugs are **not** clinically indicated for the so-called behavioral and psychological symptoms of dementia.
- **Know Your Rights:** Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used: 1) in excessive dose; 2) for excessive duration; 3) without adequate monitoring; 4) without adequate indications for its use; or 5) in the presence of adverse consequences which indicate the dose should be reduced or discontinued.

Dexter Health Care (Maine)

Medication as needed... for whom?: Psychotropic medications continued beyond 14 days.

The surveyor determined that the three-star facility failed to ensure PRN (administer as needed) psychotropic medications met the requirements for continued use beyond 14 days for two residents ([F758](#)). Although this deficient practice could lead to residents receiving unnecessary medications, the surveyor cited the violation as no harm.⁴ The citation was based, in part, on the following findings from the [SoD](#):

- Physician orders for one resident included an order for an anti-anxiety medication as needed with a first date of 7/20/22. The medication did not include a stop date for re-evaluation, as required, and the physician did not include a rationale for continued use.
- An interview with the director of nursing confirmed that the medication was continued past the original 14 days without a rationale for its continued use.

- Review of a second resident's records revealed an order for an antipsychotic medication to begin on 7/22/22. Nineteen days later (8/10/22), the surveyor confirmed the order for the as needed medication was still active without rationale to continue and without a stop date for re-evaluation.
- **Know Your Rights:** PRN (*pro re nata*, meaning administer as needed) orders for psychotropic drugs must be limited to 14 days. If the attending physician or prescribing practitioner believes it is appropriate for the PRN order to extend beyond 14 days, they should document their rationale in the resident's medical record and indicate the duration for the PRN order. Additionally, the order cannot be renewed unless the physician evaluates the resident for the appropriateness of that medication. For more information, check out [LTCCC's fact sheet on antipsychotic drugging](#).

PRN, or as needed, orders for psychotropic drugs must be limited to 14 days.

Louisville Healthcare LLC (Mississippi)

“End date: Indefinite”: Director of nursing doesn't know drug rules.

The surveyor determined that two residents had indefinite end dates on PRN, or as needed, psychotropic medications ([F758](#)). Though PRN orders for psychotropic drugs must be limited to 14 days, the surveyor cited the violation as no harm.⁵ The citation was based, in part, on the following findings from the [SoD](#):

- According to the citation, one resident had a physician's order dated 12/30/2020 for an as needed psychotropic medication. The order did not include an end date.
- In an interview, the director of nursing stated she was not aware of the regulation surrounding the end date of an as needed psychotropic.
- The nursing home administrator revealed in an interview that antipsychotic medications should be evaluated by the doctor and pharmacist and that they should have a 14-day deadline. The administrator further stated that for an as needed medication that began on 12/30/2020, “there should be a lot of documentation.”
- The resident's record contained no documentation required for continuing the medication.
- A second resident's records revealed an as needed medication with a start date of 2/3/22. According to the order, the physician listed the medication's end date as indefinite.
- **Know Your Rights:** The facility must develop and maintain policies and procedures for the monthly drug regimen review that include, but are not limited to, time frames for the different steps in the process and steps the pharmacist must take when they identify an irregularity that requires urgent action to protect the resident.

According to [federal regulations](#), the drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

Menorah Home & Hospital for Aged & Infirm (New York)

Short cut: Nursing home resorts to APs before implementing behavioral interventions.

The surveyor determined that the three-star nursing home failed to ensure that a resident's person-centered care plan was developed to meet the resident's medical, nursing, mental, and psychosocial needs ([F656](#)). Despite the nursing home's failure to implement dementia-related behavioral interventions leading to the resident receiving antipsychotics for such behaviors, the surveyor cited the violation as no harm.⁶ The citation was based, in part, on the following findings from the [SoD](#):

- Upon admission, the resident's minimum data set documented no behavioral symptoms, no rejection of care, and no wandering.
- The resident's care plan included only one intervention: "avoid situations that might precipitate negative behavior."
- According to a nursing admission note, the nursing home admitted the resident after being hospitalized due to altered mental status and combativeness at home.
- From late May 2022 until September 2022, the resident's progress notes contained no documentation describing behaviors of hitting, kicking, or spitting during care.
- In an interview, a CNA stated the resident often exhibited behaviors of hitting, scratching, and spitting, but the CNA was unable to show this behavior documented in the resident's records.
- An interview with the nurse manager revealed the resident was admitted with behaviors of hitting, kicking, and spitting. Instead of implementing behavioral interventions to address the resident's behavior's, the resident was placed on antipsychotic medications.
- **The More You Know:** In the past, the use of antipsychotics to treat people with Alzheimer's Disease and other dementias was often considered an accepted practice. We know now that antipsychotic medications that are prescribed inappropriately are dangerous, especially for the elderly and people with dementia. To learn more, check out [LTCCC's fact sheet on best standards of practice for good dementia care](#).

"Understaffed and underenforced, nursing homes are too often turning to dangerous AP drugs instead of implementing the non-pharmacological approaches to dementia care that have been required for over 30 years."

– [A Decade of Drugging: Sedation of Nursing Home Residents with Dangerous Antipsychotic Drugs Persists Despite Federal Partnership](#)

Can I Report Resident Harm?

YES! Residents and families should not wait for annual health inspections to detect resident harm. Anyone can report violations of the nursing home standards of care by contacting their state survey agency. To file a complaint against a nursing home, please use [this resource](#) available at CMS's Care Compare website. If you do not receive an adequate or appropriate response, [contact your CMS Regional Office](#).



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To learn more about nursing home and assisted living care, visit us online at
MedicareAdvocacy.org & NursingHome411.org.

Note: The overall star rating of any facility identified in this newsletter is subject to change. The star ratings are current up to the date of newsletter's drafting.

Note: This document is the work of the LTCCC. It does not necessarily reflect the views of the Department of Health, nor has the Department verified the accuracy of its content.

¹ Statement of Deficiencies for Extencicare Health Center (June 18, 2022). Available at <https://nursinghome411.org/wp-content/uploads/2023/01/Extencicare-Health-Center-AL.pdf>.

² Statement of Deficiencies for Countryview Care Center-Macomb (September 21, 2022). Available at <https://nursinghome411.org/wp-content/uploads/2023/01/Countryview-Care-Center-Macomb-IL.pdf>.

³ Statement of Shawnee Care Center (August 22, 2022). Available at <https://nursinghome411.org/wp-content/uploads/2023/01/Shawnee-Care-Center-OK.pdf>.

⁴ Statement of Deficiencies for Dexter Health Care (August 10, 2022). Available at <https://nursinghome411.org/wp-content/uploads/2023/01/Dexter-Health-Care-ME.pdf>.

⁵ Statement of Deficiencies for Louisville Healthcare LLC (February 24, 2022). Available at <https://nursinghome411.org/wp-content/uploads/2023/01/Louisville-Healthcare-LLC-MS.pdf>.

⁶ Statement of Deficiencies for Menorah Home & Hospital for Aged & Infirm (September 2, 2022). Available at <https://nursinghome411.org/wp-content/uploads/2023/01/Menorah-Home-Hospital-for-Aged-Infirm-NY.pdf>.