



March 16, 2023

The Honorable Charles E. Grassley
Ranking Member
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Ranking Member Grassley:

Thank you for your leadership in raising concerns about the inappropriate use of psychotropic medications in nursing homes. The Department of Health and Human Services (HHS) is committed to reducing the unnecessary use of antipsychotic drugs in nursing homes and holding facilities accountable for failures to comply with federal requirements. Between 2011 and the fourth quarter of 2021, the national prevalence of antipsychotic medication use among long-stay nursing home residents was reduced by 39.1 percent to 14.5 percent nationwide, with every state showing reduced rates.¹ However, inappropriate diagnosis and prescribing still occur at too many nursing homes. This year, HHS announced it is redoubling its oversight efforts to ensure that facilities are not prescribing unnecessary medications or erroneously coding nursing home residents as having schizophrenia,² which can mask the facilities' true rate of antipsychotic usage, as explained below.

All nursing homes are required to ensure residents are free from unnecessary medications.³ On every standard survey and on relevant surveys conducted in response to complaints, surveyors review medical records to confirm that the clinical indication for any prescribed medicine, including antipsychotics and other psychotropics, is thoroughly documented. Surveyors document any inappropriate use of psychotropic medications in the facility's survey report, which is published on CMS's Medicare Care Compare website⁴ and on the Quality Certification and Oversight Reports website.⁵

CMS has implemented specific enforcement remedies—such as denial of payment for new admissions or per day civil money penalties—for nursing homes that have continued to have high levels of antipsychotic medication use among long-stay nursing home residents, known as “late adopters.”⁶

¹ <https://www.cms.gov/files/document/antipsychotic-medication-use-data-report-2021q4-updated-07292022.pdf>

² <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-takes-additional-steps-strengthen-nursing-home-safety-and-transparency>

³ 42 CFR 483.45.

⁴ <https://www.medicare.gov/care-compare/>

⁵ <https://qcor.cms.gov/main.jsp>

⁶ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO19-07-NH.pdf>

Facilities found to be out of compliance because of their use of unnecessary antipsychotic drugs must demonstrate to surveyors that they have implemented a plan for discontinuing any unnecessary medications, and as with any findings of noncompliance, facilities must correct their noncompliance. CMS's goal is to bring nursing homes into compliance with regulations and encourage them to remain in compliance.

Building on prior efforts, this year, CMS announced its intent to conduct audits to identify facilities with patterns of erroneous Minimum Data Set (MDS)⁷ coding of residents with a diagnosis of schizophrenia.⁸ Currently, quality measurements regarding the use of antipsychotic medications among nursing home residents exclude residents with schizophrenia. When nursing home residents are given erroneous schizophrenia diagnoses, they are subject to poorer quality care and unnecessary antipsychotic medications, both of which can be dangerous. Additionally, this inaccurate MDS coding misleads the public by misrepresenting the nursing homes' rate of antipsychotic usage in the posted quality measure.

Facilities selected for an audit will receive a letter explaining the purpose of the audit, the process that will be utilized, and instructions for providing supporting documentation. During the audit, CMS will analyze the MDS data to identify facilities that have MDS coding inaccuracies. These results, in addition to other quality measurements—including the percentage of long-stay residents who are receiving antipsychotic drugs and the percentage of short-stay residents who newly received an antipsychotic medication—are incorporated into the methodology for CMS's Five Star Quality Rating System. Facilities identified through the schizophrenia MDS audit will have their Nursing Home Care Compare Five Star Quality Measure Ratings adjusted as follows:

- The overall and long-stay ratings will be downgraded to one star for six months (this drops the facility's overall star rating by one star).
- The short stay rating will be suppressed for six months.
- The long stay antipsychotic rating will be suppressed for 12 months.

Because of the urgency of this issue, instead of waiting for the audit to complete, facilities that admit that they have errors and are committed to correcting this issue should not wait for an audit. To incentivize this admission and to promote improvement, for facilities that admit miscoding after being notified by CMS that the facility will be audited, but prior to the start of the audit, CMS will consider a lesser action related to their star ratings than those listed above, such as suppression of the ratings (rather than downgrade). Incentivizing facilities to report MDS miscoding in lieu of being audited safeguards CMS time and resources. It also encourages facilities to urgently focus their attention on reducing these unnecessary diagnoses.

⁷ <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqimds30>

⁸ <https://www.cms.gov/files/document/qso-23-05-nh.pdf>

For all facilities where patterns of MDS coding inaccuracies are identified, either through an audit or through a facility's admission, CMS will monitor each facility's data to identify if the information indicates they have addressed the identified issues. As part of this monitoring, a follow up audit may be conducted to confirm the issue is corrected.

Since 2012, CMS has issued 75,616 citations linked to resident harm or immediate jeopardy. Of these, 14,539 citations (19.2 percent) have gone through the Informal Dispute Resolution (IDR) or Independent IDR process. Of those that went through the IDR process, 11,534 (79.3 percent) remained with no changes, 543 (3.7 percent) had revised scope and severity, and 15 (0.01 percent) were removed. CMS will post deficiency citations under IDR/Independent IDR in each section of Nursing Home Care Compare that currently displays citations, and will indicate if a citation is under dispute.⁹ Note, once a dispute is resolved the citations are included in the Nursing Home Care Compare Five Star Quality Rating. A very small percentage (less than 0.2 percent) of the citations posted on Nursing Home Care Compare are currently under dispute and not reflected in the Five Star Quality Ratings.

To improve facilities' compliance with regulations and reduce the inappropriate use of psychotropic medications, CMS has conducted extensive outreach to nursing homes, providing numerous educational materials and technical assistance. Through the National Partnership to Improve Dementia Care in Nursing Homes,¹⁰ CMS is working to reduce the use of antipsychotic medications and enhance the use of non-pharmacologic approaches and person-centered dementia care practices.

HHS greatly appreciates the insights and recommendations from the Office of Inspector General (OIG) in their report titled *Long-Term Trends of Psychotropic Drug Use in Nursing Homes*.¹¹ In the report, OIG recommends CMS begin requiring Medicare Part D claims to include a diagnosis code. However, state laws govern what is required to be included on prescriptions, and CMS currently lacks the statutory authority to require that prescribers include diagnosis codes on prescriptions. Instead, CMS is pursuing other ways to effectively monitor nursing home compliance regarding the prescription of psychotropic medications, including OIG's recommendations to use data to identify trends or characteristics associated with a higher use of psychotropic drugs and to continue evaluating whether additional action is needed.

CMS is also convening a Technical Expert Panel to examine the current quality measures and the appropriateness of the exclusions for certain conditions, including whether schizophrenia should no longer be excluded, as well as other topics for future quality measures in nursing homes. Finally, we note that all survey and certification efforts require funding, and CMS has not received a funding increase since FY 2015. The President's FY 2024 budget requests \$566

⁹ <https://www.cms.gov/files/document/qso-23-05-nh.pdf>

¹⁰ <https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/national-partnership-to-improve-dementia-care-in-nursing-homes>

¹¹ <https://oig.hhs.gov/oei/reports/OEI-07-20-00500.pdf>

million for survey and certification funding, which would be an increase of \$159 million above FY 2023. This investment would strengthen health, quality, and safety oversight for approximately 67,000 participating Medicare or Medicaid provider facilities.

Nursing home compliance is one of HHS's most important responsibilities, and the Department strives to ensure that residents of long-term care facilities are treated with the respect and dignity they deserve. This includes freedom from unnecessary and potentially harmful psychotropic medications. I appreciate your leadership on this issue, and I look forward to working with you on ways to continue decreasing the inappropriate use of psychotropic medications among nursing home residents. If you have further thoughts or questions, please have your staff contact the CMS Office of Legislation.

Sincerely,

A handwritten signature in blue ink, reading "Chiquita Brooks-LaSure". The signature is written in a cursive, flowing style.

Chiquita Brooks-LaSure