



LONG TERM CARE COMMUNITY COALITION
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Working to improve long term care through research, education & advocacy

LONG TERM CARE (LTC) E- NEWSLETTER - - Volume 7, Number 4: May 2009

Welcome to the [LTC E-NEWSLETTER](#), a monthly electronic newsletter of the [Long Term Care Community Coalition](#).

Note to Readers: The format of the LTC E-Newsletter has changed. To go directly to an article, click on its title 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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[CALIFORNIA ATTORNEY GENERAL CHARGES NURSING HOME DRUGGING IS “ASSAULT WITH A DEADLY WEAPON”](#)

In February, California Attorney General Jerry Brown announced the arrest of a nurse, physician and a pharmacist of a skilled nursing facility in Lake Isabella, California. All were charged with elder abuse for forcibly administering psychoactive medications for their own convenience and for causing the deaths of three residents.

According to the website of the California Advocates for Nursing Home Reform (CANHR),

...[T]he former nursing director, is reported to have ordered staff to inject numerous residents with powerful, dangerous antipsychotic medications without any medical justification. According to the charges, groups of staff held down at least two residents and injected them with drugs that reduced them to a zombie-like state. In addition to the three deaths, other residents suffered severe medical and psychological trauma. When drugging triggered behavioral problems, even stronger drugs were ordered and administered. Many residents and family members were not informed that psychoactive drugs were being used.

The year-long investigation by the Attorney General's office was triggered by a Department of Public Health investigation in January 2007 that first documented the widespread drugging and brought a rare finding of "Immediate Jeopardy."

"These people maliciously violated the trust of their patients, by holding them down and forcibly administering psychotropic medications if they dared to question their care," Attorney General Brown said. "This is appalling behavior, which amounts to assault with a deadly weapon."

"Deadly weapon" is an apt description of antipsychotic drugs when used in this fashion. The U.S. Food & Drug Administration (FDA) has issued its most dire warning – known as a black box warning – that antipsychotic drugs cause elders with dementia to die. Although the FDA has never approved use of antipsychotic drugs to treat dementia, it is estimated that up to 40 percent of nursing home residents with dementia are subjected to antipsychotic drugs, such as Zyprexa, Seroquel, Risperdal and Haldol.

[www.canhr.org]

NEW CMS GUIDELINES CALL FOR HOMELIKE ENVIRONMENT IN NURSING HOMES

In April, CMS issued [new interpretive guidelines](#) for state surveyors to help them assess nursing home compliance with the [Nursing Home Reform Law](#) (OBRA '87), which requires that residents be provided with the care necessary to enable them to achieve their highest practicable physical, social and emotional well-being. Though these requirements are all essential components of our national minimum standards for nursing homes, from a consumer perspective they are generally considered to be largely absent from survey and oversight processes. The institutional nature of most nursing homes, high incidence of pressure sores and widespread use of physical and chemical restraints (as discussed in the article above) are all evidence that nursing homes have been permitted to operate with virtual disregard for what the law requires.

The new guidelines, which go into effect on June 17, give surveyors detailed information on how to assess nursing homes specifically in terms of quality of life and environment. Following are some examples of guidelines relating to dignity and autonomy from the advance copy of the guidelines, available on the CMS website at

http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter09_31.pdf.

- Grooming residents as they wish to be groomed (e.g., maintaining the resident's personal

preferences regarding hair length/style, facial hair for men, removal of facial hair for women, and clothing style);

- Encouraging and assisting residents to dress in their own clothes appropriate to the time of day and individual preferences rather than hospital-type gowns;
- Promoting resident independence and dignity in dining such as avoidance of:
 - Day-to-day use of plastic cutlery and paper/plastic dishware;
 - Bibs (also known as clothing protectors) instead of napkins (except by resident choice);
 - Staff standing over residents while assisting them to eat;
 - Staff interacting/conversing only with each other rather than with residents, while assisting residents;
- Respecting residents' private space and property (e.g., not changing radio or television station without resident's permission, knocking on doors and requesting permission to enter, closing doors as requested by the resident, not moving or inspecting resident's personal possessions without permission);
- Respecting residents by speaking respectfully, addressing the resident with a name of the resident's choice, avoiding use of labels for residents such as "feeders," not excluding residents from conversations or discussing residents in community settings in which others can overhear private information;
- Residents have the right to have a choice over their schedules, consistent with their interests, assessments, and plans of care. Choice over "schedules" includes (but is not limited to) choices over the schedules that are important to the resident, such as daily waking, eating, bathing, and the time for going to bed at night. Residents have the right to choose health care schedules consistent with their interests and preferences, and the facility should gather this information in order to be proactive in assisting residents to fulfill their choices. For example, if a resident mentions that her therapy is scheduled at the time of her favorite television program, the facility should accommodate the resident to the extent that it can.
- If the resident refuses a bath because he or she prefers a shower or a different bathing method such as in-bed bathing, prefers it at a different time of day or on a different day, does not feel well that day, is uneasy about the aide assigned to help or is worried about falling, the staff member should make the necessary adjustments realizing the resident is not refusing to be clean but refusing the bath under the circumstance provided. The facility staff should meet with the resident to make adjustments in the care plan to accommodate his or her preferences.
- The food procurement requirements for facilities are not intended to restrict resident choice. All residents have the right to accept food brought to the facility by any visitor(s) for any resident.
- Procedure [for Surveyor to Follow]: For a sampled resident, use resident and family interviews as well as information from the Resident Assessment Instrument (RAI) to consider the resident's former life style and personal choices made while in the facility to obtain a picture of the resident's individual needs and preferences.
- Throughout the survey, observe: Do staff show respect for residents? When staff interact with a resident, do staff pay attention to the resident as an individual? Do staff respond in a timely manner to the resident's requests for assistance? Do they explain to

the resident what care they are doing or where they are taking the resident? Do staff groom residents as they wish to be groomed?

- In group activities, do staff members focus attention on the group of residents? Or, do staff members appear distracted when they interact with residents? For example, do they continue to talk with each other while doing a “task” for a resident(s) as if the resident were not present?
- Determine if staff members respond in a dignified manner to residents with cognitive impairments, such as not contradicting what residents are saying, and addressing what residents are trying to express (the agenda) behind their behavior. For example, a resident with dementia may be attempting to exit the building in the afternoon, but the actual intent is a desire to meet her children at the school bus, as she did when a young mother. Allowing the behavior under supervision such as walking with the resident without challenging or disputing the resident’s intent and conversing with the resident about the desire (tell me about your children) may assist the behavior to dissipate, and the staff member can then invite the resident to come along to have a drink or snack or participate in a task or activity.

SPOTLIGHT ON ADVOCACY: SPEAK OUT TO PROTECT MEDICAID ASSISTED LIVING RESIDENTS

Please speak out in support for Assemblyman Gottfried's bill (A7654) which will apply the consumer protections of an "enhanced assisted living residence" (EALR) as described in New York's Assisted Living Law and basic assisted living requirements to new ALP beds and to all ALP beds over time.

The NY State budget for 2009-2010 adds 6000 Assisted Living Program (ALP) beds over the next five years. ALP beds are for people who are eligible for nursing home care but could be cared for in an adult home or enriched housing safely. ALP residents are on Medicaid. LTCCC had urged the legislature not to expand these beds unless the ALP program is required to follow the protections in the Assisted Living Residence Law. Adult home providers, where most of the ALP beds are housed, fought against this provision. Consumers lost the battle.

The Assisted Living Law defines assisted living in New York and establishes strong consumer protections for assisted living residents such as: specifics on residency agreements and disclosures, requirements of an individualized service plan, resident rights and penalties for not complying.

[PLEASE SPEAK OUT NOW](#). Send a message to NY State officials by going to LTCCC's Citizen Action Center (go to www.ltccc.org and click on the Citizen Action Center on the right hand side). Let YOUR political leaders know that:

1. Consumer protections provided by the law must be available to all New Yorkers regardless of where they reside on an economic scale.
 2. Medicaid funding for assisted living should only go to those models of assisted living that comply with Assisted Living Law, which emphasizes aging in place, personal dignity, autonomy, independence, privacy, and freedom of choice.
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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 Newsletter](#)

[Click Here To Make A Donation On-Line](#) or send a tax-deductible donation to LTCCC, 242 West 30TH Street, Suite 306, NY, NY 10001.

If the above links do not work (or if you are reading a printout of this newsletter) you can find these documents on our homepage, www.ltccc.org.

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