

# Antipsychotic Drug Use in NY State Nursing Homes

An Assessment of New York's Progress in the National  
Campaign to Reduce Drugs and Improve Dementia Care



**The Long Term Care Community Coalition**

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## Note on the Report & the Data

(1) Nursing Home Compare contains data for roughly (but not precisely) the last three years. In addition, though we eliminated certain nursing homes from the tables we created, they are still part of the NH Compare database and are included in any computations based directly on those data.<sup>1</sup> As a result, though our assessments always compare “apples to apples,” some slight variations exist between sections of the report.

(2) Given the large numbers of New York nursing homes and residents, this report contains a large amount of data. In order to make best use of the information presented, we recommend utilizing the hyperlinks embedded in the Table of Contents and Table of Figures. We also recommend accessing the interactive data resources posted on our nursing home website, on a dedicated page at <http://www.nursinghome411.org/articles/?category=antipsychoticclaws>.

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<sup>1</sup> We removed nursing homes that we identified as being transitional care units, pediatric facilities or as having closed during the 2011-2013 time period. We also removed the St. Mary’s Healthcare Demonstration Project which was listed in some tables but not in others.

## Executive Summary

### Background

Inappropriate antipsychotic drug use is a widespread, national problem in nursing homes. Despite the FDA's 'black box' warning against using powerful and dangerous antipsychotics on elderly patients with dementia, they are frequently used to treat symptoms of the disease, including so-called behavioral and psychological symptoms of dementia. These drugs are often used as a form of chemical restraint, stupefying residents so that they are more easy to care for. In addition to destroying social and emotional well-being, these drugs greatly increase risks of stroke, heart attack, Parkinsonism & falls.

Approximately one in five nursing home residents are given these drugs every day in New York nursing homes, though only one percent of the population will ever be diagnosed with a psychotic condition. As the U.S. Inspector General Daniel Levinson noted in 2011, "Too many [nursing homes] fail to comply with federal regulations designed to prevent overmedication, giving nursing home patients antipsychotic drugs in ways that violate federal standards for unnecessary drug use." The Inspector General concluded, "Government, taxpayers, nursing home residents, as well as their families and caregivers should be outraged – and seek solutions."

In response to the Inspector General's report and advocacy by nursing home resident representatives, including LTCCC, the federal Centers for Medicare and Medicaid Services (CMS) began a national antipsychotic drugging initiative in March 2012. Nursing homes in New York and across the country were charged with reducing their antipsychotic drug use by 15% by the end of 2012, with additional goals to come. CMS announced at the time that the long-stay measure (rates for nursing home residents who are institutionalized for long term care, rather than short term rehab) would be used to track the progress of the "National Partnership to Improve Dementia Care in Nursing Homes." In addition, CMS announced that it would be using, as a baseline, antipsychotic drugging rates for the last three quarters of 2011. The national average for the percentage of long-stay residents who received an antipsychotic during that time period was 23.9%.

### Purpose of this Study

The goals of this study were (1) review and assess the success of this campaign, particularly in respect to New York State's nursing home residents, and (2) assess whether enforcement actions corresponded with the scope and breadth of the antipsychotic drugging problem in New York.

## Findings

**Important note on our findings and the data:** This report is structured so as to provide easily accessible and practical information on a range of nursing home antipsychotic drugging rates and relevant enforcement activities. It includes section on overall rates for the United States and for New York State, as well as specific information on New York State's regions and individual nursing homes. In conjunction with the interactive data posted on our website at <http://www.nursinghome411.org/articles/?category=antipsychoticlaws>, we believe it will be useful to a range of stakeholders, including policymakers, regulators, consumers and providers.

It is now well known that the country, overall, has been slow in reducing inappropriate antipsychotic (AP) drugging rates. This month (April 2014) CMS announced that the country has finally achieved the 15% reduction goal set for December 2012. As of this writing, CMS has yet to officially set a new goal. The national data released in April 2014 indicate that **by the end of 2013 New York had reduced its drugging by 14.6%, just short of the 2012 goal.**

Using CMS data, including the data on Nursing Home Compare, **we found that there are significant differences among the regions of New York in terms of both drugging rates at the start of the national campaign and success in reducing unnecessary drugging over the course of the campaign.** The MARO region of New York State (which includes New York City and area counties) had the highest drugging rate to begin with and, even after two years of progressive decline, still had a higher rate of drugging than the Western region of the state began with. That region, like the Capital region, had a more modest reduction over the campaign period. New York's Central region had a slightly higher rate of reduction.

Importantly, the data we collected on individual nursing homes show remarkable diversity in both the range of drugging rates and success (or failure) in the campaign to reduce antipsychotic drugging. **Many nursing homes are using antipsychotics at very high rates, up to (and sometimes even beyond) 50% of their residents.** This is especially surprising given that the data are risk-adjusted, meaning that these figures do not include drugs given to residents who have one of several antipsychotic conditions identified by CMS. Presumably, **few if any of the incidents of drugging reported on Nursing Home Compare should be happening at all, no matter at the rates we are seeing across the state and the country.** In that regard, we were also surprised to find that a significant number of nursing homes across the state have actually increased their AP drugging levels over the last two years.

**Given the persistence of this widespread problem, we were hoping to find that enforcement against nursing homes that failed to meet standards of care was robust or had, at least, increased significantly over the course of the federal campaign. Our findings indicate that this is not happening to a meaningful extent in New York. In fact, we found that citations actually went down for the principal federal standard associated with the campaign in both the Capital and Central regions of New York.** Citations for this standard went up moderately in the

MARO region (which, as noted above, had the biggest drugging “problem” in the state to begin with) and they increased the most, proportionally, in the Western region (which, ironically, had the lowest antipsychotic drugging rates of the four regions). This is not to say that the problem has been eradicated in the Western part of the state, only that it appears to be making the most headway of any area in New York. As our findings on both the persistence of high drugging rates and low levels of enforcement indicate, much more needs to be done to surmount this insidious problem.

## **Recommendations**

### Recommendations for New York State

- (1) New York State (including the state government and/or providers) should follow California’s example and set its own goal for reduction of antipsychotic (AP) drugging beyond the federal goal and take substantive steps to make it happen.
- (2) The NYS Department of Health should:
  - a. Ensure that all surveyors are knowledgeable about the standards of care required by the Nursing Home Reform Law, particularly appropriate practices for addressing “Behavioral and Psychological Symptoms of Dementia” (BPSDs);
  - b. Ensure that all surveyors are knowledgeable about current standards of practice related to AP drugging and the use of non-pharmacological interventions;
  - c. Ensure that all surveyors have the skills and knowledge necessary to appropriately identify, rate and substantiate inappropriate practices and resident harm;
  - d. Review, on at least a quarterly basis, AP drugging rates and enforcement trends for both the state and regions and address, on a quarterly basis, performance (in terms of drugging rates and enforcement activities) with regional office leadership. This review should be predicated on an understanding of the following:
    - i. Longstanding practice standards require the use of non-pharmacological approaches and gradual dose reduction;
    - ii. Antipsychotics are not indicated for elderly people with dementia, or as a treatment for dementia-related psychosis; and
    - iii. Stupefying a resident, and putting him or her at significantly increased risk of falls, heart attack, stroke, etc... is unquestionably harmful and should be so classified when identified and cited by surveyors;
  - e. Volunteer to be a state participant in the CMS pilot of an improved dementia care survey process;

- f. Not allocate CMP (civil money penalty) funds to facilities to meet the standards of dementia care for which they are already being paid; and
  - g. Include input from consumers and consumer representatives in all decisions re. CMP use (for dementia related as well as other activities).
- (3) The NYS Legislature should:
- a. Hold a hearing on antipsychotic drug use in NYS nursing homes and the state's progress, to date, on reducing inappropriate use;
  - b. Promulgate legislation requiring written and verbal informed consent when AP drugs are used, such consent to be predicated on receipt (both verbally and in writing) of information on the FDA "black box warning" against use of these drugs on elderly patients with dementia;
  - c. Tie all future nursing home pay-for-performance and other quality incentives to demonstrably lower AP drugging rates.
- (4) The NYS Medicaid Inspector General should:
- a. Conduct an analysis of nursing homes' antipsychotic drug use rates to identify inappropriate – or potentially inappropriate – prescribing practices and patterns;
  - b. Conduct an assessment of rates of diagnoses of a psychotic condition to identify providers who are inappropriately diagnosing residents with a psychotic condition as a cover to improperly give AP drugs;
  - c. Release its long-awaited "white paper" on antipsychotic drugs.
- (5) The NYS Comptroller's Office should conduct an audit of DOH's monitoring of nursing homes' compliance with standards of care and antipsychotic drug use.
- (6) The NYS LTC Ombudsman Program should:
- a. Educate ombudsman coordinators and volunteers on the antipsychotic drugging problem, how widespread it is and residents' rights regarding dementia care and AP drug use and
  - b. Monitor ombudsman case handling and reporting trends to identify and address obstacles or challenges that local ombudsman might be facing in identifying and working on these problems. [For more information see LTCCC's recent report on the challenges that LTC ombudsmen face working on these and other issues at <http://www.nursinghome411.org/?articleid=10080>.]

## Recommendations for the Centers for Medicare & Medicaid Services (CMS)

CMS should directly and through its regional offices hold states accountable for substantially reducing inappropriate antipsychotic drugging in nursing homes and ensuring that residents are receiving appropriate care and services as required by the Nursing Home Reform Law. In addition to the stakeholder trainings and engagement activities that have been utilized to launch the national initiative, CMS should:

- (1) Now that the initial goal for 2012 has finally been achieved, set a new and more robust goal for AP drugging reduction. All stakeholders, including providers, consumers and survey agencies, have now been fully informed on the standards of practice and enforcement protocols. We believe it is time to commence serious, substantive progress on this issue.
- (2) Monitor state drugging rates and enforcement activities and provide user-friendly information, on at least a quarterly basis, to state agencies and the public on drugging and enforcement performance trends.
- (3) Re-institute a separate F-tag for antipsychotic drugging.
- (4) Ensure that regional office (RO) personnel are:
  - a. Aware of AP drugging and dementia care requirements;
  - b. Monitoring their states' enforcement activities and directly engaging states to improve these activities;
  - c. Holding their states accountable for appropriate enforcement by taking (or recommending to CMS central office, as appropriate) meaningful steps with a state's regulatory and political leadership to ensure the state's compliance with the letter and spirit of the State Operations Manual;
  - d. Aware of requirements around the use of CMPs and are not approving inappropriate CMP funding requests from states. As regards AP drugging, this entails, minimally, that they are ensuring that these funds are not going to providers to simply help them achieve minimum standards of dementia care.
- (5) Require nursing homes, hospitals and Medicaid assisted living facilities to post information on AP drugging, including the FDA's black box warning.
- (6) Post actual (non-risk-adjusted) rates of antipsychotic drug use for all nursing homes on Nursing Home Compare.
- (7) Direct Quality Improvement Organizations (QIOs) to conduct substantive nursing home improvement activities, and monitoring thereof. These activities should be independently reviewed to ensure that they are both substantive and effective.