

Examining Inappropriate Use of Antipsychotic Drugs

Part Three: Recommendations

Examining Inappropriate Use of Antipsychotic Drugs, a Report in three Parts, looks at Survey and Certification deficiency citations for antipsychotic drug use in skilled nursing facilities (SNFs) and nursing facilities (NFs) from two perspectives. First, it analyzes all of the approximately 300 antipsychotic drug deficiencies that were cited by seven states over a two-year period, calendar years 2010 and 2011 (Part One). Second, it reports, in detail, the perspectives of more than 400 state Surveyors from ten states regarding the survey process, in general, and their citations of antipsychotic drug deficiencies, in particular (Part Two). Surveyors' observations regarding the Centers for Medicare & Medicaid Services's (CMS's) *Partnership to Improve Dementia Care* Initiative and their sense of job accomplishment are also included in Part Two. This paper (Part Three), the third and final paper in the series, is based on information obtained through analysis and study of Parts One and Two and the recommendations of the Office of Inspector General to ensure that residents are protected from unnecessary drugs.¹ Part Three presents recommendations for specific and important ways to improve the citing of antipsychotic drug deficiencies, and consequently, to improve the health, safety, welfare, and rights of nursing home residents throughout the United States.

To our knowledge, this Project is the first of its kind, inviting and encouraging front-line Surveyors to share directly their candid thoughts, observations, and recommendations about their work, the challenges they face, and how the regulatory oversight system could be strengthened to improve their jobs and the quality of care and quality of life for residents. Further research efforts using the data compiled in this study could expand on the analysis of antipsychotic drug deficiencies and the impact of CMS's *Partnership to Improve Dementia Care* on changing facilities' practices. The research methodology used here could also be applied to analyzing and understanding additional deficiency categories and associated Surveyor challenges.

Background

The federal Nursing Home Reform Law of 1987 provides the statutory framework for the standards of care that skilled nursing facilities and nursing facilities must meet and the survey process by which their compliance with these standards of care is evaluated and enforced.² The goals and expectations of the Reform Law are clear – to assure that each resident receives all of the care and services that are necessary to attain and maintain the highest practicable level of physical, mental, and psychosocial well-being.³ Under contracts between states and the federal

¹ The Office of Inspector General's report *Medicare Atypical Antipsychotic Drug Claims for Elderly Nursing Home Residents*, OEI-07-08-00150, page 20 (May 2011) recommends that CMS "assess whether survey and certification processes offer adequate safeguards against unnecessary antipsychotic drug use in nursing homes," and, if any processes are determined ineffective, that CMS "develop improved mechanisms to ensure that all elderly nursing home residents are protected from unnecessary drugs." CMS concurred with this recommendation. Appendix G, pages 38-39.

² 42 U.S.C. §§1395i-3(a)-(h), 1396r(a)-(h), Medicare and Medicaid, respectively. Medicare uses the term skilled nursing facilities; Medicaid uses the term nursing facilities. This Report uses the general terms nursing home or nursing facility to refer to all federally certified facilities.

³ 42 U.S.C. §§1395i-3(b)(2), 1396r(b)(2).

government, State Survey Agencies conduct unannounced annual recertification surveys and complaint investigations to determine whether facilities comply with federal standards, which are called Requirements of Participation. State Agency Surveyors are regulators of the more than 15,000 nursing homes nationwide that participate in Medicare or Medicaid, or, most frequently, both, and that must comply with federal Requirements. Although progress is being made towards reaching the goals of the Reform Law, much work remains to be done.⁴

Recognition of the value and importance of provider compliance through enhanced Surveyor efforts is critical to ensuring the health, safety, welfare, and rights of residents. Although facilities' quality improvement measures may contribute to improving care for residents, they are not a substitute for full implementation of the regulatory oversight function, including rigorous citation of deficiencies through the survey process and meaningful enforcement.⁵ With respect

⁴ A lengthy series of reports by the Government Accountability Office (GAO) since July 1998 repeatedly and consistently documents the need for more effective enforcement of federal standards of care. See *Poorly Performing Nursing Homes: Special Focus Facilities Are Often Improving, but CMS's Program Could Be Strengthened*, GAO-10-197 (March 19, 2010); *Nursing Homes: Addressing the Factors Underlying Understatement of Serious Care Problems Requires Sustained CMS and State Commitment*, GAO-10-70 (Nov. 24, 2009); *Nursing Homes: CMS's Special Focus Facility Methodology Should Better Target the Most Poorly Performing Homes, Which Tended to Be Chain Affiliated and For-Profit*, GAO-09-689 (Aug. 28, 2009); *Medicare and Medicaid Participating Facilities: CMS Needs to Reexamine Its Approach for Funding State Oversight of Health Care Facilities*, GAO-09-64 (Feb. 13, 2009); *Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses*, GAO-08-517 (May 9, 2008); *Nursing Home Reform: Continued Attention Is Needed to Improve Quality of Care in Small but Significant Share of Homes*, GAO-07-794T (May 2, 2007); *Nursing Homes: Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents*, GAO-07-241 (March 26, 2007); *Nursing Homes: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety*, GAO-06-117 (Dec. 28, 2005); *Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight*, GAO-03-561 (July 15, 2003); *Nursing Homes: Prevalence of Serious Quality Problems Remains Unacceptably High, Despite Some Decline*, GAO-03-1016T (July 17, 2003); *Nursing Homes: Quality of Care More Related to Staffing than Spending*, GAO-02-431R (June 13, 2002); *Nursing Homes: Sustained Efforts Are Essential To Realize Potential of the Quality Initiatives*, GAO/HEHS-00-197 (Sep. 28, 2000); *Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality*, GAO/HEHS-00-6 (Nov. 4, 1999); *Nursing Home Oversight: Industry Examples Do Not Demonstrate That Regulatory Actions Were Unreasonable*, GAO/HEHS-99-154R (Aug. 13, 1999); *Nursing Homes: HCFA Initiatives to Improve Care Are Under Way but Will Require Continued Commitment*, GAO/T-HEHS-99-155 (June 30, 1999); *Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Nursing Homes Has Merit*, GAO/HEHS-99-157 (June 30, 1999); *Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents*, GAO/HEHS-99-30 (March 22, 1999); *Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards*, GAO/HEHS-99-46 (March 18, 1999); *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight*, GAO/HEHS-98-202 (July 27, 1998).

⁵ Testimony of William Scanlon, Ph.D., Director, Health Financing and Public Health Issues, GAO, before Senate Finance Committee, *Nursing Home Quality Revisited: The Good, the Bad, and the Ugly*, 108th Cong., 1st Sess, S. Hrg. 108-325 (July 17, 2003) (stepping back from more than six years in his position at GAO, Dr. Scanlon testified that the nursing home industry's voluntary Quality First Initiative "is not a substitute for strengthening the survey and enforcement process to ensure that deficient care resulting in harm to residents in too sizeable a minority of homes is eliminated." He rejected a consultative role for Surveyors: "The nursing home industry is a \$100 billion a year industry, employing tens of thousands of health professionals. It is incongruous to me to think that it needs the consultative assistance of a government surveyor to correct problems that every non-health professional in this room would instantly agree involved care that was simply and woefully lacking." He concluded by rejecting the contention that the survey and enforcement processes cannot ensure quality of care for residents: "My perspective is different. I do not believe we have adequately implemented the survey and enforcement process as envisioned in

to the inappropriate use of antipsychotic drugs, this Project provides evidence that change in survey and enforcement practices is essential to assure that residents' needs are met.

Part One of this Report demonstrates that State Survey Agencies need additional assistance in consistently analyzing and citing antipsychotic drug deficiencies under federal standards addressing unnecessary drugs (F329) and chemical restraints (F222) and in accurately assigning appropriate scope and severity levels. Even when Surveyors document multiple instances of a facility's noncompliance with federal standards of care and serious harm to residents, scope and severity determinations are generally inadequate – they almost always categorize the facility's noncompliance as causing no harm to residents. In the federal enforcement system, classification of a deficiency as no-harm is significant because usually, facilities are allowed to correct no-harm deficiencies without any remedy being imposed and enforcement actions are limited to deficiencies where actual harm or jeopardy is cited. Based on the data evaluated in Part One and an analysis of the results of administrative appeals of antipsychotic drug deficiencies,⁶ project staff believe that state Surveyors and CMS should be citing a far greater number of antipsychotic drug deficiencies and related deficiencies than they do at present and should be citing them at higher scope and severity levels.

Part Two of this Report generally reflects a sufficient awareness by most Surveyors of the fundamentals of analyzing and citing F329 deficiencies and assigning appropriate scope and severity. Surveyors identify when harm and jeopardy-level deficiencies should be cited.

The apparent inconsistency between Parts One and Two suggests that while Surveyors may largely know how to cite antipsychotic drug deficiencies, the barriers and challenges they face often interfere with the performance of their tasks.

What is also clear from Parts One and Two of this Report is that there is no single, simple solution to either reducing facilities' inappropriate use of antipsychotic drugs or enhancing Surveyors' competencies, capabilities, and capacities to perform their work. Multiple approaches are necessary and all deserve serious consideration.

Derived from the empirical data of Parts One and Two, the following recommendations support Surveyors' essential Survey and Certification work and changes to federal Requirements of

OBRA 1987, and further defined by HCFA. The execution of surveys and the enforcement actions that should follow them have been so lacking, we do not know how effective the process can be.”

⁶ Between 2006 and 2012, federal Administrative Law Judges (ALJs) decided only three administrative appeals by facilities of enforcement actions based, at least in part, on deficiencies related to antipsychotic drugs. In all three cases, the ALJ sustained the deficiency(ies) that were cited and the remedies that were imposed. *Golden Living Center – Colonia Manor v. CMS*, Civil Remedies (CR) Division, CR2504 (Feb. 22, 2012) (sustaining three deficiencies, including unnecessary drug deficiency for failures to attempt gradual dose reductions of Haldol and to implement behavioral interventions; sustaining civil money penalty (CMP) of \$700 per day for 26 days, totaling \$23,800); *Washington Christian Village v. CMS*, CR2403 (July 2, 2011) (sustaining unnecessary drug deficiency based on multiple antipsychotic drugs given to two residents, neither of whom had a diagnosis supporting use of the drugs; sustaining CMPs of \$300 per day for 47 days and \$100 per day for 27 days, totaling \$16,800); and *Manor Care at Palos Heights – West v. CMS*, CR 1847 (Sep. 24, 2008) (sustaining three jeopardy-level deficiencies for excessive doses of Risperdal that were given to a resident because of transcription errors from the hospital; sustaining CMPs of \$3050 for one day of jeopardy, \$50 per day for 27 days of non-jeopardy, totaling \$4400).

Participation that facilities must meet in order to provide each resident with high quality of care and quality of life.

Recommendations

Certain themes and recommendations recur throughout Part Two, regardless of the specific questions being addressed.

As they relate to Surveyors, these themes and recommendations are the need for more time to complete survey activities, including more surveyors; a simplified, yet more specific and directed, survey protocol; more and better-focused training; enhanced investigative skills, support, and assistance; available professional assistance (pharmacists and physicians); more support from supervisory and enforcement personnel; and tools to address interference with the integrity of the survey process.

As they relate to providers, these themes and recommendations are the need for mandated additional staff; mandatory additional staff training; more engaged, informed, and cooperative physicians and pharmacists; more communication and coordination among pharmacists, physicians, and facilities' interdisciplinary care teams; and specific anti-retaliation protections for facility employees, contractors, residents, and family members who appropriately contribute to Survey and Certification efforts.

I. Antipsychotic Drug/Dementia Care Compliance Report

Many of the specific recommendations discussed in detail below come together in a recommendation for Antipsychotic Drug/Dementia Care Compliance Reports. CMS should develop, test, evaluate, and implement a new approach to both the Requirements of Participation and the survey process. This approach would place responsibility on each facility to assemble, maintain, and update, in a single location, essential information about each resident's use of antipsychotic drugs and would require Surveyors to read and analyze the information as they determine whether the facility is in substantial compliance with Requirements or not.

Under this approach, CMS would require facilities to complete and timely update a specific "Antipsychotic Drug/Dementia Care Compliance Report" for each resident taking one or more antipsychotic medications. The Compliance Report would be both a CMS-mandated form and a CMS-mandated process that would require a facility's interdisciplinary team to demonstrate how it evaluated and complied with federal Requirements for antipsychotic drug use. The form and process would require the team to identify the resident's diagnosis (with accompanying dates and background), all attempted non-pharmaceutical interventions (with accompanying dates, results, and other background), consents, and recommendations for, and physician responses to, gradual dose reductions. The Compliance Report would be signed by all members of the interdisciplinary team, certifying that they have complied with all federal Requirements and explaining in detail how they have done so. Facilities would certify their statements and the information contained in the Compliance Reports. Surveyors would review these Reports as part of their determination of facilities' compliance with federal Requirements for antipsychotic drug use.

Preparation of these Compliance Reports would serve two key purposes for care delivery. First, it would require participation, communication, and cooperation among the various decision-makers, including physicians, pharmacists, and facility staff,⁷ and second, it would require each facility to carefully evaluate whether it has satisfied all necessary Requirements related to the use of antipsychotic medications for each resident. Such Compliance Reports could also offer significant time savings for Surveyors.

II. Surveyors Need Sufficient Time to Complete Survey Activities

1. CMS should require a minimum number of surveyors for each survey team, based on factors including size of facility, prior survey results, complaint history, and other relevant considerations, such as each team member's level of experience. Surveyors' expectation from this recommendation is that states would hire and train additional surveyors.
2. CMS should ensure that states give Surveyors sufficient time to conduct surveys, recognizing not only factors about the facility that are identified in advance of the survey (identified in recommendation #1 above), but also conditions in the facility when Surveyors begin a survey and geography (*i.e.*, travel issues).
3. An additional solution to the time shortage problem is the creation of a specialized team of experienced and skilled federal Surveyors who would be assigned, on an as-needed basis, to states that are experiencing staffing shortages or other problematic issues, such as failures in enforcement responsibilities. These federal Surveyors would serve the dual purposes of performing survey activities, as well as training and educating state Surveyors. The roles and responsibilities of these Surveyors should be dedicated to these efforts, not to existing federal oversight efforts, which are intended primarily to evaluate state compliance. Combining training and existing oversight responsibilities would present a conflict of interest.

III. Surveyors Need Improved Relationships with, and Support from, State and Federal Offices

1. State supervisors and enforcement staff should receive the same training in federal Requirements of Participation and the federal survey process that state Surveyors receive.
2. State supervisors and enforcement staff should be required to participate in a specified number of recertification and complaint surveys each year, both to maintain their skills and to experience Surveyors' challenges directly.
3. CMS should require Surveyors to report to CMS's Central Office any interference in the performance of their survey activities, regardless of the source of the interference (facilities, trade associations, state and local officials, federal officials, or others). CMS

⁷ Nazir A, Unroe K, Tegeler M, et al. Systematic Review of Interdisciplinary Interventions in Nursing Homes. *J Am Med Dir Assoc* 2013;14:471-478 (citing reports finding that interdisciplinary interventions have positive impact on outcomes for nursing home residents).

should be required to investigate all reports reflecting reasonable belief of interference and to make appropriate responses. A whistleblower protection provision should protect Surveyors who, in good faith, report interference.

4. CMS should assist State Survey Agencies in explaining to State Officials the obligations incumbent upon the State pursuant to their 1864 Agreements.⁸

IV. The State Operations Manual (Federal Survey Protocol) Should Be Simplified and Made More Specific and Directed

1. CMS should develop a template, checklist, user-tool, pathway, grid, decision-making tree, or investigative outline to streamline the survey process. Providing such an explicit roadmap for citing antipsychotic drug deficiencies under F329 (or a different F-tag, if CMS unbundles antipsychotic drugs from unnecessary drugs, as recommended in V.1 below) would decrease variability among Surveyors and help assure that Surveyors are evaluating all necessary Requirements of Participation related to antipsychotic drug use.⁹
2. CMS should reduce and simplify surveyor Guidance in the State Operations Manual. Reducing what Surveyors describe as “subjectivity” in the survey process would improve survey consistency, reduce supervisors’ rejection of deficiencies, and reduce nursing facilities’ requests for informal dispute resolution and formal administrative appeals.
 - a. Guidance should be made succinct, concise, and specific, with “simple and direct practical examples.”
 - b. Guidance should include examples of well-written deficiencies.
 - c. Examples in Surveyor guidance should be drawn from well written violations that have survived the appeals process, when available.
3. CMS should provide more guidance on scope.
 - a. CMS should provide explicit guidance on isolated, pattern, and widespread (the three categories of scope) as they relate to antipsychotic drugs.
4. CMS should provide more guidance on severity.
 - a. CMS should provide explicit guidance on substantial compliance, no actual harm with the potential for more than minimal harm, actual harm, and immediate jeopardy (the four levels of severity) as they relate to antipsychotic drugs.

⁸ The 1864 Agreement, §1864 of the Social Security Act, 42 U.S.C. §1395aa, is the contract under which states determine, on behalf of the federal government, health care providers’ compliance with federal Requirements of Participation and Conditions of Participation.

⁹ The lessons learned from Peter Pronovost, M.D. in his book *Safe Patients, Smart Hospitals: How One Doctor’s Checklist Can Help Us Change Health Care from the Inside* could serve the survey process well.

- b. CMS should provide explicit guidance on when and how to cite harm-level deficiencies, with specific examples of scope and severity for each category of harm.
5. CMS should, to the fullest extent possible, standardize citations and prescribe automatic scope and severity assignments for certain deficiencies.
6. CMS should require the automatic citing of at least a harm-level deficiency under specified circumstances, including when a resident without a long-standing diagnosis of psychosis is given an antipsychotic drug, when a facility fails to monitor a resident for side effects of antipsychotic drugs, when a facility fails to attempt a behavioral intervention before administering an antipsychotic drug (particularly if PRN orders continue to be allowed), and other similar situations.

V. The Federal Survey Process Should Be Strengthened

1. CMS should re-establish a separate F-tag for antipsychotic drug deficiencies, unbundling antipsychotic drug deficiencies from unnecessary drugs. A separate tag would add specificity, clarity, efficiency, and focus and would help “streamline the surveyor investigative protocols and identify when [they are] not being followed.”
2. CMS should require that all states have a pharmacist available to consult with surveyors during surveys. Facilities’ pharmacists, frequently consulted by Surveyors when no independent pharmacist is available at the state agency, have an inherent conflict of interest.
3. CMS should require that pharmacists be included on a survey team when the state has received complaints about antipsychotic drug use at the facility or when a facility’s rate of antipsychotic drug use is high or otherwise suggests cause for concern, as determined in surveyors’ off-site preparation.
4. CMS should require that Surveyors with advanced training in dementia care and antipsychotic drugs be included on a survey team when the state has received complaints about antipsychotic drugs at the facility or when a facility’s rate of antipsychotic drug use is high or otherwise suggests cause for concern, as determined in surveyors’ off-site preparation.
5. CMS should provide more links to research literature on antipsychotic drugs, particularly for newer antipsychotic drugs and for commonly used antipsychotic drugs, such as Seroquel and Risperdal.
6. CMS should assure the integrity of the survey process by establishing strict enforcement protocols for interference with the survey process, record falsifications, misrepresentations, concealed or withheld documents, and other illegal or unethical conduct. CMS should require State Survey Agencies to coordinate with appropriate law enforcement offices, including the State Attorney General, State Medicaid Fraud Control

Unit, United States Department of Justice, and Department of Health and Human Services's Office of Inspector General.¹⁰

7. CMS should establish protections for provider employees, contractors, families, and others who cooperate with Surveyors and assist in their Survey and Certification efforts, including serious sanctions for provider retribution.
8. CMS should place more emphasis on fulfilling preadmission screening and resident review (PASRR) requirements and responsibilities, which are intended to prevent the admission of people with mental health needs that cannot be appropriately addressed in a nursing facility and to assure that those who are admitted receive all necessary specialized services and are considered for integration into the community.

VI. CMS and States Should Provide Surveyors with More and Better Training

1. Surveyors should be trained in antipsychotic drugs, their appropriate use and dosages for older people, and the consequences of their misuse, including a discussion of the Food and Drug Administration's Black Box Warnings and the Beers List. The training must be regularly updated to reflect newer psychoactive drugs on the market, including anti-anxiety drugs and hypnotics.
2. Surveyors should be trained in non-pharmacological approaches to providing care for residents who have dementia.
3. Training should be practical. CMS should provide training on the appropriate assignment of scope and severity, using specific real examples. Surveyor training should use case studies and should include examples of deficiencies that have been challenged and upheld in Informal Dispute Resolution, formal appeals, and litigation.
4. Surveyors should be trained in areas that are commonly missed in order to identify how surveying can be improved for those areas. Surveyors should be trained in investigative techniques.
5. In addition to web-based training, CMS should provide training in person, with opportunities for questions and answers.

¹⁰ After receiving a complaint from an ombudsman that a resident had been held down and forcibly injected with an antipsychotic drug, the California Department of Public Health conducted a survey, cited immediate jeopardy, and referred the case to the State Attorney General, who investigated and subsequently filed criminal charges against the Director of Nursing (DoN), the pharmacist, the medical director, and the administrator. Office of the Attorney General, "Brown Announces Arrests of Nursing Home Employees Who Drugged Patients for Staff's Convenience" (News Release, Feb. 18, 2009), <http://ag.ca.gov/newsalerts/release.php?id=1682>. The DoN was sentenced to three years in prison for elder abuse; the medical director was sentenced to 300 hours of volunteer service and "restitution pending conclusion of civil lawsuits;" and the administrator was sentenced to three years of formal probation. Office of the Attorney General, "Attorney General Kamala D. Harris Announces Nurse Sentenced to 3 Years in Prison for 'Convenience Drugging' of Elder Patients," (News Release, Jan. 9, 2013), <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-nurse-sentenced-3-years-prison->.

6. CMS should provide various levels of training courses – for non-nurses, refresher courses, and advanced courses. CMS should provide in-service and continuing education for Surveyors.
7. Surveyors should be trained in how to make their interviews with physicians who prescribe antipsychotic drugs more useful and informative to their decision-making.
8. Surveyors should be trained in how to evaluate issues surrounding gradual dose reduction.
9. Surveyors should be trained in how to determine whether facilities falsify records, such as assessments and care plans, and when they should refer cases to law enforcement. Surveyors should be trained in how to determine whether providers are being truthful and forthcoming with information required to be provided as a part of the survey process.
10. Surveyors should be eligible for CEUs for attending training.
11. Every State Survey Agency should be required to have a law enforcement trained investigator on staff, both to conduct complex investigations (abuse, chemical restraint) and to train and educate other Surveyors with these special investigative skills.
12. Surveyors should be trained in the basic economics of the nursing home industry.

VII. CMS Should Revise Requirements of Participation for Facilities

1. CMS should require all facilities to meet meaningful mandatory direct care staffing levels for licensed nurses (registered nurses and licensed practical nurses) and for paraprofessional nursing staff (certified nurse assistants (CNAs)). Nurses performing solely administrative tasks should not be counted in direct care staffing levels.
2. CMS should require all facilities to provide consistent assignment of staff to residents.
3. CMS should increase initial and ongoing training requirements for CNAs and should support the creation of career ladders, self-scheduling, and other innovative mechanisms that improve the professionalism and job performance of the paraprofessional workforce. CMS should also require the inclusion of CNAs in resident care planning meetings.
4. CMS should require that a physician see and examine a resident in person before prescribing an antipsychotic drug, with a limited exception for emergency situations. CMS should prohibit telephone orders for antipsychotic drugs, except in limited, highly circumscribed, or emergency situations.
5. CMS should prohibit orders for PRN antipsychotic drugs, except in limited, highly circumscribed, or emergency circumstances.

6. CMS should require physicians to provide a specific written response to a consultant pharmacist's recommendation for gradual dose reduction (GDR) and, as applicable, to document in writing why GDR is not appropriate.
7. CMS should require every facility with high rates of antipsychotic drug use to have a Performance Improvement Project on antipsychotic drugs (part of Quality Assurance and Performance Improvement).
8. CMS should place more emphasis on fulfilling preadmission screening and resident review (PASR) requirements and responsibilities, which are intended to prevent the admission of people with mental health needs that cannot be appropriately addressed in a nursing facility and to assure that those who are admitted receive all necessary specialized services and are considered for integration into the community.

VIII. Additional Recommendations for CMS

1. CMS should create its own webpage for antipsychotic drugs and not rely solely on the webpage of *Advancing Excellence*. On its webpage, CMS should place all federal guidance on antipsychotic drugs, links to updated research, and links to updated data on antipsychotic drug utilization rates and enforcement actions. CMS should report antipsychotic drug rates in its Data Compendium.
2. CMS should monitor deficiency citations and enforcement actions for antipsychotic drug use and should report deficiency citations and enforcement actions on its antipsychotic drug website.
3. CMS should monitor enforcement trends involving antipsychotic drugs, publicly report its findings on at least a quarterly basis, and take prompt corrective measures if weak enforcement patterns continue.
4. In light of the high degree of Surveyor dissatisfaction with the Quality Indicator Survey (QIS), CMS should reexamine the QIS protocol to examine its efficiency and effectiveness and to address problems that interfere with the appropriate citing of deficiencies. Surveyors who are experienced in implementing QIS should be actively involved in CMS's reexamination of the survey protocol.
5. CMS should establish a designated confidential Surveyor Hotline and e-mail address for Surveyors to share concerns, suggestions, and specific input on timely questions posed by CMS. CMS should be responsive to Surveyors' reports and recommendations.
6. CMS should reconfirm that Surveyors are not consultants to providers and that they have strict oversight responsibilities as regulators inspecting facilities for compliance with federal Requirements of Participation. The Quality Improvement Organizations and many other entities are available to assist providers and help them improve the quality of

care they provide. It is a conflict of interest for Surveyors to confuse their responsibilities.¹¹

7. CMS should develop and implement protocols for identifying insufficient staffing levels as they relate to the inappropriate use of antipsychotic medications. It should also promulgate substantive guidance for State Surveyors on the imposition of appropriate remedies for these staffing deficiencies.
8. CMS should place more emphasis on fulfilling preadmission screening and resident review (PASR) requirements and responsibilities, which are intended to prevent the admission of people with mental health needs that cannot be appropriately addressed in a nursing facility and to assure that those who are admitted receive all necessary specialized services and are considered for integration into the community.
9. CMS should conduct a study to identify which nursing facilities disproportionately administer antipsychotic medications inappropriately to their residents and why. It should use this information to promulgate additional regulatory Requirements for facilities and surveyor guidance, as appropriate.
10. CMS should identify which physicians and other prescribers disproportionately prescribe antipsychotic medications inappropriately for their patients and refer them to appropriate law enforcement agencies.

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¹¹ The Institute of Medicine, whose 1986 report *Improving the Quality of Care in Nursing Homes* was the blueprint for the 1987 Reform Law, identified “the potential conflict between the consulting and regulatory roles of a survey agency” (page 150) and explicitly recommended “that survey agency personnel not be used as consultants to providers with compliance problems” (Recommendation 5-1, page 155). See CMS, “Information Exchange by Surveyors During the Nursing Home Survey Process,” S&C-03-08 (Dec. 12, 2002), <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCletter03-08.pdf> (reiterating SOM statement that surveyors do not provide consultations during surveys and distinguishing consultation, technical assistance, and sharing of best practices information).