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INFORMATIONAL LETTER #2019-01

DATE: March 8, 2019

TO: LONG TERM CARE (LTC) FACILITIES

FROM: DEBBY RANSOM, R.N., R.H.I.T., Chief
Bureau of Facility Standards

SUBJECT: **QSO-19-07-LTC- ENHANCED OVERSIGHT AND ENFORCEMENT OF NON-IMPROVING LATE ADOPTERS**

The CMS QSO: 19-07-LTC-Enhanced Oversight and Enforcement of Non-Improving Late Adopters is being distributed to all LTC Facilities in Idaho.

If you have any questions, please contact Belinda Day or Laura Thompson at 208/334-6626, option 2.

DEBBY RANSOM, R.N., R.H.I.T., Chief
Bureau of Facility Standards

DR/lg
Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-19-07-NH

DATE: **March 1, 2019**

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Enhanced Oversight and Enforcement of Non-Improving Late Adopters

Memorandum Summary

- **The National Partnership & Identification of Late Adopters –** Since 2011, the Centers for Medicare & Medicaid Services (CMS) has seen a reduction of 38.9 percent in long-stay nursing home residents who were receiving an antipsychotic medication. Despite the success of the National Partnership, CMS identified approximately 1,500 facilities that had not improved their antipsychotic medication utilization rates for long-stay nursing home residents, referred to as late adopters. In December 2017, CMS notified these facilities of this identification.

- **Enforcement for A Segment of Non-Improving Late Adopters with Multiple Citations -** As of January 2019, there are 235 late adopter nursing homes that have been cited for noncompliance with federal regulations related to unnecessary medications or psychotropic medications two or more times since January 1, 2016, and who have not shown improvement in their long-stay antipsychotic medication rates. If these facilities are determined not to be in substantial compliance with requirements for Chemical Restraints, Dementia Care, or Psychotropic Medications during a survey, they will be subject to enforcement remedies for such noncompliance.

- **Corporate Engagement -** CMS is also looking for opportunities to engage with corporate chains that have significant numbers of nursing homes identified as late adopters.

Background

The National Partnership to Improve Dementia Care in Nursing Homes (the National Partnership) is committed to improving the quality of care for individuals with dementia, living in nursing homes. The National Partnership has a mission to deliver health care that is person-centered, comprehensive and interdisciplinary with a specific focus on protecting residents from being prescribed antipsychotic medications unless there is a valid, clinical indication and a systematic process to evaluate each individual's need.

In 2011Q4, 23.9 percent of long-stay nursing home residents were receiving an antipsychotic medication; since then, there has been a decrease of 38.9 percent to a national prevalence of 14.6 percent in 2018Q3. We are encouraged by the progress to date. In December 2017, through the work of the National Partnership, approximately 1,500 nursing homes were identified as late adopters, meaning facilities that had not improved their antipsychotic medication utilization rates for long-stay nursing home residents since 2011Q4 and had high rates of usage. Among facilities with high rates of usage (late adopters), CMS has set a goal for a decrease of antipsychotic medication use by 15 percent for long-stay residents by the end of 2019.

The late adopter identification is based upon 2017Q1 Minimum Data Set data which showed:

- These nursing homes continued to have a high rate of antipsychotic medication use (2017Q1 top quartile for the long-stay antipsychotic medication quality measure, greater than 20.29 percent);
- Their percentage of antipsychotic medication usage changed very little or increased between 2011Q4 to 2017Q1 (an increase or decrease of less than 6.47 percent);
- These nursing facilities were not in the top decile of schizophrenia prevalence in 2017Q1 (18.29 percent); and
- Their rate of antipsychotic medication usage remained above the 2017Q1 national average of 15.7 percent.

Discussion

With the support of state dementia care coalitions and stakeholders across the country, CMS has provided outreach, strong technical assistance, coordination, and revisions to the underlying long term care requirements and survey processes. CMS intends to continue to expand its efforts by pursuing a two-pronged approach. The first approach will involve enhanced oversight and enforcement actions, while the second approach will focus on outreach with corporations that own or operate significant numbers of late adopter facilities. Both approaches expect to improve dementia care and reduce the inappropriate use of psychotropic medications and chemical restraints for nursing homes identified as late adopters. The enhanced oversight and enforcement approach will focus two subgroups of these late adopter nursing homes which have had a prior history of noncompliance citations with specific federal requirements related to antipsychotic medication use and dementia care. Group one facilities had three or more deficiency citations, while group two had two citations. These two groups were stratified by the number of noncompliance deficiencies cited under unnecessary medications or psychotropic medications – two or more times since January 1, 2016. Given facilities are surveyed on average annually, the January 1, 2016 timeframe allowed for identification of a deficiency noncompliance pattern related to unnecessary medications or psychotropic medications and inclusion of most recent citations.

In addition to the enhanced oversight and enforcement for the two groups consisting of 235 nursing homes, all of late adopter facilities (approximately 1,500) are also encouraged to continue focusing on reducing use of antipsychotic medications and person-centered approaches as CMS will closely monitor progress on the remaining facilities outside of the subgroups.

Group One

There are 41 group one facilities late adopters that have had three or more prior deficiency citations for unnecessary medications or inappropriate use of psychotropic medications since January 1, 2016. Specifically, if a facility within this group is determined to not be in substantial compliance during any survey (e.g., recertification, revisit, focused dementia/schizophrenia, and complaint) with tags F605 (Chemical Restraints), F744 (Dementia Care), or F758 (Psychotropic Medications) at scope and severity (s/s) levels that are not actual harm but pose the potential for more than minimal harm (s/s D-F, level 2), cause actual harm to residents (s/s G-I, level 3), or put residents in immediate jeopardy (IJ) (s/s J-L, level 4), it will be subject to certain enforcement remedies during this period of enhanced oversight. Specifically, the CMS Regional Offices (ROs) will impose a discretionary Denial of Payment for New Admissions (DPNA) with a two-day notice period for any citations at the IJ level and with a 15-day notice period for non-IJ level deficiencies or if IJ is removed before the end of the survey. In addition to the discretionary DPNA remedy, a per-day Civil Money Penalty (CMP) will be imposed starting on the first day of the survey in which tags F605, F744, or F758 are cited. CMP amounts will continue to be established using the CMP Analytic Tool.

Group Two

There are 194 group two late adopters that have had two prior deficiency citations for unnecessary medications or inappropriate use of psychotropic medications since January 1, 2016. Specifically, if a facility within this group is determined to not be in substantial compliance during any survey (e.g., recertification, revisit, focused dementia/schizophrenia, and complaint) with tags F605 (Chemical Restraints), F744 (Dementia Care), or F758 (Psychotropic Medications) at scope and severity (s/s) levels that is not actual harm but pose the potential for more than minimal harm (s/s D-F, level 2), cause actual harm to residents (s/s G-I, level 3), or put residents in immediate jeopardy (IJ) (s/s J-L, level 4). Facilities will be subject to certain enforcement remedies during this period of enhanced oversight. Specifically, the CMS ROs will impose a discretionary DPNA with a two-day notice period for any citations at the IJ level and with a 15-day notice period for non-IJ level deficiencies or if IJ is removed before the end of the survey.

Enforcement Remedies

Remedies for Group One and Group Two facilities under this policy will be imposed in addition to any other remedies required by law. Enforcement actions will not be retroactive and will not be based on the mere status of being a late adopter, but will be based on a late adopter's current noncompliance determinations with the specific requirements identified above.

If any survey (e.g., recertification, revisit, focused dementia/schizophrenia, and complaint) of Group One or Group Two facilities results in a citation of one of the three tags listed above as well as in other regulatory citations that meet the Immediate Imposition of Remedies (IIoR) outlined in Quality, Safety & Oversight Memorandum 18-18-NH[1], the CMS RO should impose the discretionary DPNA remedy (with a two-days' notice for IJs and 15-days' notice for non-IJs) in addition to any other remedy specified by the IIoR policy and the CMP Analytic Tool. However, if cited deficiencies under the IIoR policy would result in the imposition of a Per Instance (PI) CMP but a Per Day (PD) CMP under this policy, the CMS RO should impose the PD CMP, and not impose the PI CMP for that survey.

[1] Quality, Safety & Oversight Policy Memorandum 18-18 NH QSO Policy Memo 18-18-NH

NOTE: For late adopter deficiency citations of F758 (Psychotropic Medications) that are solely related to PRN order limitations at §§483.45(e)(3)-(e)(5) and occur on or before May 28, 2019, the Temporary Enforcement Delay for certain Phase 2 F-tags applies to those citations and therefore these Group One and Group Two facilities will not be imposed a CMP or discretionary DPNA under this policy, but should be imposed a directed plan of correction or directed in-service training as noted under that moratorium. Please see policy memorandum 18-04-NH[2] for a complete description of the Phase 2 enforcement moratorium. If the violation of F758 does not meet this condition, then the moratorium does not apply and CMPs and discretionary DPNAs should be imposed pursuant this memorandum.

CMS Regional Offices (ROs)
State Agencies (SAs) are directed to monitor these Group One and Group Two facilities and transfer to the ROs all cases that fit the criteria described above for enforcement.

The CMS ROs may also survey these facilities as part of their oversight efforts. The CMS ROs will send notification to DNH_Enforcement@cms.hhs.gov after enforcement actions are taken as a result of this enhanced oversight activity.

State Agency Role
The SAs must transfer all cases to the ROs for enforcement consistent with this memorandum where Group One and Group Two facilities are cited for noncompliance with tags F605, F744, or F758 at a scope and severity of D or above. In addition, SAs must conduct on-site revisits to confirm that these deficiencies are fully corrected. If other non-compliance deficiencies in addition to the above tags are cited on any survey, the SAs are responsible for following the normal process.

Outreach Approach
In addition to this new enforcement approach, CMS is also looking for opportunities to engage and collaborate with corporate chains that own or operate significant raw numbers of nursing homes identified as late adopters or a significant percentage of their facilities identified as late adopters.

CMS will re-evaluate this enhanced oversight policy in approximately one year among all late-adopter homes to determine appropriateness to continue and/or modify efforts.

Contact: For questions and concerns, send correspondence to DNH_Enforcement@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
Karen Tritz
Acting Director

cc: Survey and Certification Regional Office Management

[2] Quality, Safety & Oversight Policy Memorandum 18-04-NH QSO Policy Memo 18-04-NH