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WTHDTASF: What the Heck Does That Acronym Stand For?: A Review of Legal Terminology in the Long-Term Care Setting and Other Important Legal Updates



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Agenda

- Common acronyms and key terms
- Hot topics in long-term care
- Q&A

Acronyms & Key Terms

- **Advance Directive**: A written statement of a person's wishes regarding medical treatment made to ensure those wishes are carried out should the person be unable to communicate them.
- **General/Financial POA**: Gives another person the ability to act on one's behalf concerning financial matters. Presently effective. Permits agent to sell home, write checks, exercise stocks, pay bills, access bank accounts, etc.

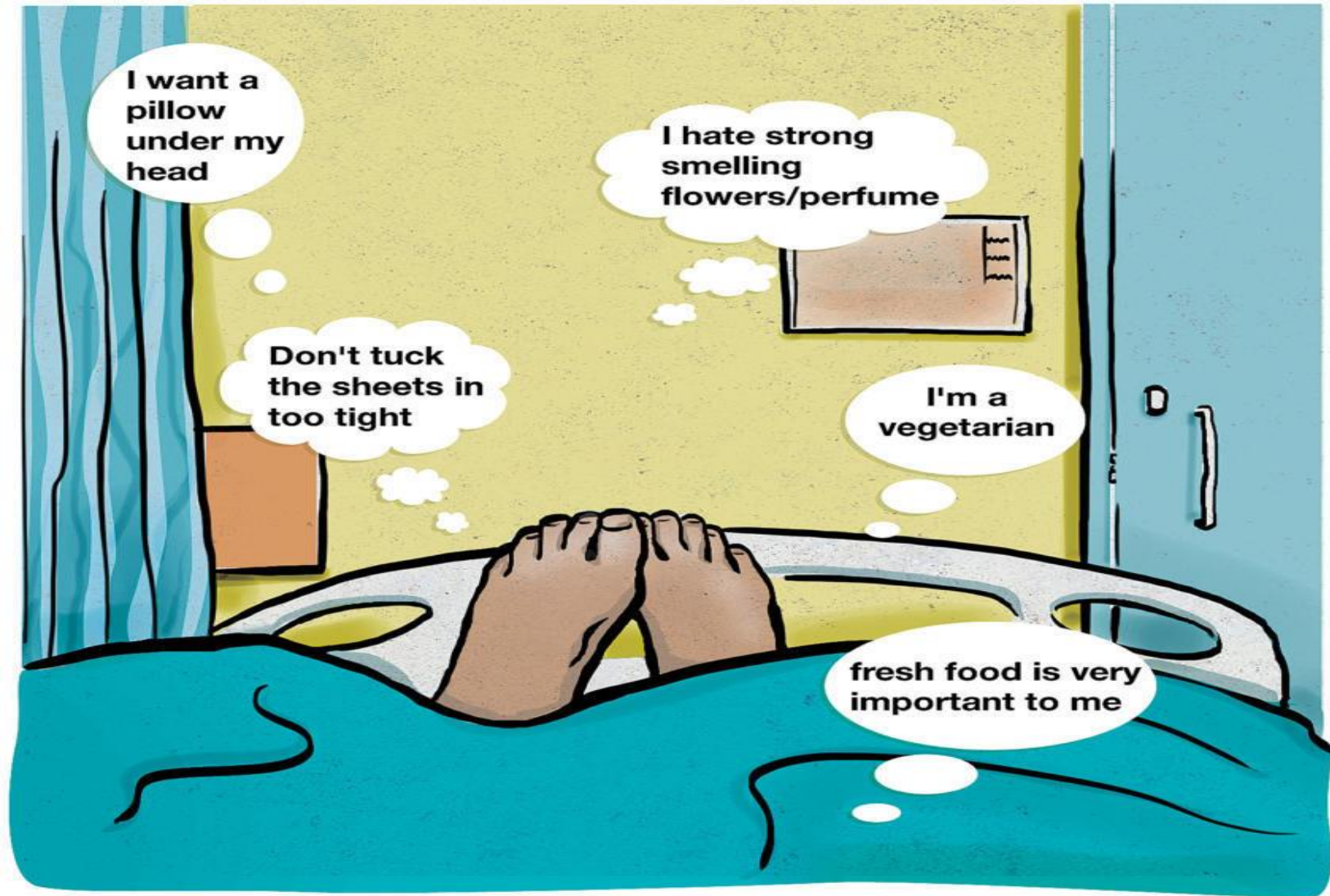
Acronyms & Key Terms

- **DPOA-HC**: Directive allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she should lose capacity. Only effective when deemed incapacitated (“springing”).

- **DPOA-HC Portion**
 - Appoints someone to make HC decisions if incapacitated.

 - States whether to start or withhold life-sustaining treatment if person lacks capacity to make decisions and is near death... or if not near death, person has become permanently unconscious.

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Acronyms & Key Terms

- **Living Will (Portion)**: “If certified to be near death or in a permanently unconscious conditions by two physicians or a physician and an APRN, and these practitioners have determined that death is imminent regardless of whether life-sustaining treatment is utilized and where application of life-sustaining treatment would serve only to artificially prolong the dying process, or that I will remain in a permanently unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, the natural ingestion of food or fluids by eating or drinking, or the performance of any medical procedures deemed necessary to provide me with comfort care.”

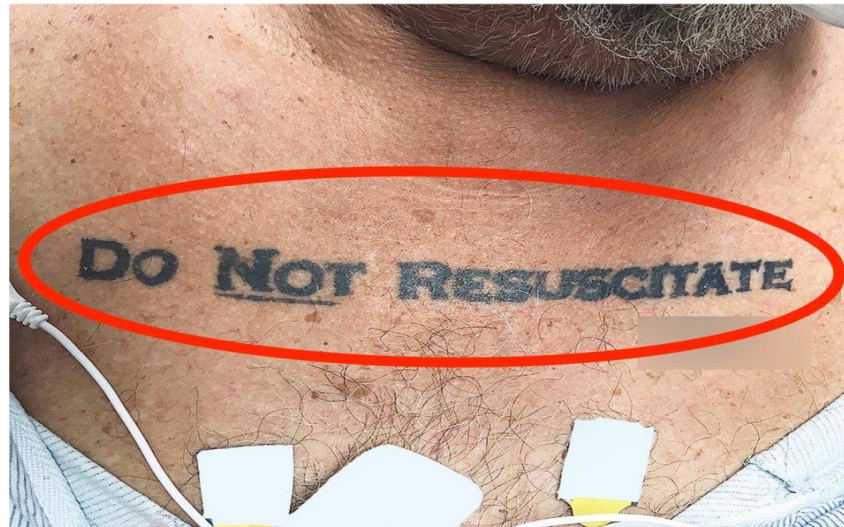
Acronyms & Key Terms

- **Provider Orders for Life Sustaining Treatment (POLST):**
Portable medical order for the specific medical treatments that person wants during a medical emergency. Appropriate for individuals with a serious illness or advanced frailty near end-of-life.
 - Does not replace advance directive; while all adults should have an advance directive, not all should have a POLST form.
 - Covers issues such as CPR, administration of medically assisted nutrition, administration of comfort treatments vs. selective treatments vs. full treatments.

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Acronyms & Key Terms

- **Do-Not-Resuscitate (DNR) Order**: Medical order written by a doctor instructing health care providers not to conduct CPR if a patient's breathing stops or if the patient's heart stops beating.



Acronyms & Key Terms

- **Health care surrogate (RSA 137-J:34-37)**: When resident lacks capacity to health care decisions, physician or APRN must make inquiry to determine whether resident has advance directive and whether agent is available, willing, able to act.
- When no health care agent is authorized and available, physician or APRN shall make reasonable inquiry to determine whether possible surrogate(s) exists and is willing to serve. *Alternative to guardianship.
- If multiple in category, all share power.
- Lasts for 90 days in most instances.

Acronyms & Key Terms

- **Guardian over Person/Estate (RSA 464-A)**
 - *Person*: Guardian to make health care decisions for incapacitated person.
 - *Estate*: Guardian to handle financial matters. Known as “conservator” in some states.
 - *Special Medicaid Representative (“SMR”)*: Under RSA 151-I, LTC facility can ask court to appoint person to file for Medicaid.

Acronyms & Key Terms

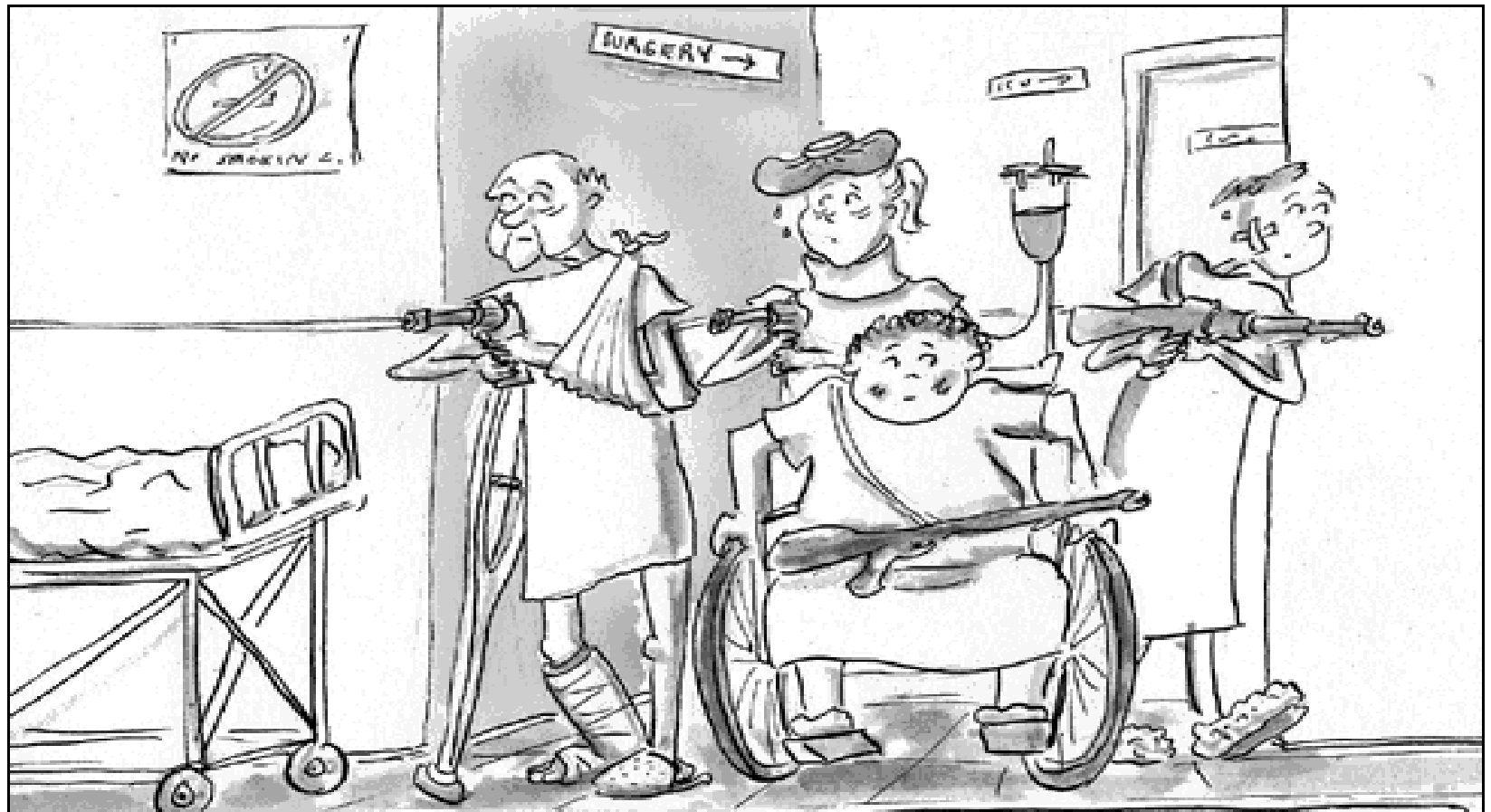
- **Physical Restraint**: The use of any hands-on or other physically applied techniques to limit the resident's freedom of movement, which includes but are not limited to forced escorts, holding, prone restraints or other containment techniques.
- Shall not be used except when authorized in writing by a licensed practitioner for specific/limited time necessary to protect resident from injury or as permitted by COPs (or in event of emergency). Used only after less restrictive measures have been found ineffective to protect resident.
- *Examples*: Belts, vests, bedrails, specialized chairs, hand mitts, soft ties, vests.

Acronyms & Key Terms

- **Chemical Restraint:** Any drug or medication prescribed to control a resident's behavior or emotional state without a supporting diagnosis, or without the presence of a hospice plan of care, or for the convenience of program personnel.
- *Examples:* Sedatives, antipsychotics, benzodiazepines, and/or anesthetics.

Acronyms & Key Terms

- **Patient's Bill of Rights (RSA 151:21)**: List of rights of those patients/residents in NH health facilities.
- Covers things like confidentiality of medical records, treated with dignity and respect, right to informed consent, right to be informed of costs or care, right to only be transferred or discharged for specified reasons, right to manage own personal financial affairs, right to be free from emotional, psychological, and sexual abuse.
- *Penalty* = \$50 per day per violation or all damages proximately caused by the violations, whichever is greater.



ARTICLE 2 : A well regulated militia being instrumental to the procurement of necessary treatments, the right of the patients to keep and bear arms, shall not be infringed.

Acronyms & Key Terms

- **Transfer**: Removal from facility and transfer to another facility.
- **Discharge**: Movement from facility to somewhere other than another facility such as home, independent living apartment, family placement, etc.
- **Bed Hold**: Period of time facility is required to hold resident's bed when resident leaves facility for emergency medical treatment. Hold for 10 calendar days. If absence is longer than 10 days, or facility has not received payment for the period of absence, the resident shall have the option to return to the facility for the next available bed.

Acronyms & Key Terms

- **Office of Long-Term Care Ombudsman (OLTCO)**: Under federal Older American Act, every state is required to have Office of State Long-Term Care Ombudsman who advocates for residents to resolve problems residents face and improve quality care.
- Identify, investigate, and resolve complaints.
- Educate residents, their families, and facility staff about resident rights, LTCSS, legal/admin/other remedies to protect residents.

Acronyms & Key Terms

- **Bureau of Elderly & Adult Services (BEAS):**
Investigates claims of elder abuse and neglect. Provides a wide range of support and services in partnership with community systems for individuals with developmental disabilities and acquired brain disorders, individuals with serious mental illness or emotional disturbance, adults aged 18-60 who have a chronic illness or disability, and individuals age 60 or older.



Acronyms & Key Terms

- **Guarantor**: Someone who voluntarily agrees to pay for a resident's care out of their own pocket.
- **Responsible Party**: Person who voluntarily agrees to facilitate payment for a resident's care with the *resident's* funds.
- **Arbitration Agreement**: Agreement to waive right to handle disputes in court and instead handle privately with judge or retired lawyer.

Acronyms & Key Terms

- **Spend Down**: \$1,500 income limit. 5-year look back.
- **Patient Liability**: Amount Medicaid resident is required to pay facility out of their monthly income based on DHHS' assessment of asset availability.
- **Community Spouse**: If one spouse requires care, and the other does not, the spouse who does not receive care is referred to as the Community Spouse.

Acronyms & Key Terms

- **Activities of Daily Living (ADLs)**: Eating, bathing, dressing, toileting, transferring, and continence.
- Performance of ADLs is important in determining what type of LTC and health coverage a person needs
- Also used to determine capacity and whether guardian over a person is needed under RSA 464-A.

Acronyms & Key Terms

- **Minimum Data Set (MDS)**: A federally-mandated health status screening and assessment tool used for all residents of nursing facilities certified to participate in Medicare or Medicaid.
- Assessment of each resident's functional capabilities and health needs conducted by trained nursing home clinicians.
- Conducted within 14 days of admission and at quarterly intervals unless significant change in condition.
- Include information regarding aging factors such as functional and cognitive status, life care wishes, psychosocial functioning, etc.

Acronyms & Key Terms

- **Resident Assessment Instrument (RAI):** 3.0 version of CMS Resident Assessment Instrument including MDS with care area assessment (CAA).
- Helps nursing home staff gather info on resident's strengths and needs to be addressed in individualized care plan.



Acronyms & Key Terms

- **Quality Assurance and Performance Improvement (QAPI)**: Each facility must develop, implement, and maintain effective, comprehensive, data-driven QAPI program that focuses on indicators of outcomes of care and quality of life (42 CFR 483.75).
 - QA committee must consist of, at a minimum, DON, medical director, three members of facility's staff at least one who is administrator, owner or board member, and infection preventionist.
 - Reporting, investigation, analysis, and prevention of adverse events. Documentation demonstrating development, implementation, and evaluation of corrective action plans and performance improvement activities.

Acronyms & Key Terms

- **Infection prevention and control program (IPCP):**
 - System for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases.
 - Policies and procedures on issues such as reporting of communicable disease/isolation of residents who are confirmed or believed to be infected, etc.
 - Designation of one or more individuals as infection preventionists.

Hot Topics in LTC

- **Patient Driven Payment Model (PDPM)**
 - Takes effect on **10/1/19**
 - Fundamentally changes the way SNFs are reimbursed for Medicare Part A stays
 - Replaces current PPS RUGS payment model with a new per-diem payment system. Payment is based upon an array of patient characteristics associated with newly designed direct care components. Therapy minutes no longer drive payment.

Hot Topics in LTC

■ PDPM

- As a condition of coverage, physicians must certify on admission and then recertify by day 14 and every 30 days thereafter that skilled care is needed.
- Physicians and MDS Coordinators must be able to understand and effectively communicate about arriving at the reason for SNF care and defining the clinical basis for admission using appropriate ICD-10 codes that map to PDPM.

Hot Topics in LTC

- **Compliance and Ethics Program (42 CFR 483.85)**
 - Deadline **11/28/19**
 - Operating organization for each facility must have program in operation.
 - Program must contain, at a minimum, following components:
 - Written compliance and ethics standards, policies and procedures.
 - Assignment of high-level personnel for oversight of program.

Hot Topics in LTC

■ Compliance and Ethics Program

- If operating organization runs 5+ facilities, program must contain:
 - Mandatory annual training program concerning organization's program;
 - Designated compliance officer; and
 - Designated compliance liaisons located in each of the operating organization's facilities.

Hot Topics in LTC

- **Infection Prevention and Control Program (42 CFR 483.80)**
 - Phase 3 specialized training component implemented by **11/28/19**
 - CMS and the CDC are collaborating on the development of a training course in infection prevention and control for long-term care nursing home staff. This course will be free of charge and available on-line and on-demand Spring 2019.

Hot Topics in LTC

- **Infection Prevention and Control Program (42 CFR 483.80)**
 - The training is expected to take approximately 16 to 20 hours and a certificate of completion will be provided after successful completion of an online exam.
 - Covers topics such as:
 - Infection prevention and control program
 - Infection surveillance
 - Outbreaks
 - Respiratory etiquette
 - Device and wound management

Other Items to Be Implemented by 11/28/19

- **42 CFR 483.80(b)**: The facility must designate one or more individual(s) as the infection preventionist(s) (IPs) who are responsible for the facility's IPCP. The IP must:
 - (1) Have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field;
 - (2) Be qualified by education, training, experience or certification;
 - (3) Work at least part-time at the facility;
 - (4) Have completed specialized training in infection prevention and control; and
 - (5) Participate in facility's QAA Committee

Other Items to Be Implemented by 11/28/19

- **42 CFR 483.25(m)**: The facility must ensure that residents who are trauma survivors receive culturally-competent, trauma-informed care in accordance with professional standards of practice and accounting for residents' experiences and preferences in order to eliminate or mitigate triggers that may cause re-traumatization of the resident.

Other Items to Be Implemented by 11/28/19

- **42 CFR 483.90(g)(1)**: The facility must be adequately equipped to allow residents to call for staff assistance through a communication system which relays the call directly to a staff member or to a centralized staff work area from each resident's bedside.

Hot Topics in LTC

■ Sexual Expression Policies

- Policies allow facilities to set ground rules, define consent amongst residents, define appropriate/inappropriate sexual expressions, explain sexual abuse, provide education on safety risks, and ensure staff are adequately trained.
- 42 CFR 483.10: Describes right to dignified existence, self-determination, and unfettered communication with persons inside/outside the facility.

Hot Topics in LTC

- **Sexual Expression Policies**
 - Federal 1987 Nursing Home Reform Law: While sexual expression is not specifically listed as a right, several related rights indicate that residents have a right to free sexual expression (e.g., privacy, confidentiality, visitation, independent choices, free from restraint).

Hot Topics in LTC

■ Sexual Expression Policies

- *Question:* Can an individual who lacks capacity to make health care decisions still consent to sexual activity?
- A sex act between two individuals where one individual does not consent = crime.
- Does individual understand the voluntariness and nature of the sexual act?

Hot Topics in LTC

■ Sexual Expression Policies

- *Barriers to Resident Sexual Expression*
 - Lack of privacy
 - Lack of partner
 - Fear of staff reaction
 - Family attitudes
 - Violation of facility policies
 - Physician and healthcare provider attitudes

Hot Topics in LTC

■ Sexual Expression Policies

- *Challenges*

- Liability in permitting or prohibiting sex act (assault vs. violation of resident's right to expression)
- Determining roles of family, staff, and legal decision-makers
- Difficult conversations
- One size fits all approach?

Hot Topics in LTC

■ Medical & Recreational Marijuana

- NH law = medical marijuana legal, otherwise decriminalized
- Federal law = marijuana illegal
- Predicament = receipt of federal funds in jeopardy if allow marijuana use in facility
- If allowed, design policies for health and safety of residents (e.g., edibles and oils vs. smoking; storage methods; assistance with administration, etc.).

Hot Topics in LTC

■ Physician Assisted Dying

- Still illegal in NH
- BUT... legal in **Maine, Vermont**, New Jersey, California, Colorado, D.C., Hawaii, Montana, Oregon, and Washington.
- Start thinking about what facility's policy on issue will be if legalized in NH.

Questions?

THANK YOU

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