

March 16, 2015

The Honorable Sylvia M. Burwell
Secretary
Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell:

As consumer advocates who monitor the quality of care provided to nursing home residents throughout the United States, we strongly support the Centers for Medicare & Medicaid Services' actions to verify, expand, and improve the data on Nursing Home Compare. Much remains to be done, but CMS's recalibration of the Nursing Home Five Star Quality Ratings is a welcome first step to increase the accuracy of information many consumers consult when choosing a nursing home and to maintain the public's trust in the stewards of the Medicare and Medicaid programs.

For almost two decades, we and our colleagues have advocated for full disclosure of nursing home information; participated in CMS forums, advisory committees and technical expert panels; surveyed consumers in the field and provided their feedback on the usefulness and usability of Nursing Home Compare; and asked Congress for authorizing statutes and appropriations—all to support the Department of Health and Human Services' efforts to improve nursing home transparency. We are writing to urge CMS and the Department to continue timely implementation of the reforms that were announced February 20; to consider and implement other changes to improve the reliability of public data and facility ratings; and to ensure regular and ongoing opportunities for consumer advocates to provide input based on beneficiaries' experiences.

Like CMS, we encourage consumers to use Nursing Home Compare as only one tool to select a nursing home. However, most persons in the confusing and stressful environment in which such decisions are often made will rely on the most comprehensive tool they have—one provided by Medicare itself. They will not know that CMS's research showed significant discrepancies between some data reported on Nursing Home Compare and Medicare cost reports, or that CMS analyses of self-reported nurse staffing levels consistently found it inaccurate. They may also not realize that the marked increase in the number of four and five-star nursing homes and a decline in cited deficiencies occurred at the same time the Office of Inspector General found one-third of short-stay Medicare beneficiaries were harmed, primarily due to substandard treatment, inadequate resident monitoring, and failure or delay of care.

Nursing Home Compare is an excellent resource, and we use it ourselves. However, for those who do not read or understand CMS's caveats, it has often created an illusion of quality in facilities with poor care and devalued the status of facilities that earned high ratings. The recalibrated Five Star ratings are fairer to consumers and also to nursing homes that staff adequately and strive to ensure that residents do not experience avoidable decline in their

physical or mental health or quality of life. Moreover, including long-stay and short-stay antipsychotic drug measures in the ratings will raise awareness that sedating residents without an appropriate medical reason is an overwhelming failure of care. With the recent changes, a four or five-star rating becomes more meaningful for those who earn it, and poor providers will find it more difficult to receive the highest ratings based on quality and staffing information they themselves submitted.

Nevertheless, improvements to the accuracy of Nursing Home Compare and the ratings system are far from complete; and more needs to be done in addition to the improvements CMS is already undertaking.

Even with recalibration of the thresholds for obtaining top overall ratings, the awarding of four and five stars for Quality Measures to almost half of nursing homes is incompatible with substantial evidence that the proportion of nursing homes receiving these ratings should be lower. CMS's plan to conduct specialized surveys to review the accuracy of facilities' data will help but probably will not be enough to overcome all the gaming and falsification that inflate many current reports, especially if facilities believe they will not be cited and penalized. Therefore, we strongly support CMS's plan to add new measures based on Medicare claims and to improve scoring methodology by placing more emphasis on data verified by independent sources. Moreover, we strongly urge CMS to develop and give greater weight to other measures based on objective, verifiable, and valid evidence of whether or not residents receive appropriate care.

Unintended and harmful consequences to residents should always be taken into account in developing quality measures. As a case in point, facilities should not be rewarded with high ratings for failing to hospitalize residents when it is necessary, or for discharging them back to homes where they cannot receive the care they need.

Nurse staffing data will be improved with the completion of the payroll-based reporting system by the end of 2016. Timely, accurate information about nurse staffing—particularly direct care by RNs, LPNs, and CNAs—can provide consumers the single most valuable piece of information about the care they can expect in a nursing home, especially combined with rates of turnover, retention, and temporary staffing. The system must be designed to avoid errors that compromise existing reports, and it must include audits and appropriate penalties for misreporting and falsification. CMS officials have assured consumers that we will continue to be informed about and have a voice in the development and implementation of this system, which we have supported for many years and have worked diligently to make possible.

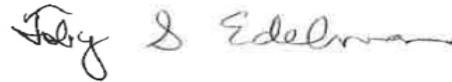
Finally, while the health inspection measure is the best existing indicator of nursing homes' quality, deficiencies are a good measure only if state surveyors cite them and score them at appropriate levels and impose meaningful penalties. The marked decrease in deficiencies, assigned levels of harm, and sanctions across the country over the past several years does not represent an improvement in quality for most residents, but rather declining federal and state enforcement. We strongly urge CMS to also take actions to improve surveys and enforcement, which will increase the reliability of this essential component of the Five Star Rating System.

Over the years, we have enjoyed the opportunity to work with HHS and CMS officials, as well as Congress and state legislatures, on issues that affect nursing home residents. We look forward to maintaining a dialogue with CMS and providing consumer input as it continues to improve vital information to the public about nursing home quality.

Sincerely,



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