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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

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August 26, 2014

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
200 Independence Ave., S.W.
Washington, DC 20001

Dear Administrator Tavenner:

The quality of nursing home care is an issue of critical importance to our nation's seniors and their families. It is imperative for the Centers for Medicare and Medicaid Services (CMS) to conduct vigorous oversight of these facilities to ensure that patients are cared for with respect, professionalism, and dignity. Unfortunately, a recent report by the *New York Times* raises troubling concerns that some of these entities—many of which operate for profit—have been able to game the current “five-star” rating system to mislead consumers.¹

According to this press report, when CMS established the nursing home rating system in 2009, it “was applauded by consumer groups, who hoped that more transparency would lead to greater accountability.” The rating system sought to achieve this goal by awarding a score of up to five stars based on three metrics: (1) health inspections, (2) staffing levels, and (3) quality indicators.²

However, only one of these indicators—health inspections—is based on data collected by government inspectors. As the CMS website explains, health inspections are “the only source of information that comes from a trained team of objective surveyors (inspectors) who visit each nursing home to check on the quality of care, inspect medical records, and talk with residents about their care.” Scores for the other two indicators—staffing and quality measures—are “self-reported by the nursing home, rather than collected and reported by an independent agency.”³

¹ *Medicare Star Ratings Allow Nursing Homes to Game the System*, *New York Times* (Aug. 24, 2014) (online at www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html).

² *Id.*

³ Centers for Medicare and Medicaid Services, *Nursing Home Compare: Strengths and Limitations* (online at www.medicare.gov/NursingHomeCompare/About/Strengths-and-Limitations.html) (accessed on Aug. 25, 2014).

Some nursing homes have been able to obtain the highest overall rating of five stars even though government health inspectors have determined that the facility meets only average standards of care. Under the current rating system, nursing homes receive one extra star if they self-report staffing levels of four or five stars, and they receive another extra star if they self-report quality measures of four or five stars.⁴ As a result, facilities may obtain an overall rating of five stars despite earning only a three-star rating based on inspection data.⁵

The article also reported that some nursing homes are improperly inflating their staffing levels prior to self-reporting, and then cutting back on staff soon after inspections occur. According to the article, the Administrator of the Medford Multicare Center for Living in Long Island wrote in an email: “The staffing hours will be a little high for this week but will drop the following week.” According to the press report, a provision of the Affordable Care Act requires Medicare to use payroll data to verify the accuracy of staffing levels, but CMS reported that it is still “working on the verification system” and “hoped to have it running soon.”⁶

Some nursing homes may also be improperly self-reporting their quality measures, which the article explains are “susceptible to manipulation.” According to the article, CMS is “testing an auditing program that they hoped to expand nationally,” and the agency “plans to consider additional metrics.”⁷

The article also explains that the rating system does not include potentially negative reports from state authorities:

The ratings do not take into account entire sets of potentially negative information, including fines and other enforcement actions by state, rather than federal, authorities, as well as complaints filed by consumers with state agencies.⁸

Although incorporating adverse incident reports from all 50 states may pose significant challenges, the article reported that from 2009 to 2013, California officials received 102 consumer complaints and reports of problems at just one facility, Rosewood Post-Acute Rehab, a nursing home in Sacramento, while California Advocates for Nursing Home Reform reported

⁴ *Medicare Star Ratings Allow Nursing Homes to Game the System*, New York Times (Aug. 24, 2014) (online at www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html).

⁵ See, e.g., Centers for Medicare and Medicaid Services, *Nursing Home Profile: Rosewood Post-Acute Rehabilitation* (online at www.medicare.gov/nursinghomecompare/profile.html#profTab=2&ID=056101&state=CA&lat=0&lng=0&name=ROSEWOOD%2520POST%2520ACUTE%2520REHABILITATION) (accessed on Aug. 25, 2014).

⁶ *Medicare Star Ratings Allow Nursing Homes to Game the System*, New York Times (Aug. 24, 2014) (online at www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html).

⁷ *Id.*

⁸ *Id.*

164 complaints at this facility.⁹ Despite these complaints, Rosewood Post-Acute Rehab was able to attain an overall rating of five-stars.

Given these serious concerns about how nursing homes have been gaming the current rating system, several organizations have called on CMS to delay the expansion of similar five-star ratings for hospitals, dialysis centers, and home-health-care agencies.¹⁰

In order to evaluate these reports and consider constructive ways to improve the nursing home rating system, I request that appropriate CMS officials provide a briefing for my staff by September 16, 2014, regarding the following questions:

1. Why does the CMS rating system allow nursing homes of average quality, as determined by government health inspectors, to receive overall ratings of five stars?
2. What is the status of CMS efforts to implement the Affordable Care Act provision requiring the use of payroll data to verify the accuracy of nursing home staffing levels?
3. What is the status of CMS efforts to implement an audit program to verify the accuracy of nursing home quality measures?
4. What other metrics are being considered? Has CMS considered the use of a consumer protection hotline or website to receive complaints about nursing homes to better inform the rating system?
5. What are the most significant benefits and challenges with incorporating fines and other enforcement actions by state authorities, as well as complaints filed by consumers with state agencies?
6. What are current CMS plans for introducing similar five-star rating systems for hospitals, dialysis centers, and home-health-care agencies, including the data to be used, the sources of the data, how the data will be verified, and the frequency of the data collection?
7. What improvements in nursing home care have resulted from the implementation of the rating system? What efforts have been made to review the impact of the rating system on nursing home care quality, and what findings have been reported?

Thank you for your consideration of this request. If you have any questions, please contact my staff at (202) 225-5051.

⁹ *Id.*

¹⁰ See, e.g., *Kidney Care Partners Asks CMS to Delay, Revise 5-Star Rating System for Dialysis Facilities*, Nephrology News & Issues (Aug. 13, 2104) (www.nephrologynews.com/articles/110383-kidney-care-partners-asks-cms-to-delay-revise-5-star-rating-system-for-dialysis-facilities).

Sincerely,



Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman