



THE ADVOCATE OF NOT-FOR-PROFIT  
SERVICES FOR OLDER OHIOANS

## Five Star Ratings Live; Minnix Response December 19, 2008

As of yesterday, the Five Star Rating System was live on the Nursing Home Compare Website of the Centers for Medicare & Medicaid Services (CMS). This followed a tumultuous week in which it was learned that CMS was "populating" facilities' MDS mailboxes with respective "5 Star Rankings" even though some information may be incorrect and that CMS released the full rating list to the media prior to this population, meaning providers and their associations were not privy to the same comprehensive information as the press. With all that said and done, as of yesterday, a press conference was held by CMS to unveil the rating system on the compare website. Facilities were to have received information on their ranking as well as an explanation of methodology and a toll free number – (800) 839-9290 - for technical assistance. While we and AAHSA continue to respond to any media inquiries we receive, we are advising members to use these talking points in response:

- There should be two types of nursing homes: the excellent and the non-existent; quality should be an automatic public expectation.
- Providers support a consumer-friendly nursing home rating system based on reliable quality information that the public can understand; unfortunately, the five-star rating system is a great idea prematurely implemented.
- Together, government and providers must be responsible, transparent and accountable for taking care of vulnerable seniors. CMS has key responsibility for defining, measuring and overseeing quality while providers have the key responsibility in delivering quality. Data provided by the government must be accurate, reliable, timely and friendly.
- The rating system is based on three pillars:
  1. Clinical measures: Clinical measures are the most mature data collected;
  2. Staffing: The staffing component is a snapshot and requires much immediate work because staffing is the best proxy for quality;
  3. Inspections: Inspection data is inconsistent.
- What needs to be improved about the Five-Star Rating system is:
  - Immediate development of a data collection tool around staffing.
  - Coordination of the rating system with the Advancing Excellence in America's Nursing Homes campaign.
  - Overhaul of the survey and certification system with funding provided for a new system.
  - Medicaid and Medicare reimbursement that flow through directly for care giving; the dollars follow the caregiver should be the mantra.
- CMS and providers need to provide guidance to consumers on other factors like using a "five-senses test" when visiting a nursing home; relying on community reputation; observation of staff-resident interactions; and, availability of senior management to address resident and family concerns.

*Check your rating (received in your MDS mailbox) and access available information for explanation of the rating system to respond to any media and resident, family and consumer inquiries. Review the accuracy of survey and other information; there have been reporting problems between the state and federal entities leading to incorrect data being used for the rating system which can be corrected by calling (800) 839-9290. Also, the "Users Guide" was e-mailed to members earlier this week and is available on the front page of [www.aopha.org](http://www.aopha.org); this document explains the rating methodology. If your information is incorrect, let us know and we can help correct it. Your AOPHA contacts are Fran Savard at [fsavard@aopha.org](mailto:fsavard@aopha.org) or (614) 444-2882, ext. 20; or, John Alfano at [jalfano@aopha.org](mailto:jalfano@aopha.org) or (614) 444-2882, ext 14; or, Tim White at [twhite@aopha.org](mailto:twhite@aopha.org) or (614) 444-2882, ext. 26.*

**A Five-Star Tragedy of Justice, Poorly Implemented**  
**Larry Minnix, AAHSA President and CEO**  
**December 17, 2008**

Tomorrow, there will be a press announcement about the new CMS Five-Star Quality nursing home rating system. It is based on significantly flawed and inadequate information that has stacked the public relations deck against nursing homes.

The Five-Star system is reflective of the way CMS has increasingly done business recently. It's ethos of working with providers has changed, in my experience, from collaborative and transparent to a heavy-handed compulsion to cram good, yet poorly executed ideas down our throats in the waning days of this administration. The Five-Star system is only one example. I'll share others below.

This harsh conclusion has been reached over the last 24 hours as it has been revealed that national media and state survey agencies have been given the entire database of the five-star ratings days in advance of providers having their individual facility data.

AAHSA blew the whistle on the advance media action to which CMS responded immediately with a conference call with the state and national association leaders to let us in on their secret and ask our help with "roll out." A caller asked the CMS official leading the call if we could all receive the same data sent to the press and state agencies. We were told that would not be possible.

Following that extended call late yesterday, Dana Petrowsky, our Iowa state executive, took the initiative to call her local newspaper that had received the information. The newspaper reporter forwarded her the information for Iowa and the entire nation, which CMS said they could not send. Even the reporter understood that we can't comment on data we haven't seen. It's a sad and ironic day when we have to turn to the media for CMS data.

Shortly after this call, AAHSA's Barbara Manard stopped by my office late in the day to give me a heads up on another ill-conceived, 11<sup>th</sup> hour half-baked CMS idea called "pay for performance." More details will be forthcoming, but she said she would recommend to states and members that they *not* participate in the pilot to be rolled out right away. In her view, under the guise of financial performance incentives, the pilot fundamentally rewards nursing homes *not* to treat nursing home residents in need of care.

Later, John Sauer, our state executive from Wisconsin, called my home enraged over the continued injustice inflicted on nursing home members through a flawed inspection process. He reminded me the message that most nursing homes are busting their tails for improved quality while living with onerous regulation and decreasing reimbursement. He's right. John understands the need to cooperate with government — and nobody does it better than John and AAHSA for that matter. But his passion (metaphorically) screamed "Enough is enough!"

I slept on that call and agreed. Enough is enough. And if your passion isn't awakened over all this, you're missing the message.

As you know, AAHSA has partnered with government, our provider colleagues and consumers around nursing home quality improvement. When I came to Washington in 2001, it was apparent that nursing home care needed much attention. Policy leaders accused us of not taking responsibility for our own quality. I believed that to be a valid judgment – as did other association colleagues.

That conclusion led then- HHS Secretary Tommy Thompson to propose the Nursing Home Quality Initiative as the government's leadership program. Quality First is the counterpart initiative of AAHSA, the American Health Care Association and the Alliance for Quality Nursing Home Care. Both programs have progressed well. They have spawned initiatives like Advancing Excellence in America's Nursing Homes and recent culture change advancements.

Every nursing home should embrace Advancing Excellence because it represents the best data available reflecting actual improvement in nursing home care. And the culture change conference, sponsored by CMS and the Pioneer Network was a watershed moment in terms of integrating culture change with contemporary regulatory oversight. Other thought leaders and provider-driven programs like Better

Jobs Better Care, Green Houses, Wellspring, Sanctuary and the Eden Alternative are all great examples of hard work underway for many years to improve nursing home care.

In the meantime, OBRA '87 has become increasingly onerous. It is now 20 years of thousands of pages of out-of-date regulation for which nursing homes are judged through the survey and certification process or "Inspection Reports" as CMS now calls them. These inspections are the fundamental basis for the five-star system.

AAHSA has completed a year-long study and report on the nursing home survey process. The effort was chaired by Kentucky state association executive Tim Veno, a former state survey director, and Bonnie Gauthier, an AAHSA board member from Connecticut. The study is entitled, "Broken and Beyond Repair." It includes insights from members and outside experts. It has been sent to Congressional and CMS leaders. It recommends a complete examination of nursing home oversight, and a study by the Institute of Medicine, which did the last study of the public oversight of nursing homes years ago.

CMS has yet to respond to our recommendations. They have had them for months. Their inaction is inexcusable. CMS' one concession in a five-star plan is to publicize that the data is reported by states and that there are inconsistencies across states. My phone is already ringing from individual facilities with flawed information in their rating.

There are other data flaws in the Five-Star system. An Alliance leader commented on the CMS call yesterday that there are data to show that nursing homes who care for sicker residents are likely to receive fewer stars. How's *that* for reinforcing those of you who serve the very ill?

CMS has promulgated a new experimental quality indicator system tested in several states called the QIS. What they are withholding is their own internal evaluations that question its effectiveness as well. What we do *not* need is a new flawed system to replace the old one.

When added to CMS's recent multiple attempts to undo the Medicare market basket adjustment and change RUGs refinements based on flawed data, a clear pattern emerges that is destructive to older people in need of care and those of us expected to provide it: **use high-sounding good ideas to cover cost reductions based on inadequate study data.**

Back to the reality of the present dilemma. A Five-Star plan that is the right idea, poorly planned, prematurely implemented and ham-handedly rolled out. But as usual, you and I have to pick up the pieces. Yes, before you call or write, we have asked that the Five-Star rollout be delayed. CMS refuses. **I ask them once again to reconsider!**

So what can we do?

1. Check your data, your rating and prepare your story about your care.
2. Document flaws, inconsistencies and injustices you have been subjected to and send them to CMS with a copy to me. Be prepared to tell the media your story.
3. If you are among the 12 percent of nursing homes with a five-star rating, toot your own horn.
4. Engage your staff, residents, families and volunteers in personal testimonials for the media. The best stories we have to tell are the people who are grateful for what you do and are willing to tell about it.
5. Read the AAHSA report called "Broken and Beyond Repair." Make it a discussion item at your board meetings.
6. Most importantly, keep embracing Quality First principles. Continuous quality improvement and culture change work. Government cannot solve our problems, but they should exercise appropriate oversight. Our job is to improve quality. Government's is to inspect what we do. We all should be transparent in the reporting of it, including CMS.
7. Write your members of Congress and state officials about the unjust and misleading situation we have been handed – ENOUGH IS ENOUGH!

And remember, there should be two kinds of nursing homes: the excellent and the non-existent. This ideal is possible if we do our part and the government will stop playing games. We all need to express the passion that John Sauer reminded me of during dinner last night.