

Long-Term Care Survey Alert

QUALITY REPORTING: State Attorneys General to CMS: Suspend and Revise 5-Star Program

Find out why 31 AGs are criticizing the initiative -- and what their opposition may mean for you.

The Five-Star nursing home rating program is in the hot seat in the wake of a letter from 31 state attorneys general asking Health & Human Services Secretary **Kathleen Sebelius** to temporarily halt the program and revise it.

This new development gives credence to the problems facilities have been lamenting about the program -- and it may help in other ways. Check out what pundits have to say about the letter, its import -- and the growing problems with a system intended to help consumers choose a nursing home.

AGs Take Aim at Methodology

The attorneys general letter notes that the Five-Star rating for nursing homes does establish nationwide criteria for evaluating nursing homes.

But the rating program "uses a normative methodology with fixed quotas to determine individual nursing home ratings on a state-by-state basis, making it impossible to evaluate nursing homes across state lines," write the AGs. Using this methodology, they complain, "can be misleading and create significant confusion for consumers."

The letter concludes that "in the interest of consumers, as well as providers, we believe it imperative that the current Five-Star System be suspended temporarily and revised using a more appropriate criterion-reference evaluation methodology."

The AGs also maintain that "the correct and appropriate criterion-referenced evaluation methodology would gauge the success or failure of a given nursing home by an absolute national standard." And they point out that CMS' Nursing Home Compare system "remains available to consumers as a tool for nursing home selection during what should be a short revision process."

Potential Import of the Letter

If you're wondering whether AGs write letters like the one about the Five-Star program often -- the answer appears to be no. "A public letter like this certainly is unusual, if not unprecedented," says **Joseph Bianculli**, in Arlington, Va. who has defended nursing homes for over two decades. Bianculli has seen things like the Federal Trade Commission opining that state certificate-of-need laws are anticompetitive. And he's seen individual state AGs or directors of health questioning CMS policies. "But this letter is much different." Attorney **Howard Sollins** agrees "it's unusual for attorneys general in such a large group to challenge a federal regulatory initiative like the Five-Star program, which is touted as having a consumer protection focus."

And "it's going to have an effect, even if CMS does not publicly agree with the comments," predicts Sollins, with Ober/Kaler in Baltimore.

Survey Inconsistencies at Issue

Nursing home providers and other industry pundits have complained all along that the Five-Star rating system is based on faulty data. "One of the primary databases for the current Five-Star system is OSCAR survey data generated by state survey teams," says attorney **Fred Miles**, with Miles & Peters in Denver. And the data show "little, if any consistency" from one state to the next, he adds.

The Quality Indicator Survey (QIS), which CMS continues to implement nationwide, will help improve consistency, Miles adds. But studies on the QIS show there are "still too many anomalies" between states' survey results, and even within a state for surveys performed by different teams, Miles cautions.

Misuse of Star Ratings Penalizing Nursing Facilities

The application of the Five-Star program has also been "overblown," says Miles, who notes it's being used by outside entities, such as managed care organizations, to make decisions about facilities that would seem to require more in-depth analysis. For example, "the Department of Housing and Urban Development (HUD) is including the Five-Star Rating in its risk assessment 'tool kit' for facilities that receive HUD funding," says **Bruce Yarwood**, president and CEO of the American Health Care Association. And "Ohio has proposed legislation that uses Five-Star ratings in its Certificate of Need program."

Good point: Facilities can use [the AGs'] letter to their advantage when the federal HUD agency, other lenders, discharge planners or others ask them about their Five-Star ranking, Sollins suggests. The letter "confirms the system needs to be changed," he points out. Not everyone agrees, however, with the AGs' suggestion to come up with a single national standard for comparing facilities. For example, the American Association of Homes & Services for the Aging "supports the use of in-state and state-by-state comparisons within the Five-Star domains to account for the variability across states," **Evvie Munley**, a policy analyst there, tells Eli .

Editor's note: CMS has been in the process of looking at additional quality measures to include in the Five-Star rating, as well as other fine-tuning. For more information, see Long-Term Care Survey Alert, Vol. 11, No. 9, available in the free Online Subscription System. If you haven't yet signed up for this benefit, call 1-800-874-9180.