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December 15, 2008

CMS Five Star Nursing Facility Quality Rating System “Goes Live” December 18, 2008

On December 18, 2008, CMS will begin publishing its new five star rating system on the CMS Nursing Home Compare consumer information website (www.medicare.gov/nhcompare). On the same day, CMS will publicize the new five star rating system by running a front-page story in USA Today. Each facility should receive notification of its provider rating via an e-mail from CMS prior to December 18 and immediately should be watching for these emails to arrive.

According to CMS, the new rating system will provide nursing facility residents and their families with an easily understood assessment of a nursing facility's quality and will make it easy for the viewer to distinguish between high performing and low performing facilities. The new rating system will not result in more data sources or expand survey categories. Rather, CMS contends the new system is designed to provide a composite and simpler layout of information that is currently on the website. In sum, CMS says the new system will make the Nursing Home Compare website more user-friendly for the consumer.

This is the first time that CMS will offer such a rating system and it is not without criticism and concern. The American Health Care Association (AHCA) urged CMS to delay implementation until the current survey system could be improved. AHCA invited CMS to work together to develop a program to create a survey system that would result in a more accurate representation of quality of care provided in nursing facilities instead of using “flawed information that reaches an equally flawed conclusion.” CMS will implement the new rating system despite AHCA's request to wait.

With this new rating system, federal regulators will rate and rank the nursing facilities on the website based on information from yearly surveys and certification results, staffing information, and other similar data. The five star quality rating system will provide nursing facilities with an overall rating of 1 to 5 stars based on the following three data sources for which information is currently available:

(a) Surveys: CMS will use nursing facilities' three most recent standard surveys in addition to all complaint surveys that have been conducted

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in the last three years. Therefore, the number of survey deficiencies identified by state surveyors will impact a nursing facility's five star rating.

(b) Quality Measures: CMS has selected a subset of the nineteen quality measures currently posted on Nursing Home Compare. The nursing facility quality measures come from resident assessment data that nursing facilities routinely collect on all residents at specified intervals during their stay. These data are converted into quality measures that give another source of information about how well nursing facilities are caring for their residents' physical and clinical needs. CMS says the quality measures have four intended purposes:

- i. To give information about the care at nursing facilities to help consumers choose a nursing facility for themselves or others;
- ii. To give information about the care at nursing facilities where consumers already live;
- iii. To get consumers to talk to nursing facility staff about the quality of care; and
- iv. To give data to the nursing facility to help them with their quality improvement efforts.

(c) Staffing data: CMS collects staffing data at nursing facilities at the time of the standard survey. This information is self-reported by each nursing facility. Nurse Staffing data are collected for registered nurses (RNs), licensed practical nurses (LPNs), and certified nurse aides (CNAs). The data currently presented on Nursing Home Compare shows the average number of hours and minutes of care per resident per day. To best utilize the staffing data collected, CMS developed a case-mix adjustment system which will provide an analytical mechanism it says will fairly compare the data across nursing facilities.

The quality of these data, however, has raised concerns with the new rating system. Some of the major concerns regarding survey data include surveyor bias, inter and intra-state survey variances/inconsistencies and the proposed rating method for evaluating deficiencies. Staffing data concerns include demonstrated inaccuracies of self-reported staffing ratios within OSCAR data and a lack of an up-to-date case-mix adjustment system for staffing ratios. In addition, the STRIVE project, which will update the understanding of staffing needs, has been postponed until 2009. Similarly, concerns regarding data for quality measures include the impact of inadequate risk adjustment and poor quality MDS data.

Other concerns are raised because the system does not give consideration to the uniqueness of each resident or take into consideration that nursing facilities are a place to live, a locus for health care, and a site of rehabilitation. Because the new rating system is simply one-dimensional it likely will mislead or fail to fully inform the consumer about all dimensions of the nursing facility.

A nursing facility's first line of defense to combat these concerns with the new rating system will require the nursing facility to reach out to its consumer base. Revise and energize marketing strategies and provide the public with the important information that is not provided by CMS. In doing so, nursing facilities will need to emphasize a high rating and counter any low ratings. Nursing facilities should take as much control as possible and educate their market about their facilities and how they can meet their consumer's needs. Nursing facilities should also be prepared for calls from the media and residents' family members.



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Nursing facilities also will need to become more proactive in survey preparedness (i.e., perform more mock surveys and compliance audits); provide more in-service and other staff training; and review and update all applicable policies and procedures.

Finally, the new rating system likely will provide incentive for facilities to become more aggressive and challenge deficiencies through informal dispute resolution. If deficiencies are reversed in appeal they will not be counted in the rating.

If you have any questions about the new five star rating system or any other nursing facility legal

issue, please contact HDJN at (804) 967-9604 or by e-mail: Mary Malone, mmalone@hdjn.com; Jeannie Adams, jadams@hdjn.com; Emily Towey, etowey@hdjn.com; Joan Mielke, jmielke@hdjn.com; and Rachel Suddarth, rsuddarth@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.

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