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February 3, 2021

**VIA ELECTRONIC TRANSMISSION**

The Honorable Gene Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Comptroller General Dodaro:

More than four years ago, the Government Accountability Office (GAO) assessed the usefulness of the Nursing Home Compare (NHC) website and the Nursing Home Five-Star Rating System as tools for the public to make informed decisions when choosing nursing homes for their loved ones. As part of its assessment, GAO identified several limitations and called on the Centers for Medicare and Medicaid Services (CMS) to make four improvements to the NHC website and Nursing Home Five-Star Rating System.<sup>1</sup> (As of the date of this letter, CMS has only implemented three of GAO's four recommendations.) Today, I write to request that GAO reassess these tools and verify that NHC and its Nursing Home Five-Star Rating System rely on objective and meaningful data from which the public can compare nursing homes.

Following GAO's 2016 review, CMS has continued to make updates to the NHC website, including as recently as 2020.<sup>2</sup> However, a steady stream of media reports, government research, and

<sup>1</sup> Specifically, in its 2016 report, GAO recommended that CMS "establish a process to evaluate and prioritize website improvements, add information to the Five-Star System that allows homes to be compared nationally, and evaluate the feasibility of adding consumer satisfaction data." The Department of Health and Human Services (HHS) agreed with three of GAO's recommendations, but did not agree to add national comparison information.

<sup>2</sup> For instance, as noted by CMS: "Starting with the October 2020 refresh of Nursing Home Compare, a new quality measure (Percentage of residents with pressure ulcers/injuries that are new or worsened) will replace the current short-stay pressure ulcer measure. This new measure is also sometimes referred to by the official measure title of "Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury." This measure will still contribute between 20 and 100 points to the short-stay QM score. Additional detail is included in the Quality Measure rating section of this document and Table A2. More information about the public reporting of the Skilled Nursing Facility Quality Reporting Program (SNF QRP) Quality Measures is available here." CMS, *Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users' Guide* (Oct. 2020), available at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/usersguide.pdf>.

congressional hearings still hint that the NHC website and Nursing Home Five-Star Rating System may fall short, in some respects, as a useful tool for comparing nursing homes. These reports also suggest that these systems can use improvements. For example, in a 2018 study published in *Health Affairs*, researchers explained that CMS's current ratings system focuses primarily on care quality, rather than patient safety, and further noted that while these two ideas often overlap, they emphasize different approaches and processes:

Although Nursing Home Compare captures some aspects of patient safety, we found the relationship to be weak and somewhat inconsistent, leaving consumers who care about patient safety with little guidance. We recommend that Nursing Home Compare be refined to provide a clearer picture of patient safety and quality of life, allowing consumers to weight these domains according to their preferences and priorities.<sup>3</sup>

Questions about NHC's Five-Star Rating System also arose in March 2019 during a Finance Committee hearing that I chaired concerning abuse and neglect in nursing homes. During this hearing, a family member of a former nursing home resident testified that her mother's facility received NHC's highest rating, but the facility was later cited by regulators for neglect of her mother and other elderly residents.<sup>4</sup> (CMS's star ratings system accords greater weight to health inspections by State surveyors. However, a facility's overall rating is also adjusted higher based on other factors, such as staffing levels and quality measures.)

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<sup>3</sup> Daniel Brauner, Rachel M. Werner, et al., "Does Nursing Home Compare Reflect Patient Safety in Nursing Homes?" *Health Affairs* (2018), available at <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2018.0721>. As noted by the authors, with patient safety, the emphasis is on identifying medical errors (such as pressure sores, injurious falls, medication errors), determining their cause, and preventing a recurrence: "If a nursing home finds that [resident] fall rates are high, a patient safety approach would examine the circumstances that lead to the falls. For example, a fall might result from a loss of balance that may be due to the side effects of medications, environmental hazards, or lack of appropriate staffing to provide oversight and assistance." A quality improvement perspective, by contrast, focuses on patient safety as just one of a broader set of goals: "For nursing homes, some of these other goals have been defined as improving or maintaining functional status, treating pain, maintaining weight, avoiding incontinence and catheter use, avoiding depression, avoiding physical restraints and the inappropriate use of antipsychotic medications, and improving vaccination rates. There has been little attention placed on differentiating patient safety from other types of quality outcomes in tools designed to measure nursing home quality." *Id.*

<sup>4</sup> See "Not Forgotten: Protecting Older Americans from Abuse and Neglect in Nursing Homes," *Hearing before the Senate Committee on Finance*, 116th Cong. (Mar. 6, 2019); Transcript available at <https://www.congress.gov/116/chrg/CHRG-116shrg41968/CHRG-116shrg41968.pdf>.

Similarly, after questions arose about the validity of nursing homes' self-reported staffing data, CMS began requiring facilities to submit employees' payroll data.<sup>5</sup> This represented a move away from the use of self-reported data, but it is unclear if Federal officials audit such payroll data to ensure that it captures hours actually worked by health care personnel on each shift. Overall, CMS's process for calculating clinical star ratings still involves reliance on facilities' self-reported quality data. The use of self-reported data may result in Medicaid- and Medicare-certified facilities receiving high ratings when compared to their peers. To improve the NHC system, CMS also announced that it would phase out its original NHC tools on December 1, 2020 in favor of a new, unified Care Compare site. The new site, launched in September 2020, reportedly consolidates CMS's health provider quality information into a single searchable database.<sup>6</sup>

To ensure that the new Care Compare site fully addresses any previous identified deficiencies, I request that GAO initiate a comprehensive review of this site as well as CMS's rating system. Furthermore, I ask that you include the following questions as part of GAO's audit parameters:

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1. To what extent does CMS's Care Compare website (or any successor site) address prior limitations identified with Nursing Home Compare and the Five Star Rating System?
  2. To what extent does CMS's new system take into account factors that might signal quality of care or safety issues at a nursing facility or skilled nursing facility? What, if any, additional reforms could CMS make to further improve this system?
  3. Do HHS personnel or the Office of Inspector General at the Department of Health and Human Services periodically audit the employee payroll data that is submitted to CMS for purposes of verifying staffing levels at Medicare- and Medicaid-certified nursing homes? How frequently do such audits take place? Do such audit reports confirm that hours worked were at the facility in question and that such hours were primarily devoted to providing direct care services to facility residents? If not, why not?

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<sup>5</sup> Daniel Brauner, Rachel M. Werner, et al., "Does Nursing Home Compare Reflect Patient Safety in Nursing Homes?" *Health Affairs* (2018), available at <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2018.0721> (describing a transition to Payroll-Based Journal (PBJ) Data in April, 2018, by which CMS will determine each facility's staffing measure on the Nursing Home Compare tool on Medicare.gov website, and calculate the staffing rating used in the Nursing Home Five Star Quality Rating System).

<sup>6</sup> Alex Spanko, CMS Finalizes Nursing Home Compare Overhaul with Launch of Consolidated Site (Sep. 3, 2020), available at [CMS Finalizes Nursing Home Compare Overhaul with Launch of Consolidated Site - Skilled Nursing News](#).

4. To what extent does CMS's Five Star Rating System reward or reflect exceptional practices by a facility (e.g., a decision, by the facility, to rely more heavily on registered nurses than is typical for the sector, or the practice, by a facility's exempt employees, of working in excess of 40 hours per week)? If CMS's Five Star Rating System does not take these factors into account, please explain why it does not?

If you have any questions, please contact Evelyn Fortier of my committee staff at 202-224-4324.

Sincerely,



Charles E. Grassley  
Chairman  
U.S. Senate Finance Committee