



CMS to Institute Five-Star Ratings for Hospitals

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The Centers for Medicare & Medicaid Services (CMS), which oversees the Medicare program, recently announced that it plans to implement its Five-Star Rating System for hospitals. The on-line rating system for more than 4,000 Medicare-certified hospitals is expected to be rolled out later this year, according to Dr. Patrick Conway, CMS Deputy Administrator for Innovation and Quality, and Chief Medical Officer. According to Dr. Conway, “The star ratings empower consumers with information to make more informed health care decisions, encourage providers to strive for higher levels of quality, and drive overall health system improvement.”¹ CMS currently uses a five-star system that rates nursing homes and Medicare Advantage plans.²

A five-star rating system for hospitals would be an addition to the data CMS currently lists on its *Hospital Compare* website. Hospital ratings are already posted on *Hospital Compare* in areas such as: timely and effective care; readmissions, complications and deaths; use of medical imaging; survey of patients’ experiences and both the number of Medicare patients and how much Medicare pays each hospital.

CMS’ intent to publish a hospital’s rating based on a five-star system should come as no surprise. On May 10, 2013, CMS published a proposed rule in which it solicited public comment on “what additional quality measures and information featured on *Hospital Compare* may be highly relevant to patients and other consumers of healthcare, and how we may better display this information on the *Hospital Compare* Web site.” CMS noted that, “One option we have considered is aggregating measures in a graphic display, such as star ratings.”³

Not everyone is thrilled at the notion of a five-star rating system for hospitals. The Association of American Medical Colleges (AAMC) noted in a letter to Marilyn Tavenner, Administrator, CMS, that it “strongly opposes the use of a star rating system which may make inappropriate distinctions for hospitals whose performance is not statistically different.” AAMC further noted that, “A star rating system can also exaggerate minor performance differences on measures.”⁴

A number of public and private organizations already rate hospitals in one manner or another. For example, the *U.S. News & World Report*, *Consumer Reports*, The Joint Commission and the Leapfrog Group provide their respective ratings of hospitals. So too, do organizations such as HealthGrades and Comparion Medical Analytics. Yet, the results are often disparate based on the methodologies employed. According to a study published in the *Annals of Internal Medicine*, “The relative standings of the top 50 hospitals largely reflect the subjective reputations of those hospitals. Moreover, little relationship exists between subjective reputation and objective measures of hospital

¹ *Five-Star Quality Ratings Coming Soon to Compare Sites on Medicare.gov*, Dr. Patrick Conway, CMS Official Blog, available at: <http://blog.cms.gov/2014/06/18/five-star-quality-ratings-coming-soon-to-compare-sites-on-medicare-gov/>, last accessed on June 28, 2014.

² CMS recently stated that it will be adopting Five Star Ratings across all Medicare.gov Compare websites.

³ *Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation*, 78 Fed. Reg. 27,486 (May 10, 2013).

⁴ Letter to Marilyn Tavenner, Administrator, CMS, Association of American Medical Colleges, June 25, 2013, available at: <https://www.aamc.org/download/295512/data/aamccommentletteronfy2013ippsproposedrule.pdf>, last accessed on June 28, 2014.

quality among the top 50 hospitals.”⁵ Whether the plethora of inconsistent hospital ratings helps or confuses consumers is a legitimate concern.

Presumably, CMS’ methodology and metrics should withstand scientific scrutiny and be similar to its other five-star paradigms. For example, CMS rates nursing home from one to five stars in the following categories: health inspections, staffing and quality measures. It then provides an overall rating for each nursing home. CMS currently collects hospital data in almost 100 discrete areas. Risk-adjusting for variables and reducing that data to a meaningful number of stars will be a challenging but necessary task.

Perhaps, one of the more frustrating aspects of CMS’ five-star rating systems from a provider’s perspective is the complete inability to formally appeal the star ratings. Nursing homes have attempted to challenge a low star rating believed to be erroneous and unwarranted. However, there is no formal mechanism to appeal a low star rating. Appeals by Medicare providers must be channeled through the administrative appeals process and the Administrative Law Judges have held that they lack the statutory and regulatory authority to hear and decide an appeal of a facility’s star rating. Likewise, the federal courts have generally not permitted a facility to challenge the CMS five-star rating system.⁶

As mandated by the Affordable Care Act, CMS currently provides a quality bonus payment (QBP) for Medicare Advantage (MA) organizations (Medicare Part C) and Medicare Prescription Drug Plans (Medicare Part D) based on their five-star ratings. For 2015, only those MA plans with a four-star or five-star rating are eligible for the quality bonus. In a Report to Congress, the Medicare Payment Advisory Commission noted that it was “concerned that the five-star system [for MA plans] grants too much weight to administrative measures and not enough to clinical issues.”⁷ It remains to be seen if the hospital five-star ratings will raise similar concerns and be tied to reimbursement.

⁵ *The Role of Reputation in U.S. News & World Report’s Rankings of the Top 50 American Hospitals*, Ashwini R. Sehgal, MD, Vol. 152, No. 8, April 20, 2010, available at: <http://annals.org/article.aspx?articleid=745734>, last accessed on June 28, 2014.

⁶ See e.g., *Bryn Mawr Care Inc. v. Kathleen Sebelius, Secretary of HHS, et al.*, U.S. Court of Appeals (7th Cir.) April 8, 2014. (“Bryn Mawr has been stigmatized, and as a facility completely filled with Medicaid patients, it is at the mercy of regulators entrusted by statute with enormous discretion.”)

⁷ *Report to the Congress: Medicare Payment Policy*, Glen M. Hackbarth, Chairman, Medicare Payment Advisory Commission, Subcommittee on Health, Committee on Ways and Means, U.S. House of Representatives, March 15, 2011, available at: http://medpac.gov/documents/20110315_WandM_Testimony_March11Report.pdf.

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