SUMMARY OF PUBLIC COMMENTS

BACKGROUND:

The Centers for Medicare & Medicaid Services (CMS) announced on June 18, 2008 that it will be launching a ground-breaking rating system of Medicare and Medicaid certified nursing homes by giving each a "star" rating. The ratings will be posted on the agency's *Nursing Home Compare* Web site on December 18, 2008. CMS requested comments from the public on the system designed to provide residents and their families an easy to understand assessment of nursing home quality, making meaningful distinctions between high performing and low performing homes. More than three million Americans rely on services provided by a nursing home at some point during the year. The new "five-star" rating system will provide a composite view of the quality information currently on *Nursing Home Compare* to help consumers, their families, and caregivers compare nursing homes more easily.

In mid-June, CMS hosted a national phone "call-in" to discuss the "five-star" plans and to take suggestions. The information used for this call is still available on CMS' "Spotlight" webpage at http://www.cms.hhs.gov/SurveyCertificationGenInfo/02_spotlight.asp.
During June and July 2008, the agency solicited ideas, comments, and suggestions from the public, consumer groups, nursing homes, and many others. Subsequent conference call discussions were held with stakeholder groups requesting general input and opinions.

Public comments were sent to a designated email box, specific for this issue. Due to the number of comments our requests generated, CMS could not provide each commenter with an individual response. Each commenter that sent an email received an automated response, as a way to acknowledge receipt of the email. This document provides a synopsis of the type of comments that were received via this email box. We address these comments in a master question and answer document.

COMMENTER CHARACTERISTICS:

- CMS received 147 public comments of which 130 were received within the comment period by July 23, 2008. We continue to receive comments to the email box (BetterCare@cms.hhs.gov) and we continue to monitor incoming comments.

- We received comments from all facets of the nursing home community, including nursing home administrators and executive directors, family members of residents, directors of nursing, long-term care ombudsmen, researchers, fiscal analysts, quality performance and compliance officers, consumer groups, advocacy groups, representatives of state governments, risk managers, and various members representing health systems.

SUMMARY OF PUBLIC COMMENTS

CMS requested commenters to provide input based on 9 key questions.

- **Section A** includes general questions on the rating system, the commenters' position on the "five-star" rating system as proposed, potential pitfalls of the rating system, and the benefits of such a rating system.
- **Section B** includes questions regarding the data sources CMS currently gathers. We asked for comments on several areas of the Five Star rating system. These areas include: (1) which of the nineteen quality measures currently available would be considered top selections; (2) are there any concerns regarding the case-mix adjustment of the staffing data, (3) would posting the full *Statement of Deficiencies* (CMS Form 2567) on *Nursing Home Compare* be beneficial,

and (4) should the release of the Statement of Deficiencies remain to be maintained by the States.

- **Section C** includes questions on additional nursing home characteristics, such as specialized care, languages spoken by staff, and other suggestions. CMS also asked about the utility of resident satisfaction surveys, consumer and staff survey results.

Section A Comments: "Five-Star" Rating System (Overall, Pitfalls, & Benefits)

Good Idea: A number of commenters felt that this was an excellent idea, that it would be easy for individuals to use and understand, and that is was important for a user-friendly system. Some made caveats that there was some hesitation given the lack of details provided on how it was created and updated. One commenter simply stated that "I like the changes, 5 star and whether or not it is located in a hospital." Another commenter felt it was a good system to help consumers if it is objective and presents information in a way that consumers could see how the stars were earned by the facility.

Weighting/Measurements: Many commenters stated that the idea behind the five-star rating system was important. Some expressed concern that the public would not be able to comment on the specific algorithm that would be used to actually calculate a nursing home's star rating. In regards to the weighting of each data domain, some commenters supported weighting some data domains heavier than other domains. For example, some commenters supported a heavy weighting of staffing levels, while others supported a heavier weighting of the health inspections/survey data.

Improving Facilities: Commenters expressed concern that the 5-Star rating system would not reflect the improvements made by individual nursing homes. They believe this to be unfair to decent facilities that may have had "a" bad survey.

Frequency of Rating Updates: Concerns were raised that a negative rating would be reflected in the nursing home's information for a year or more, while the factor that caused the negative rating had been corrected. One commenter suggested quarterly updates to the 5-star rating system in order to avoid an appearance of unfairness for those facilities that are improving.

Display of Information: Commenters requested that CMS identify the reason why the nursing home received the star rating that it did. For example, if a nursing home was rated as a 5-star then that meant that they did not have any major violations in a given amount of years, or that they received a good satisfaction survey, versus a 3-star that had, for example, 2 violations in a given amount of years, and that 5% of residents had bedsores.

Resident Family Input/Consumer Friendly Rating System: Many felt this was a good idea, one which may be long overdue. Some commenters believe that the system should be able to include input from family members. Others were in full support of a consumer friendly system, comparing it to their state systems and requesting for consistency or efforts to avoid confusion for the public. One commenter representing findings from their organization identified that performance systems must include the resident and family voices in quantifying excellence. Their organization uses a reporting system that includes the resident, and yet understands that voice alone is not enough either and that consumers cannot always know what clinical quality should be, nor can they anticipate always what it could be. This commenter indicated that there are difficulties with obtaining information from the aging consumer who may well have significant cognitive issues; however, the most effective system will include them as a critical aspect.
Nursing Homes are not Restaurants or Hotels: A few commenters believed this would trivialize the care in nursing homes and that the five-star program would be impossible to implement, truthfully, impartially, and intelligibly. They further noted that this rating system on nursing homes is too "glib" and that stars awarded depend on personal likes and dislikes of the surveyor. For example, stars in restaurants are used

to justify higher prices, not better food or better services. One commenter felt that a nursing home has other circumstances to explain, and that numbers always reflect poor care due to the type of residents being admitted to the facility. Another commenter felt this could be misleading to a family and that emphasis should be placed on the review of available information; but more importantly touring the nursing home, talking with current residents and staff, and talking to local professionals who have their patients in the particular nursing home being considered.

Resources: Concerns were raised that the data domains were not very helpful or credible, and a few felt this was not a meaningful endeavor for CMS to undertake. A few suggested that CMS reconsider until any "bugs" can be worked through. Those who were not in favor raised that their State's "report card" rating system does not show accurately how well a nursing home is doing. Another commenter did not see any benefits of a 5-star system and identified that monetary resources spent on this would be better spent in other ways. Another commenter felt this was misleading to people and not a good use of anyone's money.

Agree in Theory:

- A commenter believes "translating" multiple sources of quality data into a consumer-friendly rating system can be worthwhile. The commenter offered four principles: (1) valid and reliable metrics that include satisfaction levels, (2) system that differentiates quality of care via differing types of care, (3) access to more than basic ratings, and (4) broadly pretest rating system before making available to consumers. The commenter posited that consumers may be irreparably harmed by relying on poor or incomplete information.
- Some commenters endorsed the proposed changes to Nursing Home Compare but have reservations about the 5-star rating system, particularly the accuracy of Minimum Data Set (MDS), and quality initiative/quality measure QI/QM accuracy
- Other commenters stated that if CMS releases the rating system before proper research and testing can occur, there is potential for consumers to lose confidence in the system as flaws are uncovered.
- Finally, commenters suggested that CMS has made great advances in providing consumers with information on quality and that the next step should not be simply thrown together quickly.

Misleading Star Labels: One commenter suggested that CMS explore the use of other symbols in the rating system instead of a "star." The commenter noted that a 1-star facility is still a "star" maybe CMS could uses letters, A, B, C, D, F system or maybe a "+" (plus) and "-" (minus) system.

Provide Clear and Succinct Information & Educate the Public:

- One commenter suggested that CMS should also provide clear and succinct information about the five-star rating system. Such information should include: how the ratings are determined (i.e., what information composes the rating, how the information is weighted, and the source of the information, especially when it is self-reported and/or not audited); the scope of the rating (e.g., does the rating compare a particular facility to others in the same state, at the national level, or over some other region? Are the ratings comparable from state to state or not?); that the ratings are specific only to a particular facility; and what each of the ratings (one, two, three, four, and five stars) means, so that consumers have a similar understanding, to the extent possible, of what each level of rating means.
- Another commenter suggested that there were some critical elements to have an effective rating system, some including: all the significant dimensions for quality, including the significant structures, practices, and outcomes; tested measures for validity, reliability (comparability across providers), and scalability; system tests to ensure that it truly identifies the poor performers, the excellent performers,

and effectively places other providers in categories in between, and limited survey and certification findings to those that are considered valid measures of performance.

- Other commenters simply stated that the ranking methodology should be clearly described in consumer-friendly language, including data sources, weights, and why the information is significant in evaluating quality.
- Some commenters raised concerns that during a difficult time when having to place a loved one in a nursing home, marketing people could and will use this star rating to their advantage. CMS should make every effort possible to educate and help to protect families and seniors from misunderstanding what this rating system means.
- A rating system may be easy to understand based on a person's experience with restaurants and hotels, however, as one commenter stated: "we must recognize that eating in a 5-star restaurant and being served a 2-star meal does not come close to moving into a 5-star rated care facility and receiving poor quality care. You don't have to go back to the restaurant, but a nursing home resident probably does not have the means or the ability to move to a new care facility."
- Another commenter believes that it is important for consumers to understand that a five-star rating does not mean that a facility provides perfect care. Consumers must also be able to access the specific information for a particular facility that composes the rating, i.e. the specific numbers and data behind the rating for a particular facility and how this data compares to other facilities. For example, a consumer could access such information by clicking on a link or the star rating for a particular facility.

Defining Quality:

- Commenters believe that one challenge in improving nursing homes is in defining quality. While some commenters still supported the idea behind the rating system, there was the acknowledged difficulty in the development of an efficient and effective system to quantify performance.
- Other commenters believe that CMS' data domains are not comparable across domains to create a composite view of quality.
- One commenter mentioned that organizations have been working diligently on the development of performance benchmarking and working toward best practices with its members for the past two years. The commenter believes that because performance is difficult to quantify and report in meaningful ways, that any effective system must be designed to be broad based and multi-dimensional and that system must include various aspects of performance because there is no one single aspect of nursing home care that fully defines a premier organization.
- While some commenters agreed with the concept and the publics' need for information, they felt the system should wait until there is a common definition of quality and that the rating should be State specific.

Poorer Outcomes Doesn't Necessarily Mean Poorer Performers: A few commenters raised the notion that while outcomes are important and positive outcomes almost always identify the premier performer, poorer outcomes do not necessarily identify the poor performer. Several commenters indicated that there are numerous factors that affect resident outcomes overall to use outcomes as a sole source of performance reporting. Some of the important standard process indicators, such as staffing, must also be included.

Discussion About Cost: One commenter felt that the concepts of funding and cost are almost absent from the quality discussions for long-term care and that quality is best "fit for the consumer," or consumer expectations met at a cost the consumer is willing to pay. This commenter also identified that the standards and acceptability of service have everything to do with cost.

Lack of Choices: One commenter noted that their organization along with others have striven for many years to give consumers advice on choosing a good nursing home, and are well aware that most consumers have limited choices and that many have no choice. The commenter indicated that forty percent (40%) of nursing home admissions are from hospitals. Difficulties exist for minority groups, such as African-Americans, and since most consumers are under stress and time constraints when they admit a loved one to a nursing home, they are vulnerable to being misled by what appears – even if it does not represent itself to be – a one-stop method to find the best facility.

More Information: One commenter felt that CMS continues to emphasize its lack of resources to provide specific information that can be critical to consumers. Specifically, owner and operator information, nurse staffing data from payroll records (including hours per resident day, turnover, and retention) and remedies imposed over a three-year period.

Delay of Five-Star Rating System: A few commenters encouraged CMS to delay or reconsider the use of a 5-star rating system. Some indicated that research has suggested that facilities should at the most be ranked as high, low, or middle. One commenter that identified themselves as a not-for-profit, 225 bed skilled nursing facility indicated that CMS should delay the 5-star rating system until it can conduct further research.

Lack of Authority: One commenter believed that government agencies should not have the authority to give a summarized ranking to public businesses, but has the responsibility to evaluate the services provided when Medicare/Medicaid dollars are being paid to businesses.

Link between Person-Directed Care and Positive Outcomes:

- One commenter identified the recent evidence that highlights the linkages between "person-directed care and positive outcomes in resident quality as well as organizational outcomes in operational areas such as staffing, operating margins and occupancy."
- The 5-star rating system increases consumer awareness and is aligned with several CMS goals, including the 2008 Nursing Home Action Plan.

Pitfalls/Concerns

A single star is viewed as positive: Several commenters raised this issue in various ways, as the difficulty in developing one composite score; many believed that consumers would always see even a 1-star facility as having positive quality regardless of information provided to the contrary.

Easy to Use with Caution: One commenter identified that the rating system would be easy to use, however they felt this could be a pitfall as well. They felt this rating system may promise more than it can deliver and "falsely promises that nursing home quality can be accurately and meaningfully identified with a single score." The commenter went on to identify that the public "will inevitably use a five-star rating system as a proxy for quality, assuming that facilities with five stars are the best and avoiding facilities with fewer stars." The commenter provided analysis presented from the State of Iowa in which those facilities receiving awards for quality were also cited with serious quality of care deficiencies.

Prefer Consumer Rating: Several commenters stated that they would prefer that the consumers would rate the facilities with a star, and that the nursing home industry had adequate public information that would help consumers in this effort.

Inconsistent Surveys: Commenters stated that they believe there are wide discrepancies in survey results among States and therefore not a good candidate for inclusion in the 5-star quality rating. Other commenters believe that the survey data does not correlate with the quality of care in a nursing home.

Explanation to Residents Presently in 1 or 2-star Nursing Homes: One commenter identified that whether the collective "we" meaning "ombudsman, regulators, families, and facility staffs" were prepared to explain to residents and families why their family member was in a 1 or 2-star nursing home, and what was our collective responsibility to "protect/oversee residents in one star facilities." Other questions this commenter raised were "how long does a one or two star facility have to improve? Will there be an effort to help with or force an improvement?" Another commenter wondered about the connection to the Special Focus Facility (SFF) program.

Benefits

Please follow through with the proposal of a ranking system: One commenter stated that this rating system would relieve "some of the strain people have to go through searching for a proper home." A few noted that they understand that "visiting the home in person is best, but sometimes that doesn't show the whole picture (deceiving) at the time of the visit."

Adding Competition: One commenter felt the biggest benefit for consumers was the "element of competition to the nursing home industry," along with an effort to make positive changes.

Benefit to Long-Term Care Ombudsman: Commenters who identified themselves as long-term care ombudsman encouraged CMS for the creation of this rating system. They identified how they received multiple calls monthly from families needing information in choosing a nursing facility. One commenter indicated that the present *Nursing Home Compare* was very helpful, but adding the star ratings would be friendlier to potential consumers. One commenter noted that "Ombudsman *have not* made recommendations to consumers as to what facilities they should choose to place their loved ones into, but have always encouraged visitations to multiple facilities, speaking with other family members and residents, plus staff and through the utilization of the Nursing Home Check List to assist them in making this important decision."

More Active Family Members: One commenter believed this would encourage more active and open communication with family members and the community and may assist in improving outcomes.

Good Job/Good Idea/Anything would help: Some commenters felt that this system was generally a good idea and supported CMS for taking this first step in establishing this rating system. Many of these comments were from family members with experience in placing their loved one in a nursing home. A commenter stated that inspections can only "tell so much" and that this "review system is at least a place to start," and they would emphasize requiring that nursing homes post their latest evaluations would prove helpful as well.

Benefit of the Doubt: One commenter identified that the rating system "*could* be useful to consumers if carefully implemented, tested, and validated using accurate data and consumer feedback." Commenter also indicated that consumers needed to be empowered to make these choices.

SECTION B COMMENTS: DATA SOURCES (QUALITY MEASURES, STAFFING DATA, & SURVEY DATA)

Availability of Payroll Data: One group commenter wanted to make several recommendations related to data sources and the construct of the rating system. Specifically, they noted that nurse staffing – including staff-to-resident ratios, turnover, and retention – is the single most important indicator of quality. They agree that any rating system should be heavily weighted according to these measures, but the data must be from a valid source, regularly updated, and audited for accuracy. According to the commenter, the self-reported OSCAR data gathered at the time of the annual survey does not meet these

criteria, and so they again recommended strongly that CMS take immediate steps to begin implementing the system developed by the University of Colorado to extract and report nurse staffing data from payroll records.

Distribution: Some commenters discussed how CMS distribution of star ratings is a critical aspect, noting that a more conservative or "timid" approach would be to describe most facilities as a four or five star, however that would not benefit the system. Another approach would be a bell shape distribution with relatively few 1-stars and 5-stars, with the largest group falling into the 3-star category. One commenter noted how this might be a bit artificial but may serve the best way to describe large populations.

Composite vs. No-Composite Ratings:

- One commenter noted that "If a potential nursing home resident and their family is in a crisis situation and must make a quick decision about a nursing home, a composite rating could help them narrow down their search by eliminating facilities from consideration that have low ratings and narrowing down the selection to those with higher ratings. But again, the consumer needs to understand that such a rating system is only one tool that is imperfect and should not be used in isolation to choose a nursing home."
- One commenter identified that a composite star ranking like the one CMS has proposed is inappropriate, even if the indicators included were substantially improved. First, there is a robust literature detailing the technical reasons why collapsing such disparate measures into one five star scale (with weights attached to each measure) is a poor idea. This commenter provided several research references to support their point: See for example: Charles D. Phillips, Catherine Hawes, Trudy Lieberman, and Mary Jane Koren, "Where Should Momma Go? Current Nursing Home Performance Measurement Strategies and a Less Ambitious Approach," BMC Health Services Research 2007, 7:93 (2007); Dana Mukamel and William Spector "Quality Report Cards and Nursing home Quality" The Gerontologist 43:58-66 (2003
- Other comments regarding one composite score identified that if CMS were to proceed with a single scale (when it has the necessary better data), then it would be better to use an approach like that outlined by researchers. A commenter identified their preference for the manner in which CMS' Hospital Compare expresses data, and that it provides a rating on a specific measure for care related to heart attack, heart failure, pneumonia, and surgery. This commenter also felt if CMS was to use a composite score, that CMS should create a system to easily ascertain the components that made up the composite score, similar to a state based system in which there is access to "drill down," to the information of interest.
- Some commenters simply stated that they recommend separate rankings based on each of the three data sources rather than a composite score.

Use of Survey Years: Some commenters believe that CMS should limit survey data to no more than 2 calendar years worth of surveys.

Aggregate Rating: Some commenters disagreed with providing an aggregate five-star rating. Specifically, they state that "not all quality measures are created equal", therefore there is there is no justification for lumping these together.

Components of a Five-Star Rating System: Some commenters proposed "four essential pillars: (1) resident and family satisfaction, (2) staffing based on resident needs and staff satisfactions, (3) clinical quality outcomes and (4) public oversight." They suggested that the rating system should be consumer-friendly and based on reliable quality information. Additional comments included that the present time frame of implementation does not provide for proper research and will result in a system that misleads consumers and is unfair for providers.

Hospital-based SNFs, Free Standing Skilled Facilities & Long Term Nursing Homes: Some commenters recommended that CMS differentiate between these types of nursing homes as the acuity of the resident population varies. Some suggested CMS should compare like or similar type facilities, such as bed size categories. One commenter who was a risk manager in a large facility identified that the facility receives numerous questions related to whether facilities are viewed the same, raising the issue that the public needs more information regarding the number of citations related to the number of beds or residents. The commenter further noted that "to list information for a 30 bed facility in the identical manner as that of a 200 bed or larger facility is misleading." Another commenter mentioned that CMS should consider comparing skilled nursing communities that are part of a Continuing Care Retirement Community (CCRC) to their peers (e.g., other nursing communities' part of CCRCs).

Self-Reported Data Sources: Many commenters made note of their concern that two (staffing and quality measures) of the three data domains were self-reported by the nursing homes. Some of their concerns are below:

- Included in staffing numbers is only licensed nurses and CNAs, other support and ancillary staff are not included but the commenter felt that such staff make a significant difference in the quality of care professionals provide.
- Some of the quality measures are not valid. For example, the commenter believes the pain, activities of daily living (ADL) and mobility are invalid quality measures. .
- These measures should be verified for accuracy
- These measures will make the nursing home's quality of care appear to be better than it actually is.

Outdated Data: One commenter noted that this system may be a great idea but the information that will be used is outdated, and does not reflect the efforts that employees and staff have accomplished in turning a facility around. Therefore, if data could be updated more frequently it would be a huge step in the right direction.

Posting the Statement of Deficiencies (CMS Form 2567)

- In favor of Posting the CMS Form 2567s: For those commenters that felt CMS should post the Statement of Deficiencies (the official CMS form that captures the deficiencies resulting from a health care inspection), also indicated that CMS should (1) explain what the form is, (2) require States to post the form and not leaving it to the States discretion; and (3) provide links directly to the 2567 on *Nursing Home Compare*.

- Against Posting of CMS Form 2567s: For those commenters that felt CMS should not post the CMS 2567 forms, they stated that CMS should (1) mention on *Nursing Home Compare* that facilities are required to have their latest survey readily available; (2) leave the posting as a State based decision; and (3) at least help facilitate consumer access by providing links to those States that currently have 2567s on their Web sites.

SECTION C COMMENTS: ADDITIONAL NURSING HOME CHARACTERISTICS –FUTURE IMPROVEMENTS

- One commenter suggested that CMS look at turnover, consumer survey results, staffing ratio's, number of therapist and ancillary staffing, use of registry, involvement with professional alliances, and involvement with NHQI-STAR (Setting Targets – Achieving Results).

- A few raised questions that quality initiatives, culture change programs, resident/family satisfaction survey (such as *Myinnerview*) that are currently in operation in progressive SNFs but not included in the 5-star quality rating system.