

Medicare Star Ratings Allow Nursing Homes to Game the System

By Katie Thomas

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CARMICHAEL, Calif. — The lobby of Rosewood Post-Acute Rehab, a nursing home in this Sacramento suburb, bears all the touches of a luxury hotel, including high ceilings, leather club chairs and paintings of bucolic landscapes.

What really sets Rosewood apart, however, is its five-star rating from Medicare, which has been assigning hotel-style ratings to nearly every nursing home in the country for the last five years. Rosewood's five-star status — the best possible — places it in rarefied company: Only one-fifth of more than 15,000 nursing homes nationwide hold such a distinction.

But an examination of the rating system by The New York Times has found that Rosewood and many other top-ranked nursing homes have been given a seal of approval that is based on incomplete information and that can seriously mislead consumers, investors and others about conditions at the homes.

The Medicare ratings, which have become the gold standard across the industry, are based in large part on self-reported data by the nursing homes that the government does not verify. Only one of the three criteria used to determine the star ratings — the results of annual health inspections — relies on assessments from independent reviewers. The other measures — staff levels and quality statistics — are reported by the nursing homes and accepted by Medicare, with limited exceptions, at face value.

The ratings also do not take into account entire sets of potentially negative information, including fines and other enforcement actions by state, rather than federal, authorities, as well as complaints filed by consumers with state agencies. Last year, the State of California, for example, fined Rosewood \$100,000 — the highest penalty possible — for causing the 2006 death of a woman who was given an overdose of a powerful blood thinner.

From 2009 to 2013, California fielded 102 consumer complaints and reports of problems at Rosewood, according to a state website. California Advocates for Nursing Home Reform, which also tracks complaints, put the number even higher, at 164, which it says is twice the state average. Nursing home officials are appealing the state fine and point out that only a small fraction of the complaints at Rosewood, which has about 110 beds, have ever been substantiated. While that may be true, the sheer number could be a sign of trouble, industry experts say.

In interviews conducted during a recent visit, a half dozen current and former residents, including some who had lived in other homes, said they did not believe that the home merited a five-star rating. “If I fell down, they’d pick me up, but that’s about it,” said Michael McFadden, 76, who has lived at Rosewood for several years.

John L. Sorensen, the chief executive of North American Health Care, the chain that operates Rosewood, said the quality of the home was excellent. “I would put my parent there,” he said.

Rosewood struggles with many of the same challenges faced by other nursing homes around the country, offering a window into the rating system’s flaws, The Times found. Many residents live three to a room, and there is often a scarcity of basic supplies like washcloths, as well as a shortage of quality staff, according to interviews with current and former patients, their families and statements from former employees.

Lawsuits From Families

Rosewood has also been the subject of about a dozen lawsuits in recent years from patients and their families claiming substandard care.

“It looks nice when you walk in,” said Bonnie Nathan, who said she placed her mother in Rosewood in 2010 mainly because of its five-star rating. She is now suing the home because she claims that workers there failed to treat her mother, Janet Zagon, for a respiratory condition that led to her death. “But I really didn’t have a sense of where patients were going to be cared for,” Ms. Nathan said.

Mr. Sorensen said that his nursing home was not at fault and that even excellent homes occasionally make mistakes.

“While we have had a few problems, they’re pretty minor compared to the overall accomplishments and tremendous customer satisfaction that’s being provided,” he said. The many lawsuits against Rosewood could be attributed to a “very litigious marketplace” in the Sacramento area, he said, and not to poor quality at the nursing home.

Receiving a high star rating has never been more important to nursing homes. When nurses and doctors discharge patients from hospitals, they often use the ratings in referral decisions, and insurers consider them when setting up preferred networks. The ratings are also often a first stop for investors and lenders, who consult them to decide whether a nursing home company is a safe bet.

“This whole program has walked into parts of our industry that we never expected,” said Steven Littlehale, executive vice president and chief clinical officer at PointRight, one of a handful of consulting firms that advise nursing homes on how to improve their ratings.



Rosewood Post-Acute Rehab in Carmichael, Calif., has a five-star rating in spite of a high number of complaints made against it. Max Whittaker for The New York Times

Widespread acceptance of the ratings is leading to their use beyond the elder-care industry. Beginning this year, Medicare plans to introduce similar five-star ratings for hospitals, dialysis centers and home-health-care agencies.

Federal officials say that while the rating system can be improved — and that they are working to make it better — it gives nursing homes incentives to get better.

“We have seen improvements,” said Dr. Patrick Conway, the chief medical officer at the Centers for Medicare and Medicaid Services. As evidence, he pointed to a decrease in the use of physical restraints by nursing homes and in the number of homes reporting bedsores among patients at a high risk of developing them.

But some nursing homes are not truly improving. Instead, they have learned how to game the rating system, according to interviews with current and former nursing home employees, lawyers and patient advocacy groups.

Nationally, the proportion of homes with above-average ratings has risen steadily. In 2009, when the program began, 37 percent of them received four- or five-star ratings. By 2013, nearly half did.

The Times analysis shows that even nursing homes with a history of poor care rate highly in the areas that rely on self-reported data. Of more than 50 nursing homes on a federal watch list for quality, nearly two-thirds hold four- or five-star ratings for their staff levels and quality statistics. The same homes do not fare as well on the sole criterion that is based on an independent review. More than 95 percent of the homes on the watch list received one or two stars for the health inspection, which is conducted by state workers.

“These are among the very worst facilities, and yet they are self-reporting data that gives them very high staffing and very high quality measures,” said Toby S. Edelman, a senior policy lawyer with the Center for Medicare Advocacy, a nonprofit organization that helps patients. “It seems implausible.”

‘False Sense of Security’

The seed of Medicare’s five-star rating system was planted in 2007, when during a congressional hearing, Senator Ron Wyden, Democrat of Oregon, asked why it was easier to shop for washing machines than it was to select a nursing home. Medicare officials set up the rating system in 2009, a move that was applauded by consumer groups, who hoped that more transparency would lead to greater accountability.

The nursing home industry, which lobbied against the ratings, later largely embraced them. An industry trade group, the American Health Care Association, offers members a free service that helps companies track their star rating; it says the rising scores are evidence that quality is improving.

Some advocates say the rating system is the best resource available. “I think it’s imperfect, but it’s by far the most valuable tool for people,” said Richard J. Mollot, executive director of the Long Term Care Community Coalition.

Other patients' groups consider the ratings so inflated that they no longer support their use and have found them helpful only in weeding out the worst-performing homes.

"They've given a false sense of security to the public," Carole Herman, president of the Foundation Aiding the Elderly, a Sacramento patients' rights group, said.

One of the simplest ways to inflate a score, according to interviews with academics and groups that monitor the process, is through the staffing measure. Nursing homes get an extra star on their overall rating if they score a four- or five-star rating on staff levels.

In 2009, only 39 percent of nursing homes had a four- or five-star rating for staff levels. By 2013, 52 percent did.

The staff rating is based on a form that a home completes once a year, at the time of the annual inspection. Homes often know when an inspection will occur, and many of them have learned to add workers in the period leading up to it.

The inspection period is so crucial that in 2010, an administrator at a home on Long Island described it as "our Super Bowl" and explained that staff levels would drop once the inspection was completed. "The staffing hours will be a little high for this week but will drop the following week," David Fielding, the administrator of the home, the Medford Multicare Center for Living, wrote in an email, which was excerpted in a lawsuit filed this year against the home by the New York State attorney general.

Since 2008, more than a dozen employees at the Medford home have been convicted on charges of patient neglect and falsification of records. In June, nine more were indicted on a range of charges related to the death of a 72-year-old woman, Aurelia Rios. Medford nonetheless holds a three-star, or average, rating from Medicare and a four-star rating for its health inspection, and state health workers reported no deficiencies during the home's most recent health inspection last August.

A provision of the Affordable Care Act of 2010 requires Medicare to use payroll data to verify the accuracy of staff levels, but the agency has not begun to follow the requirement. The agency said it was still working on the verification system and hoped to have it running soon.

The other major part of the ratings that is not checked by Medicare, the so-called quality measures, is also susceptible to manipulation. The score in this area is based on data collected by the home about every patient, such as whether bedridden or wheelchair patients are developing bedsores and how many residents experience serious falls.

Nursing homes receive an extra star on their overall rating if they get five stars in this area. The number of nursing homes with five stars in quality measures has increased significantly since the beginning of the program, to 29 percent in 2013 from 11 percent in 2009.

“They need to spot-audit those, but they haven’t done it,” said Charlene Harrington, a professor emeritus at the University of California, San Francisco, School of Nursing, who is an expert on nursing home staffing.

Federal officials acknowledged that the quality measures rating needed improvement and said they were testing an auditing program that they hoped to expand nationally. The agency also plans to consider additional metrics, such as the number of residents being given antipsychotic drugs.

Dr. David Gifford, senior vice president of quality and regulatory affairs at the American Health Care Association, the nursing home trade group, says the ratings have had a positive effect on the industry. “I think it’s helped move us all along in the right direction,” he said, adding that any suggestion that facilities were manipulating their ratings was far-fetched. “I have not seen any evidence of that or heard any evidence of it,” he said.

A Five-Star Pursuit

Few have pursued top ratings with more zeal than North American Health Care, which operates Rosewood and 34 other nursing homes scattered across California and three other Western states. Each of the chain's nursing homes has a five-star rating, and the company maintains a team of more than 30 nurses who conduct mock inspections to ensure the homes perform well. In recent years, the chain has awarded \$50,000 bonuses to nursing home administrators who achieve or maintain a five-star rating.

"It's everything to us," Mr. Sorensen, the chief executive of North American, said. "If you create a product that people can trust and admire, the profits that you hope for — they follow as a result of excellence."

Despite the chain's exemplary performance in the Medicare ratings, Rosewood is not the only one of its homes to have had problems that are not reflected in the score. State inspectors concluded that staff at another home, Chatsworth Park Health Care Center in Los Angeles, neglected in 2010 and 2011 to properly care for a man with Parkinson's disease who developed malnutrition and extensive bedsores, which typically occur because of substandard care, and later died.

At another of the chain's nursing homes, the Grand Terrace Care Center near San Bernardino, Calif., the staff failed in 2010 to properly care for a woman with diabetes and other conditions. The coroner ruled that her death was due in part to a urinary tract infection and bedsores that had become so bad, they had developed gangrene and were infested with maggots, according to a state report about the case.

In 2010, when both episodes took place, Chatsworth carried an overall rating of three stars, and Grand Terrace was rated four stars. Both now hold five-star ratings.

Mr. Sorensen said his staff disputed the facts in these cases, and he maintained that the residents received good care.

Neither case shows up on the Medicare website. Until recently, California often refused to cite nursing homes for federal-level violations, the only type that counts toward a star rating. State workers are responsible for enforcing both state and federal laws governing nursing homes. A spokesman for the California Department of Public Health said the state was now doing so.



Mr. Chandler's mother, who died in Rosewood after experiencing serious falls, and Mr. Chandler's family is now suing the home.

Max Whittaker for The New York Times

Dr. Conway, of the Centers for Medicare and Medicaid Services, said his agency worked hard to make sure states were enforcing federal law but acknowledged that there had been problems. “We are aware of some issues with states,” he said, adding that the federal website warned consumers that state actions were not listed there. Still, he said, “the goal would be not to have that gap.”

North American is also under investigation by the office of the inspector general for the federal Health and Human Services Department. Mr. Sorensen declined to say what the investigation entailed, and a spokesman for the inspector general's office would not comment. It is not publicly known whether the investigation relates to care.

Ed Dudensing, a Sacramento lawyer who has represented several clients against the chain's homes, including Rosewood, said he had deposed more than 30 current and former employees of North American Health Care in recent years. Based on

those interviews, he said, “I strongly disagree with the suggestion that its nursing homes are five-star quality.”

Mr. Sorensen said the lawsuits against Rosewood were without merit. “We’re in this business because we want to do the right thing for our patients,” he said. “That is our agenda.”

In 2012, nearly all of North American Health Care’s nursing homes held four- or five-star ratings for staff levels, an outcome that Mr. Sorensen attributed to the company’s investment in quality workers.

Nevertheless, an analysis by The Times of 2012 staffing data reported by North American’s nursing homes in California shows that the company consistently reported higher levels of staffing to Medicare than it reported to Medi-Cal, California’s health care program for the poor, which audits the data.

The chain’s 29 homes in California reported staff levels to the federal government that were on average 23 percent higher than what they reported to the state in 2012, the most recent year for which state data were available. Statewide, California nursing homes reported levels to Medicare that were 15 percent higher than what they reported to Medi-Cal.

Mr. Sorensen said the state and federal staff data could not be compared because some employees, like the director of nursing and other supervisory positions, were not counted by the state but were counted at the federal level. He said the disparity could also be a result of different reporting periods and month-to-month variations in staff and patient levels.

A spokesman for the California Office of Statewide Health Planning and Development said that supervisory positions like the director of nursing were included in state staff data and that the main reason for the disparity was probably that the federal data accounted only for the two weeks preceding the annual survey, while the state data reflected the whole year.

Ms. Harrington, who sits on the technical advisory board for Medicare's rating system and has served as an expert witness on behalf of plaintiffs suing nursing homes, said the disparity showed that the chain's homes were probably adding people before the annual inspection. "They're inflating their staffing," she said.

Even as North American's nursing homes were reporting high levels of staffing to Medicare, executives were focusing on keeping labor costs low, according to interviews with former employees and records made available in connection with lawsuits.

In 2011, for example, the nursing home administrator at Rosewood eliminated six full-time jobs and cut back on staff hours just days after the annual inspection was completed, according to emails the chain provided to plaintiff lawyers in a pending lawsuit against Rosewood. Ms. Harrington described such cuts as "substantial." The home received a four-star rating in staffing that year.

Kyle Dahl, Rosewood's administrator at the time, said in an interview that the staff reductions had been made to prepare for expected cuts to Medicare and Medi-Cal. But he acknowledged that consultant nurses were often brought in before the annual inspection to prepare the home. Their presence also had the effect of keeping staff levels higher than usual. Mr. Dahl likened the annual inspection to a visit from one's mother-in-law. "You might throw an extra vacuum over the carpet to make sure everything looks good," he said. "People could potentially staff up during that time period."

For some families, however, all that effort did not translate to high-quality care, and they said they wished they had better options. Elizabeth Chandler and her husband, Ken, placed his mother in Rosewood in 2011 to recover from a broken femur. Ms. Chandler said she had been impressed that Rosewood had a top rating, "like a hotel."

Mr. Chandler's mother died after experiencing serious falls at the home, and the family is suing Rosewood. Ms. Chandler said she felt misled by the rating system.

“You don’t know where to look to get accurate information,” she said. “I can go and find a preschool for my child better than I can find a skilled nursing facility for my loved one.”

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