



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

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January 6, 2009

TO: Supervisor Don Knabe, Chairman
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Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

FROM: William T Fujioka
Chief Executive Officer

SKILLED NURSING AND CONVALESCENT HOMES GRADING SYSTEM

On October 7, 2008, your Board approved a motion by Supervisor Antonovich directing this Office to prepare a five-signature letter to Governor Arnold Schwarzenegger, the State Legislature and the Director of the State Department of Public Health to support a facility rating guide for skilled nursing facilities and convalescent homes; and instructed the Director of Public Health to post the results and inspection reports on the Department of Public Health's (DPH) website and report back to the Board in 30 days.

On October 22, 2008, the five-signature letter was signed and forwarded to the State officials noted in your Board's motion. This memorandum is to address the posting of inspection results on the DPH website.

INFORMATION CURRENTLY AVAILABLE ONLINE

Currently, the DPH website provides links to the federal Centers for Medicare and Medicaid Services (CMS) and the State of California's Department of Public Health (CDPH) websites where summary information is available on the results of its respective health facility inspections. Not available on the DPH website are the inspection reports which are actual surveys completed by DPH inspectors. Unlike the inspection summaries, the actual surveys include protected health information, and therefore are not available online or in hard copy without individual review and redaction.

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DPH's Health Facilities Inspection Division (HFID) has a contract with CDPH to conduct inspections of State, federal and private-pay facilities on behalf of the State. While all health facilities, including skilled nursing and convalescent homes among others, are required to be licensed by the State, the majority of facilities are federally certified and are subject to much more stringent eligibility requirements than the facilities that opt to meet the minimum requirements for a State-only license. An even smaller number elect to accept only private-pay clients with no public funding support and only the minimum requirements needed to maintain its State license and are subject to State regulations and statutes.

While HFID performs the inspections on all of the types of facilities mentioned above, it does so on behalf of the State. Consequently, it neither owns the inspection data, nor has authority to make public any of the inspection findings without the consent of the governing agency. Moreover, for federal inspection reports, the County would be required to enter into the lengthy process of negotiating a Data User Agreement, a legal document that restricts how the data is used. Even if the County executed a Data User Agreement, it would still have to redact the inspection report to remove protected health information. More importantly, it would fall on the County to redact the report accurately or risk violating the privacy protection laws for which any incurred litigation costs would be at the County's expense. Lastly, DPH has been informed that the Agreement process generally takes more than a year.

Estimated costs for posting inspection results and redacted reports on the DPH website are \$65,000 for one-time start-up fees that include improvements to the existing information technology system (\$10,000) and clerical staff (\$55,000) necessary for the initial data entry; as well as \$35,000 annually for ongoing clerical support.

It is also important to note that the type of inspections that exist now are deficiency-based inspections designed to determine if facilities have areas in which they fail to meet CMS and/or CDPH minimum standards. Such inspections are not necessarily measurements of the overall quality of care provided by these facilities. For example, a facility which provides care far above the minimum standards and a facility which just barely meets the minimum standards may have the same number of deficiencies found on the days when they are inspected. CDPH has several consumer sites designed to inform potential nursing home residents and their families about deficiencies of long term care facilities. CMS also has similar deficiency based sites. HFID has links on its home page to both services at <http://publichealth.lacounty.gov/hfd>. Given that deficiency-based inspection reports do not necessarily measure the overall quality of care provided by these facilities, DPH's posting of the inspection reports may be of limited use to consumers, as the deficiency information made available may have a wide range of interpretation to interested viewers or potential consumers.

UPCOMING EFFORTS AND WEBSITES

A system which is quality-based, with a broader array of measurements for quality of care, would be more useful to the public and consistent with your Board's support for a facility rating guide. On December 18, 2008, CMS replaced its antiquated system and launched its new 5-Star Nursing Home Rating System. This new system uses three rating dimensions: survey results, staffing ratios, and quality measures. Four ratings are listed, one for each of the three dimensions and an overall composite rating. Users are able to sort the information by any of the ratings or by facility name. CMS' 5-Star Nursing Home Rating System is specific to federally certified facilities, so it does not cover private-pay nursing homes or State-only licensed facilities. However, as mentioned above, the majority of facilities are federally certified. A link to the 5-Star Nursing Home Rating System is provided on the DPH website.

CONCLUSION

Based on the time and effort necessary for negotiating a Data User Agreement, the potential liability DPH would be subject to as a result of ensuring that certain privacy information was sufficiently redacted from reports that were obtained under the Data User Agreement, the operational costs that would result from the posting of this information on the DPH website, and CMS' forthcoming 5-Star Nursing Home Rating System, DPH does not believe that posting results and inspection reports on the DPH website will achieve the benefit for consumers intended by your Board's action.

Alternatively, DPH will continue to urge the State to develop a quality-based rating system for private-pay and State-only licensed facilities similar to CMS' 5-Star Nursing Home Rating System. Urging the State to develop a rating system similar to CMS' would not only be the most cost-effective direction pursued, but potentially the most effective and successful course of action to achieving the County's desired outcome.

If you have any questions or need additional information, please contact me or your staff may contact Tami Omoto-Frias of this Office at (213) 893-9741, or at tomoto-frias@ceo.lacounty.gov.

WTF:SRH:SAS

MLM:TOF:yb

c: Executive Officer, Board of Supervisors
County Counsel
Director of Public Health and Health Officer