

MEMORANDUM

A.2037 (Dinowitz)/S.553 (Sanders)

An act to amend the public health law, in relation to publication of nursing home ratings.

While acknowledging the laudable intent of this legislation, LeadingAge New York must register its opposition on the basis that the legislation is redundant and will not further the intended objective to provide consumers with actionable information on nursing home quality. The bill would require nursing homes and the Department of Health (DOH) to prominently post Centers for Medicare and Medicaid Services (CMS) 5-star ratings on their respective websites, and require nursing homes to prominently display their 5-star ratings onsite at the facility for residents and the public.

While it is important for consumers to be well informed when choosing a nursing home for themselves or loved ones, CMS 5-star ratings have serious limitations that should be properly disclosed and understood by the public. A nursing home's 5-star rating is based on the result of a facility's survey inspections, a series of quality measures (QMs) and reported staffing levels, with the survey component given the greatest weight. Standard survey inspections are supposed to take place every 12-15 months, but are often delayed by several additional months due to survey staffing issues and federal directives. For instance, CMS temporarily froze the survey inspection ratings for all facilities effective March 4, 2020, due to the COVID-19 pandemic and changes in the focus of surveys. Thus, the 5-star survey rating for any given facility may be 18-24 months old and may not accurately reflect the current quality of care in the facility.

Additionally, nursing home inspection surveys and the resulting 5-star ratings are highly subjective and vary greatly even within the survey regions of New York State. LeadingAge NY's analysis of nursing home surveys during the period 12/1/17 through 2/29/20 revealed that among New York's seven survey regions, the number of deficiencies per home ranged from 3.5 to 8.5 (a 140% variation) and the percentage of facilities with zero deficiencies ranged from 0% to 20.8%. It is inconceivable that the average quality of nursing home care varies so much from region to region. Nursing homes are given some ability to challenge erroneous survey findings, but this process is time consuming and, in the meantime, their 5-star survey ratings reflect the deficiencies that they may have validly challenged.

The overall 5-star ratings also utilize some QMs that are not validly risk-adjusted, which is to say for example that a facility that specializes in treating a certain condition may appear to have quality issues merely because it has more cases of that condition than other facilities. Five-star ratings also reflect staffing data that are based on a relatively new submission process.

LeadingAge NY recognizes that while the 5-star rating system is far from perfect, it has utility as an indicator of quality that consumers can use in their research. Our discussion of the limitations of the 5-star rating system is aimed at pointing out that these ratings are useful only if they are part of a process that includes visiting a facility, observing care and asking a lot of questions. Any policy that implies or encourages exclusive reliance on the 5-star rating to make these decisions will not serve consumers well. CMS's *Nursing Home Compare* website (<https://www.medicare.gov/nursinghomecompare/search.html>) recognizes this, and not only offers consumers an easy-to-use platform for locating and comparing nursing homes but provides a guide to choosing a nursing home and other resources.

The bill would require DOH to prominently post nursing home 5-star ratings on its website. Importantly, DOH already makes the 5-Star ratings and other information available for every nursing home in the state. On the DOH website (<https://www.health.ny.gov/>), consumers can easily search for facility ratings by clicking on "Health Facilities," then "Nursing Homes," then "Nursing Home Profiles" which directs visitors to an interactive map. This current format is optimal for consumers as they can easily compare the ratings of facilities and search by area of the state.

We are concerned that requiring each nursing home to post its most recent 5-star rating on its website creates an unfunded mandate, exposes the facility to potential liability if the rating isn't timely revised every time that CMS revises it, and fails to provide the proper context for the ratings, as explained above. Mandating the publishing of a rating that could be based primarily on a two-year old survey will unduly impact providers that have, since their last survey, addressed any issue areas and otherwise enhanced the quality of care provided but are awaiting their next survey.

Finally, this legislation would enact yet another mandate on nursing homes as they continue their difficult work to protect aging and vulnerable New Yorkers from COVID-19. In our view, it would also unfairly stigmatize nursing home care, since other types of providers with rating systems that provide services to older New Yorkers such as acute care hospitals or clinics would not be subject to these same requirements.

For the above stated reasons, LeadingAge New York urges you to oppose A.2037 (Dinowitz)/S.553 (Sanders).