Food & Nutrition- Regulations Roundup

Elaine Farley-Zoucha RD, LMNT
EZ Nutrition Consulting

LEARNING OBJECTIVES

- Learn difference between hospital, assisted living, skilled nursing and nursing home facilities with regulatory compliance
- Review history of CMS Regulations
- Review the timeline for introduction of changes to CMS regulations for Long Term Care
- Identify all regulation changes that pertain to Food and Nutrition Services

Hospitals-Acute Care & Critical Access (CAH)

- Follow CMS federal regulations and State law required for hospitals
- Can be accredited by various regulatory agencies (i.e. JCAHO, HFAP, DNV & GL Healthcare)
- Hospital regulations are similar to critical access hospital regulations
The food and dietetic services must be organized, directed and staffed in such a manner to ensure that the nutritional needs of the patients are met in accordance with practitioners’ orders and recognized dietary practices.

Must have written policies and procedures that address at least the following:

- Availability of diet manual and therapeutic diet menus to meet patient nutritional needs;
- Frequency of meals served;
- System for diet ordering and patient tray delivery;
- Accommodation of non-routine occurrences such as enteral nutrition, total parenteral nutrition, peripheral parenteral nutrition, change in diet orders, early/late trays, nutritional supplements, etc;
- Integration of the food and dietetic service QA and Infection Control programs;
- Guidelines for acceptable hygiene practice of food service personnel; and
- Guidelines for kitchen sanitation.

Must be in compliance with Federal and State licensure requirements for food and dietary personnel as well as food service standards, laws and regulations.

**Director of Food Service – Full time employee**

- Serves as director of the food and dietetic services;
- Is responsible for daily management of the dietary services;
- Is qualified by experience or training

This includes the daily management of the service, implementing training programs for dietary staff, and assuring that established policies and procedures are maintained that include the following:

- Safety practices for food handling;
- Emergency food supplies;
- Orientation, work assignments, supervision of work and personnel performance;
- Menu planning, purchasing of foods and supplies, and retention of essential records (i.e. cost, menus, personnel, QAPI, etc)
- Service of QAPI program

Qualified Dietitian—must supervise the nutritional aspects of patient care. Responsibilities may include, but are not limited to:

- Approving patient menus and nutritional supplements;
- Patient, family, and caretaker dietary counseling;
- Performing and documenting nutritional assessments and evaluating patient tolerance to therapeutic diets when appropriate;
- Collaborating with other hospital services (i.e. medical staff, nursing, pharmacy, social services, etc) to plan and implement patient care as necessary in meeting the nutritional needs of the patients;
- Maintaining pertinent patient data necessary to recommend, prescribe, or modify therapeutic diets as needed to meet the nutritional needs of the patients.
Menus—must meet the needs of patients

- Individual patient nutritional needs must be met in accordance with recognized dietary practices such as current RDA or DRI of the Food and Nutrition Board of the National Research council
- Must provide therapeutic diets as ordered, as well as mechanically altered food
- Must offer substitutes that are of equal nutritional value

Assessments—more detailed assessments are required but not limited to:

- All patients receiving artificial nutrition by any means
- Patients whose condition interferes with their ability to ingest, digest, or absorb nutrients;
- Patients whose condition indicates compromised nutritional status (i.e. electrolyte imbalances, dysphagia, end stage organ diseases, etc);
- Patients whose condition can be adversely affected by their nutritional intake (i.e Diabetes, CHF, medications, Renal Disease, etc)

Survey procedures—

- Verify that personnel are position specific and are qualified for position; review of personnel file, education and training
- Determine that therapeutic diet manual is current and approved by medical staff and qualified dietitian; is readily available to MD, nursing, and dietary staff; includes different types of therapeutic diets routinely ordered at the hospital and is consistently used as guidance for ordering and preparing diets
- Review of patient records to verify that diet orders are provided as prescribed by practitioner (MD or Qualified RD); will verify if RD ordered diet that they have been appointed by medical staff with diet-ordering privileges and that the Qualified RD is qualified under state law

Survey procedures—

- Can the RD demonstrate how the menus meet the nutritional needs of patients; patients are assessed for special nutritional needs and how the hospital assures the needs of those with specialized needs are met
- Observation inpatient units to ensure patients are given food/drink as ordered and assessed; will ask staff how patients are assessed for nutritional needs
4-006.10 Food Service: The assisted-living facility must provide food service as specified in the resident service agreement and may include special diets if offered by the facility.

4-006.10A Menus: When the facility provides food service, meals and snacks must be appropriate to the resident’s needs and preferences and must meet daily nutritional requirements.

4-006.10A1 Menus must be planned and written based on the Food Guide Pyramid or equivalent and modified to accommodate special diets and texture adaptations as needed by the resident and specified in the resident services agreement. Menus are made accessible to residents.

4-006.10A2 Menus should reflect the food preferences of the resident population to the extent possible.

4-006.10A3 Records of menus with food actually served must be maintained for a period not less than 14 days.

4-006.10B Nutritional Supervision: The facility must monitor residents for potential problems involving nutritional status as follows:

1. Weigh each resident at the time of admission and record the weight in the resident’s record;

2. Weigh each resident identified as having potential problems with nutritional status at least quarterly and record the weight in the resident’s record.

A resident must be weighed every time a weight loss or gain of three pounds or more, or a weight loss or gain of one or more pounds in any single week, occurs that equal or exceed 7.5% gain or loss in weight within the last three months or 10% gain or loss in weight within the last six months.

4-006.10C Food Safety: The assisted-living facility must store, prepare, protect, serve and dispose of food in a safe and sanitary manner and in accordance with the Food Code.
PHASE 1: EFFECTIVE 11/28/16

1. F162—in general, discusses resident rights and has made some additions, including residents receiving services under Medicaid and Medicare are not charged for Food and Nutrition Services.


3. Intent: The intent of this requirement is to specify that facilities not charge residents for items and services for which payment is made under Medicare or Medicaid.

4. Interpretive Guidelines (regarding Food & Nutrition Services)—
   - A resident may refuse food usually prepared and food substitutions of similar nutritive value because of personal, religious, cultural, or ethnic preference. If the resident requests and receives food that is either not commonly purchased by the facility or easily prepared, then the facility may charge the resident. For example, the facility may charge the resident’s account for specially prepared food if the facility has a restricted diet policy and notified the resident on admission of the fact. The facility may not charge the resident’s account for specially prepared foods that are required by the physician’s order of a therapeutic diet. If a facility changes its menu so that the menu no longer reflects the food preferences of residents, see F165, F242, and F243 to determine compliance with these requirements.

PHASE 1: EFFECTIVE 11/28/16

1. Resident Assessment (§483.20)—assessments are being clarified to what constitutes appropriate coordination of a resident’s assessment the Preadmission Screening and Resident Review (PASARR) program under Medicaid.

2. Assessments must include direct observation and communication with the resident including communication with direct care staff.

3. Nutrition assessments should include but is not limited to weight, height, labs, clinical observations of nutrition, PO intakes, eating habits and preferences, dietary restrictions, supplements, and adaptive equipment.

PHASE 1: EFFECTIVE 11/28/16

1. Comprehensive Person-Centered Care Planning (§483.21) is a new section.

2. Requiring facilities to develop and implement a baseline care plan (phase II) for each resident, within 48 hours of their admission including how to provide effective and person-centered care that meets professional standards of quality care.

3. Requiring that a nurse aide and a member of Food and Nutrition Services staff to be a member of the interdisciplinary team (IDT) that develops the care plans.

4. IDT for care planning includes the attending physician, RN, resident, resident representative, and other appropriate staff determined by the resident’s needs or requested by the resident.

5. Discharge planning is new focus of the care planning focus which to be initiated at admission. The discharge plan should represent the resident discharge goals and needs.
**PHASE 1: EFFECTIVE 11/28/16**

- Order Writing (§483.30)—Attending physician (only) has the authority to delegate the task of writing dietary orders to a qualified dietitian or other clinically qualified nutrition professional who is acting within the scope of practice defined by State law and is under the supervision of the physician.
- Surveyors must verify the state’s regulations regarding order writing status and dietitians cannot write orders if not allowed under State law.

**FOOD SERVICE RELATED F-TAGS**

**F360 FOOD AND NUTRITION SERVICES**

- The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets his or her daily nutritional and special dietary needs, taking into consideration the preferences of each resident.
§483.60(a) Require that the facility employ sufficient staff with the appropriate competencies and skills sets to carry out the functions of the food and nutrition services, taking into consideration resident assessments, individual care plans and the number, acuity and diagnoses of the facility’s population.

§483.60(a)(1) Facility must employ a qualified dietitian or other clinically qualified nutrition professional on a full-time, part-time, or consultant basis.

§483.60(a)(2) If a qualified dietitian or other clinically qualified nutrition professional is not employed full-time, the facility would have to designate a person to serve as the director of food and nutrition services who would receive frequently scheduled consultation from a qualified dietitian or other clinically qualified nutrition professional.

The intent of this regulation is to ensure that a qualified dietitian is utilized in planning, managing and implementing dietary service activities in order to assure that the residents receive adequate nutrition.

A director of food services must be able to function collaboratively with a qualified dietitian in meeting the nutritional needs of the residents.

A dietitian qualified on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs has experience or training which includes:

- Assessing special nutritional needs of geriatric and physically impaired persons;
- Developing therapeutic diets;
- Developing “regular diets” to meet the specialized needs of geriatric and physically impaired persons;
- Developing and implementing continuing education programs for dietary services and nursing personnel;
- Participating in interdisciplinary care planning;
- Budgeting and purchasing food and supplies; and
- Supervising institutional food preparation, service and storage.
**DIRECTOR OF FOOD SERVICE REQUIREMENTS**

- Most states have State laws with requirements for the Director of Food Service. Surveyors will default to State law prior to Federal law. Example of Nebraska State Regulations:

  - SNF-NF-ICF (175 NAC 12)
  - 12-006.04B2c Director of Food Service: When the director of food service is not a qualified dietitian, the director must have at least 15 hours of continuing education related to dietetics each year, 5 hours of which relate to sanitation. Evidence of credentials and of continuing education must be available within the facility.

  *These are specific to Nebraska Regulations

**DIRECTOR OF FOOD SERVICE REQUIREMENTS**

- 12-006.04D2a to qualify as director of food service the employee must be one of the following:
  1) A graduate of a dietetic technician program approved by the American Dietetic Association;
  2) An individual with a bachelor’s degree in foods and nutrition;
  3) A graduate of a dietetic assistant program approved by the American Dietetic Association, qualifying certification by the Dietary Manager’s Association;
  4) A graduate of a dietary manager program approved by the Dietary Managers Association and qualifying certification by the Dietary Managers Association; or
  5) An individual who successfully completes a course in food service management offered by an accredited university, community college, or technical college, whose curriculum meets at least the minimum requirements of any of the programs described in 175 NAC 12-006.04D2a, items 1-3, whether or not formally approved by the entities named in those sections.

**Example of Nebraska State Regulation

**F362 SUPPORT STAFF**

- §483.60(a)(3) The facility must provide sufficient support personnel to safely and effectively carry out the functions of the food and nutrition service.

- §483.60(b) A member of food and nutrition services staff will participate on the interdisciplinary team as required in §483.21 (b)(2)(ii).
“Sufficient support personnel” is defined as enough staff to prepare and serve palatable, attractive, nutritionally adequate meals at proper temperatures and appropriate times and support proper sanitary techniques being utilized.

Menus must:

- §483.60(c)(1) Meet the nutritional needs of residents in accordance with the established national guidelines;
- §483.60(c)(2) Be prepared in advance;
- §483.60(c)(3) Be followed;
- §483.60(c)(4) Reflect, based on a facility’s reasonable efforts, the religious, cultural and ethnic needs of the resident population, as well as input received from residents and resident groups;
- §483.60(c)(5) Be updated periodically;
- §483.60(c)(6) Be reviewed by the facility dietitian or other clinically qualified nutrition professional for nutritional adequacy; and
- §483.60(c)(7) Nothing in this paragraph should be construed to limit the resident’s right to make personal dietary choices.

The intent of this regulation is to assure that the meals served meet the nutritional needs of the resident in accordance with the recommended dietary allowances (RDAs) of the Food and Nutrition Board of the National Research Council, of the National Academy of Sciences. This regulation also assures that there is a prepared menu by which nutritionally adequate meals have been planned for the resident and are followed.
**F363 CONTINUED**

- **NOTE:** A standard meal planning guide (e.g. food pyramid) is used primarily for menu planning and food purchasing. It is not intended to meet the nutritional needs of all residents. This guide must be adjusted to consider individual differences. Some residents will need more due to age, size, gender, physical activity, and state of health. There are many meal planning guides from reputable sources, i.e., American Diabetes Association, Academy of Nutrition & Dietetics, American Medical Association, or U.S. Department of Agriculture, that are available and appropriate for use when adjusted to meet each resident’s needs.

---

**F364 FOOD AND DRINK**

Each resident receives and the facility provides:

- **(1)** Food prepared by methods that conserve nutritive value, flavor, and appearance;

- **(2)** Food and drink that is palatable, attractive, and served at a safe and appetizing temperature.

---

**F364 INTENT**

- The intent of this regulation is to assure that the nutritive value of food is not compromised and destroyed because of prolonged food storage, light, and air exposure; prolonged cooking of foods in a large volume of water and prolong holding on steam table, and the addition of baking soda. Food should be palatable, attractive, and at a safe and appetizing temperature, to include consideration of allergies, intolerances, and preferences in preparing food, and to ensure water and other dietary liquids are available to residents and provided, consistent with resident needs and preferences.
"Food-palatability" refers to the taste and/or flavor of the food.

"Food attractiveness" refers to the appearance of the food when served to residents.

Evidence for palatability and attractiveness of food, from day to day and meal to meal, may be strengthened through sources such as: additional observation, resident and staff interviews, and review of resident council minutes. Review nutritional adequacy in §483.25(i)(1).

F364 INTERPRETIVE GUIDELINES

Food prepared in a form designed to meet individual needs.

F365

Food that accommodates resident allergies, intolerances, and preferences;

Appealing options of similar nutritive value to resident who choose not to eat food that is initially served or who request a different meal choice; and

Drinks, including water and other liquids consistent with resident needs and preferences and sufficient to maintain resident hydration.

F366

Food prepared in a form designed to meet individual needs.
Therapeutic diets must be prescribed by the attending physician.

A food substitute should be consistent with the usual and ordinary food items provided by the facility. For example, if a facility never serves smoked salmon, they would not be required to serve this as a food substitute; or the facility may, instead of grapefruit juice, substitute another citrus juice or vitamin C rich juice that the resident likes.

---

**SAMPLE OF SUBSTITUTION RECORD**

<table>
<thead>
<tr>
<th>Date</th>
<th>Menu Item Substituted</th>
<th>Alternate food item</th>
<th>Reason for substitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/09</td>
<td>Pork Roast</td>
<td>Pork Chops</td>
<td>Roast shorted on order</td>
</tr>
<tr>
<td>2/3/09</td>
<td>Butternut Squash</td>
<td>Sweet Potatoes</td>
<td>Item not available</td>
</tr>
<tr>
<td>2/14/09</td>
<td>Entire menu</td>
<td>See Attached</td>
<td>Special Event Dinner</td>
</tr>
</tbody>
</table>

---

**F367 THERAPEUTIC DIETS**

- **§483.60(1)** Therapeutic diets must be prescribed by the attending physician.
- **§483.60(2)** The attending physician may delegate to a registered or licensed dietitian the task of prescribing a resident’s diet, including a therapeutic diet, to the extent allowed by state law.
- "Therapeutic Diet" is defined as a diet ordered by a physician as part of treatment for a disease or clinical condition, or to eliminate or decrease specific nutrients in the diet, (e.g., sodium) or to increase specific nutrients in the diet (e.g., potassium), or to provide food the resident is able to eat (e.g., a mechanically altered diet).
F367 INTENT

The intent of this regulation is to assure that the resident receives and consumes foods in the appropriate form and/or the appropriate nutritive content as prescribed by a physician and/or assessed by the interdisciplinary team to support the treatment and plan of care.

F368 FREQUENCY OF MEALS

1) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community or in accordance with resident needs, preferences, requests, and plan of care.

2) There must be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in (4) below.

3) The facility must offer snacks at bedtime daily.

4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span, and a nourishing snack is served.

5) Suitable nourishing alternative meal or snack for residents who want to eat at non-traditional times or outside of facility’s scheduled meal service times, consistent with resident plan of care.

F369 ASSISTIVE DEVICES

The facility must provide special eating equipment and utensils for residents who need them and appropriate assistance to ensure that the resident can use the assistive devices when consuming meals and snacks.

The intent of this regulation is to provide residents with assistive devices to maintain or improve their ability to eat independently. For example, improving poor grasp by enlarging silverware handles with foam padding, aiding residents with impaired coordination or tremor by installing plate guards, or providing postural supports for head, trunk, and arms.
**F371 FOOD SAFETY REQUIREMENTS**

The Facility Must:
- §483.60(i)(1) - Procure food from sources approved or considered satisfactory by Federal, State or local authorities.
  - (i) This may include food items directly from local producers, subject to applicable State and local laws/regulations.
  - (ii) This provision does not prohibit or prevent facilities from using produce grown in facility gardens, subject to compliance with applicable safe growing and food-handling practices.
  - (iii) This provision does not preclude residents from consuming goods and procured by the facility.
- §483.60(i)(2) Store, prepare, distribute, and serve food in accordance with professional standards of food service safety.
- §483.60(i)(3) Have a policy regarding use and storage of foods brought to residents by family and other visitors to ensure safe and sanitary storage, handling, and consumption.

**F371 INTENT**

The intent of this requirement is to ensure that the facility:
- Obtains food for resident consumption from sources approved or considered satisfactory by Federal, State, local authorities; and
- Follows proper sanitation and food handling practices to prevent the outbreak of foodborne illness. Safe food handling for the prevention of foodborne illnesses begins when food is received from the vendor and continues throughout the facility’s food handling processes.

**F372 DISPOSE OF GARBAGE AND REFUGE PROPERLY**

483.60(i)(4) Dispose of Garbage and Refuge Properly

Interpretive Guidelines
- The intent of this regulation is to assure that garbage and refuse be properly disposed.
F373 PAID FEEDING ASSISTANTS

Paid Feeding Assistants- (3) State-approved training course. A facility may use a paid feeding assistant, as defined in §488.301 of this chapter, if—

- The feeding assistant has successfully completed a State-approved training course that meets the requirements of §488.160 before feeding residents; and
- The use of feeding assistants is consistent with State law.

Supervision.
- A feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse (LPN).
- In an emergency, a feeding assistant must call a supervisory nurse for help.
- The interdisciplinary team (IDT) is responsible for the determination of whether a paid feeding assistant would be appropriate for a resident.

PHASE 1: EFFECTIVE 11/28/16

CLINICAL F-TAGS

F314 SKIN INTEGRITY

- 483.25(b)(1) Pressure ulcers

Based on the comprehensive Assessment of a resident, the facility must ensure that—

- (i) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual’s clinical condition demonstrates that they were unavoidable; and
- (ii) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing
**F314 SKIN INTEGRITY**

- **Intent**—
  - The intent of this requirement is that the resident does not develop pressure ulcers unless clinically unavoidable and that the facility provides care and services to:
  - Promote the prevention of pressure ulcer development;
  - Promote the healing of pressure ulcers that are present (including prevention of infection to the extent possible); and
  - Prevent development of additional pressure ulcers.

**NOTE:** Although the regulatory language refers to pressure sores, the nomenclature widely accepted presently refers to pressure ulcers, and the guidance provided in this document will refer to pressure ulcers.

**F322 ASSISTED NUTRITION & HYDRATION**

- (Includes naso-gastric and gastrostomy tubes, both percutaneous endoscopic gastrostomy and percutaneous endoscopic jejunostomy, and enteral fluids). Based on a resident’s comprehensive assessment, the facility must ensure that the resident:
  - §483.60(g)(4) A resident who has been able to eat enough alone or with assistance is not fed by enteral methods unless the resident’s clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident, and
  - §483.60(g)(5) A resident who is fed by enteral means receives the appropriate treatment and services to restore, if possible, oral eating skills and to prevent complications of enteral feeding including but not limited to aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers.

**F325 ASSISTED NUTRITION & HYDRATION**

- §483.25(g) Based on a resident’s comprehensive assessment, the facility must ensure that a resident—
  - F-325
    1. Maintains acceptable parameters of nutritional status, such as usual or desirable body weight and electrolyte balance, unless the resident’s clinical condition demonstrates that this is not possible or resident preferences indicate otherwise;
    2. Is offered a therapeutic diet when there is a nutritional problem and the health care provider orders a therapeutic diet.
F325 ASSISTED NUTRITION & HYDRATION

Intent--
• The intent of this requirement is that the resident maintains, to the extent possible, acceptable parameters of nutritional status and that the facility:
  • Provides nutritional care and services to each resident, consistent with the resident’s comprehensive assessment;
  • Recognizes, evaluates, and addresses the needs of every resident, including but not limited to, the resident at risk or already experiencing impaired nutrition; and
  • Provides a therapeutic diet that takes into account the resident’s clinical condition, and preferences, when there is a nutritional indication.

F327 ASSISTED NUTRITION & HYDRATION

§483.25(g) Based on a resident’s comprehensive assessment, the facility must ensure that a resident—
• Is offered sufficient fluid intake to maintain proper hydration and health

• The intent of this regulation is to assure that the resident is offered sufficient amount of fluids based on individual needs to prevent dehydration.

PHASE 2: EFFECTIVE 11/28/17

• §483.75 Quality Assurance Performance Improvement (QAPI)—would be designed to monitor and evaluate performance of all services and programs of the facility, including services provided under contract or arrangement. QAPI will be designed in phase 3.

• Phase 2—Facility will need to submit the QAPI plan to the State Agency or federal surveyor at the first annual recertification survey 1 year after the effective date of these regulations.
PHASE 2: EFFECTIVE 11/28/17

§483.95 Training Requirements—A facility must develop, implement, and maintain an effective training program for all new and existing staff, individuals providing services under a contractual arrangement and volunteers, consistent with their expected roles. A facility must determine the amount and types of training necessary based on a facility assessment.

PHASE 2: EFFECTIVE 11/18/17

§483.55 Dental Services—Must have a policy identifying those circumstances when the loss or damage of dentures is the facility's responsibility and may not charge a resident for the loss or damage of dentures determined in accordance with the facility policy.

Must promptly, within 3 days refer residents with lost or damaged dentures for dental services. If does not occur within the 3 days, the facility must provide documentation of what they did to ensure the resident could still eat and drink adequately while awaiting dental services.

RESOURCES FOR REGULATIONS

- Hospital Regulations
- Critical Access Hospital Regulations

- Assisted Living Regulations

- CMS

- Federal Register – Reform of requirements for Long-Term Care Facilities Final Rule


- Nebraska Department of Health and Human Services
  - [http://www.dhs.ne.gov/reg175.htm](http://www.dhs.ne.gov/reg175.htm)
QUESTIONS?