



# To Liberalize the Diet or Not What's A Provider to Do?

by Brenda Richardson, MA, RDN, LD, CD, FAND

One of the most frequent challenges for long-term care providers involves the concept of person-centered care and the individualized diet/diet liberalization. There is uncertainty as to what this actually means, and apprehension about possible increased survey or liability issues to the facility.

## WHAT'S IT ALL ABOUT?

Historically, nursing homes in the United States have functioned, and been regulated at the federal and state levels, as total medical/residential institutions. Nonetheless, the restrictive, regimented atmosphere of nursing homes is slowly changing. There is a broad commitment to the transformative concept of “culture

change.” This movement originated in 1997 and has increasingly gained popularity. The Association of Nutrition & Foodservice Professionals (ANFP) in April 2011 published a Position Paper on “The Role of the Certified Dietary Manager in Person-Directed Dining,” stating the CDM who works in long-term care is expected to seek continuing education and information in order to implement the best practices and recognized standards of practice for elder nutrition care and person-directed dining.

Culture change has been promoted by the Pioneer Network, a small group of prominent long-term care professionals who have joined together to advocate for person-directed care with the vision of “a culture of aging



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MEALS



that is life-affirming, satisfying, humane and meaningful.” The culture change movement is embodied in, and exemplified by, progressive long-term care initiatives and is premised on a belief in person-centered care, encompassing sincere consideration of and fidelity to the values and wishes of nursing home residents, their families, and their direct caregivers.

Central aspects of culture change embrace support of resident dignity and freedom. Culture change features include collaborative decision making, including resident control over dining and sleeping schedules, a warmer and more homelike climate, and a concentration on close relationships among residents and staff that has been

empowered to improve not just the quality of professional services, but also the quality of resident lives.

In 2010, the Pioneer Network and the Centers for Medicare & Medicaid Services (CMS) sponsored a National Symposium on Culture Change and the Food and Dining Requirements. A set of research papers were commissioned by CMS which formed the basis for a stakeholder workshop held in May 2010. At that workshop, a recommendation was made that a national stakeholder workgroup be formed to develop agreed-upon, evidence-based individualized standards of dietary practice moving away from traditional diagnosis-related treatment to individualized care supportive of self-directed living. The workgroup developed Proposed New Dining Practice

**CULTURE CHANGE** is defined as “a culture of aging that is life-affirming, satisfying, humane, and meaningful.”

Standards, which were reviewed and revised by a Food and Dining Clinical Standards Task Force. Represented on the task force were 12 standard-setting groups comprised of the various disciplines that work in nursing homes, as well as relevant government agencies. The Association of Nutrition & Foodservice Professionals (formerly DMA) and the Academy of Nutrition and Dietetics (formerly ADA) were members of the task force. The “New Dining Practice Standards” was published in August 2011 as a product of this process.

This document—available at [www.pioneernetwork.net](http://www.pioneernetwork.net)—includes 10 new practice standards, which are intended not only to be consistent with the federal standards that have been in place since publication of the 1990 regulations, but also provides guidance for improved and modernized implementation. These practice standards are based on the best available research and current thinking of the various organizations represented on the Task Force and include the following topics: Individualized

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Nutrition Approaches/Diet Liberalization; Individualized Diabetic/Calorie Controlled Diet; Individualized Low Sodium Diet; Individualized Cardiac Diet; Individualized Altered Consistency Diet; Individualized Tube Feeding; Individualized Real Food First; Individualized Honoring Choices; Shifting Traditional Professional Control to Individualized Support of Self-Directed Living; and New Negative Outcome.

In practice, the various individualized diet standards might be implemented, for example, by beginning with a regular diet and monitoring how the resident does, rather than by assuming that a restricted diet is always necessary because of the resident's specific clinical diagnosis.

### **CURRENT STATUS AND CONSIDERATIONS FOR LIABILITY AND REGULATORY COMPLIANCE**

In 2016 we continue to see providers struggling with implementing the Dining Practice Standards as a component of the culture change movement. Providers' apprehensions include the potential exposure to negative civil liability and regulatory consequences for deviation from traditional, disease-focused practice. Providers perceive that regulations impede culture change adoption and that regulations act as a barrier to culture change.

Regulations require that nursing homes "must provide services and activities to attain or maintain the highest practicable physical, mental, and social well-being of each resident in accordance with a written plan of care." This increases the focus on medical outcomes rather than quality of life, and stands in the way of innovative practice.

Nursing home providers are generally apprehensive because many of them feel threatened regarding potential civil (tort) lawsuits seeking monetary damages. Providers fear malpractice litigation brought against them by or on behalf of residents claiming intentionally or negligently inflicted injuries and breach of contract claims. An example might involve a stroke related to high blood pressure, which is related, in turn, to permitting the resident to deviate from a low-sodium diet, or the resident choking on the steak that the resident requested.

**C**ulture change features collaborative decision making, including resident control over dining and sleeping schedules, a warmer and more homelike climate, and a concentration on close relationships among residents and staff.



### **HOW CAN WE MOVE FORWARD?**

Significant progress in convincing nursing homes to adopt and implement the New Dining Practice Standards and embrace individualization/liberalization of diets will require continued concerted, sustained educational and advocacy efforts. Efforts must be directed toward providers, regulators, and the legal system.

Providers need increased education about the value of basing actions—including more individualized, person-centered dining practices—on the informed, voluntary choices asserted by individual nursing home residents or their decisional surrogates. This is important not just as an

ethical matter promoting the principle of autonomy, but also for managing lawsuit and liability risk.

Another avenue to promote provider acceptance of diet individualization and diet liberalization is continued education about the value of evidence-based clinical practice guidelines (CPGs) or parameters in establishing and proving the clinical standard of care to which providers should, and will, be held legally accountable in civil litigation. Such CPGs are exemplified by the Dining Practice Standards, which were developed through a consensus process by a task force broadly representative of national experts in the relevant field after a methodical, critical review of available research data.

There is a pragmatic, prudential incentive for providers to follow pertinent CPGs, besides an ethical obligation to treat patients/residents in a manner consistent with the most current relevant evidence concerning benefits and risks. Increasingly, the legal system is formally permitting defendants to introduce evidence-based CPGs during litigation as proof of the applicable standard of care to which the defendant provider should be held accountable. In effect, CPGs may serve as a “safe harbor” for providers who comply with them. Because of this trend, it is highly likely that many potential plaintiffs contemplating the filing of negligence claims against healthcare providers are deterred once they examine the clinical record and determine that care was rendered consistently with relevant CPGs.

Thus, as the New Dining Practice Standards become more widely accepted and followed by nursing home providers, and as attorneys and the judiciary become more knowledgeable in this arena, compliance with the Standards is likely to serve as a significant deterrent to litigation in the first place, and as the basis for a strong defense against any claims that are brought.

Regulations are also continuing to support person-centered care as CMS, for example, changed regulatory guidelines in 2012 to identify resident choice over preset daily schedules as a resident right. “Residents have the right to have a choice over their schedules, consistent with their interests, assessments and plans of care. Choice over ‘schedules’ includes choices over the schedules that are important to the resident, such as daily waking, eating, bathing, and the time for going to bed at night.”

There is also a need for consistent interpretation and enforcement by state employees who regularly survey facilities and issue them citations for perceived noncompliance. There continues to be the need for intensive, ongoing regulatory review and education of state surveyors to inculcate them with the principles and goals of culture change. An example of such education includes CMS’s commission, through the Pioneer Network, to create a video training module on the New Dining Practice Standards as a mandatory component for surveyor training.

## CONCLUSION

The total institution paradigm of nursing home care clearly is no longer tolerable in a modern era in which the residents’ value and demand individual dignity, respect, and (to the maximum extent possible) self-determination. The culture change movement is built on a firm commitment to innovation. If society truly is serious about improving the quality of nursing home residents’ lives, then regulatory agencies and the legal system must accommodate thoughtful innovation and its uncertain consequences in a manner that rewards and stimulates.

The process of developing an individualized diet starts with the resident’s admission to the nursing home. One of the first staff interactions for a new resident is held with the CDM, who usually interviews the resident for traditional dietary preferences, allergies, intolerances, and preferred location of dining (i.e., in room or dining room). Many CDMs are expanding this initial interview with questions about the resident’s diet preferences and when the resident normally eats (i.e., late breakfast, snacking throughout the day, late evening snack). New residents are informed that they may sleep in and have a right to a reasonable accommodation of a late breakfast and food opportunities throughout the day, as close to their usual homelike pattern as possible.

Task Statements from the ANFP Position Paper for the Certified Dietary Manager include:

- Empowers and honors the resident and quality of life first and foremost by getting to know the resident, listening to the resident’s preferences/goals in dining, and informing the resident of dining rights.

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- Builds an ongoing relationship with the resident that includes quality of life markers such as satisfaction with food, mealtime service, level of control, and independence.
- Collaborates with the dietitian, other interdisciplinary team (IDT) members, and the family/POA or surrogate decision makers to create a person-directed environment and maximize resident choice in dining, quality of life, and quality of care.
- Recognizes that all dining decisions default to the resident, works toward removing traditional or institutional decision making, and implements creative, effective solutions based on person-directed decision making.
- Encourages active resident participation in changing the language of nutrition care plans away from the problem goals-approaches format, to promoting the incorporation of resident preferences and goals into development of an individualized plan of care.
- Collaborates with the dietitian and other IDT members to develop, implement, and review policies and procedures that ensure residents are offered dining choices that promote dignity and self-determination (e.g., choices regarding waking times and breakfast dining, evening snack times, availability of preferred food between meals, liberalizing diets, discussions of risk/benefits in making informed choices/refusal of therapeutic diets).
- Participates in orienting, training, and monitoring staff in promoting individualized dining care.
- Participates in maintaining and continually improving the quality of care (e.g., helps develop quality assessment and assurance projects that monitor the success of person-directed dining approaches).
- Continues to seek information in order to implement the best practices and recognized standards of practice for elder nutrition care and person-directed dining.
- Ensures regulatory compliance for a resident's dignity, rights, and self-determination in dining areas, as well as supports the maintenance of nutrition markers, food safety, and other dietary requirements.

The bottom line is person-directed dining and individualization of the diet promotes resident choice and self-determination in ways that are meaningful to the resident and, hence, their quality of life. The Certified Dietary Manager, in collaboration with the Registered Dietitian Nutritionist and the interdisciplinary team, has an essential role both in facilitating this process, as well as in monitoring it for desired outcomes. **E**



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#### RESOURCES:

- Dining Practice Standards: [www.pioneernetwork.net/Providers/DiningPracticeStandards](http://www.pioneernetwork.net/Providers/DiningPracticeStandards)
- NH Regulations Plus: This website examines and compares the content of state regulations related to nursing homes, the processes of regulation and exceptions to regulations within a state, recent state changes, innovative nursing home designs and programs that were accomplished within existing regulations, and innovative state regulatory initiatives. [www.hpm.umn.edu/NHRegsPlus](http://www.hpm.umn.edu/NHRegsPlus)
- The Eden Alternative: [www.edenalt.org](http://www.edenalt.org)
- The Greenhouse Project: [www.thegreenhouseproject.org](http://www.thegreenhouseproject.org)
- State Operations Manual: Appendix PP: [www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107Appendicestoc.pdf](http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107Appendicestoc.pdf)
- The Academy of Nutrition and Dietetics Position Papers By Subject: [www.eatrightpro.org/resource/practice/position-and-practice-papers/position-papers/academy-position-papers-by-subject](http://www.eatrightpro.org/resource/practice/position-and-practice-papers/position-papers/academy-position-papers-by-subject) (i.e. Food and Nutrition Programs for Community-Residing Older Adults, Food and Nutrition for Older Adults: Promoting Health and Wellness, Individualized Nutrition Approaches for Older Adults in Health Care Communities)
- Association of Nutrition & Foodservice Professionals (ANFP): [www.anfponline.org](http://www.anfponline.org)



## Review Questions

### NUTRITION CONNECTION

Reading *To Liberalize the Diet or Not: What's a Provider to Do?* and successfully completing these questions online has been approved for 1 hour of CE for CDM, CFPPs. CE credit is available ONLINE ONLY. To earn 1 CE hour, purchase the online CE quiz in the ANFP Marketplace. Visit [www.ANFPonline.org/market](http://www.ANFPonline.org/market), select "Publication," then select "CE article" at left, then search the title "To Liberalize the Diet or Not: What's a Provider to Do?" and purchase the article.



- The culture change movement is associated with all of the following except:
  - Person-centered care and collaborative decision making
  - Values and wishes of residents/families and their caregivers
  - Focus on everyone following the same culture
- The Dining Practice Standards were published in:
  - August 2011
  - January 2014
  - January 2016
- The Dining Practice Standards focus on:
  - Proper dinnerware selection for meals
  - Individualizing the diet
  - Increasing dietary restrictions
- Many professional organizations were instrumental in developing the Dining Practice Standards along with:
  - Centers for Medicare & Medicaid Services
  - US Food and Drug Administration and the Centers for Disease Control and Prevention
  - Both A and B
- Clinical practice guidelines are parameters in establishing standards of care and are:
  - Used only when the residents are high risk
  - Evidence-based
  - Developed based on an individual's preferences
- To maximize person-centered care, the Certified Dietary Manager collaborates with:
  - The resident/POA or surrogate decision makers
  - The Registered Dietitian Nutritionist and other interdisciplinary team (IDT) members
  - Both A and B
- If society is truly serious about improving the quality of residents' lives, then providers, regulatory agencies, and the legal system must accommodate:
  - Thoughtful innovation and its uncertain consequences in a manner that rewards and stimulates
  - More regulatory requirements based on medical protocols
  - The increased need for more computers

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