



New CMS Long-Term Care Requirements: Food, Nutrition, and Dining are Critical Components

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

The long-awaited ‘Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities’ was published in the Federal Register on October 4, 2016. The Centers for Medicare & Medicaid Services (CMS) of the Department of Health and Human Services released the Final Rule for participation in Medicare and Medicaid programs.

Effective November 28, 2016, these new regulations reflect substantial advances made over the past several years in the theory and practice of service delivery and safety. CMS stated in a response to a public comment that *“Effective management and oversight of the food and nutrition service is critical to the safety and well-being of all*

residents of a nursing facility.” This article will provide an overview of key changes in the regulations with a focus on food, nutrition, and dining.

BACKGROUND: OVERVIEW OF CHANGES

Consolidated Medicare and Medicaid requirements for participation by long-term care (LTC) facilities were first published in the Federal Register on February 2, 1989. The requirements had not been comprehensively reviewed and updated since 1991, despite substantial changes in service delivery in this setting.



NEW CMS
REGULATIONS
REFLECT
ADVANCES IN
SERVICE DELIVERY
AND SAFETY

The new regulations incorporate innovations in resident care and quality assessment practices for the diverse and more clinically complex LTC population. CMS reviewed regulations in an effort to improve the quality of life, care, and services in LTC facilities, optimize resident safety, reflect current professional standards, and improve the logical flow of the regulations. New requirements were added where necessary, duplicative or unnecessary provisions have been eliminated, and regulations are reorganized as appropriate.

The effective date for the new CMS regulations is November 28, 2016 and includes three phases and timeframes for implementation. The regulations

included in Phase 1 must be implemented by November 28, 2016; Phase 2 must be implemented by November 28, 2017; and regulations in Phase 3 must be implemented by November 28, 2019. Most of the Food and Nutrition Services requirements will be in Phase 1.

USING THE FEDERAL REGISTER FINAL RULE DOCUMENT

The Final Rule was published in the Federal Register/ Vol. 81, No. 192/Tuesday, October 4, 2016/Rules and Regulations and is available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-23503.pdf>

CAREFULLY READ the Final Rule to understand the new regulations and make sure requirements are implemented for Phase 1, effective November 28, 2016.

It's important to carefully read the Final Rule to understand the new regulations to make sure requirements are implemented for Phase 1, effective November 28, 2016; especially noting that new FTags and Guidance to the Survey will not be available until November 28, 2017.

This Final Rule is organized as follows:

- I. **Background.** Includes the Executive Summary, Purpose, Summary of the Major Provisions, Summary of Costs and Benefits, Statutory and Regulatory Authority of the Requirements for Long-Term Care Facilities, and Why Revise the LTC Requirements?
- II. **Provisions of the Proposed Regulation and Responses to Public Comments.** The largest component of the Final Rule and includes CMS responses to more than 9,800 public comments organized into the 26 categories. The category R. Food and Nutrition Services (§483.60) has specific comments and responses to food and nutrition services, although many of the other categories address specific nutrition-related areas.

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- III. **Provisions of the Final Regulations.** Includes adopted revisions of the proposed rule.
- IV. **Long-Term Care Facilities Crosswalk.** Cross-references current Final Rule sections to the proposed rule.
- V. **Collection of Information Requirements.** Explains data sources.
- VI. **Regulatory Impacts.** Summarizes overall impact of the Final Rule and includes a List of Subjects that provides the authority citation for Part 483 - Requirements for States and Long-Term Care Facilities.

FOOD AND NUTRITION SERVICES

The Final Rule includes the following language for §483.60 Food and Nutrition Services, and lists the CDM credential first among qualifications for new Directors of Food and Nutrition Services.

§483.60 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.*

(a) Staffing. The facility must employ sufficient staff with the appropriate competencies and skill sets to carry out the functions of the food and nutrition service, taking into consideration resident assessments, individual plans of care and the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e).

This includes:

(1) A qualified dietitian or other clinically qualified nutrition professional either full-time, part-time, or on a consultant basis. A qualified dietitian or other clinically qualified nutrition professional is one who— (i) Holds a bachelor's or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics accredited by an appropriate national accreditation organization recognized for this purpose. (ii) Has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition



The new CMS regulations list the CDM credential first among qualifications for new Directors of Food and Nutrition Services.

professional. (iii) Is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed. In a state that does not provide for licensure or certification, the individual will be deemed to have met this requirement if he or she is recognized as a "registered dietitian" by the Commission on Dietetic Registration or its successor organization, or meets the requirements of paragraphs (a)(1)(i) and (ii) of this section. (iv) For dietitians hired or contracted with prior to November 28, 2016, meets these requirements no later than 5 years after November 28, 2016 or as required by state law.

Want to Learn More About the New CMS Regs?

A webinar is available in the ANFP Marketplace to help CDMs understand the new CMS Requirements. The webinar, **New CMS Regulatory LTC Requirements for Food/Nutrition and Dining**, is found at www.ANFPonline.org/market

(2) *If a qualified dietitian or other clinically qualified nutrition professional is not employed full-time, the facility must designate a person to serve as the director of food and nutrition services who— (i) For designations prior to November 28, 2016, meets the following requirements no later than 5 years after November 28, 2016, or no later than 1 year after November 28, 2016 for designations after November 28, 2016, is: (A) A certified dietary manager; or (B) A certified food service manager, or (C) Has similar national certification for food service management and safety from a national certifying body; or (D) Has an associate's or higher degree in food service management or in hospitality, if the course study includes food service or restaurant management, from an accredited institution of higher learning; and (ii) In States that have established*

standards for food service managers or dietary managers, meets State requirements for food service managers or dietary managers, and (iii) Receives frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional.

(3) *Support staff. The facility must provide sufficient support personnel to safely and effectively carry out the functions of the food and nutrition service.*

(b) A member of the Food and Nutrition Services staff must participate on the interdisciplinary team as required in §483.21(b)(2)(ii).

(c) Menus and nutritional adequacy. Menus must— (1) Meet the nutritional needs of residents in accordance with established national guidelines;

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(2) Be prepared in advance; (3) Be followed; (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; (5) Be updated periodically; (6) Be reviewed by the facility's dietitian or other clinically qualified nutrition professional for nutritional adequacy; and (7) Nothing in this paragraph should be construed to limit the resident's right to make personal dietary choices.

- (d) 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 at a safe and appetizing temperature; (3) Food prepared in a form designed to meet individual needs; (4) Food that accommodates resident allergies, intolerances, and preferences; (5) Appealing options of similar nutritive value to residents who choose not to eat food that is initially served or who request a different meal choice; and (6) Drinks, including water and other liquids consistent with resident needs and preferences and sufficient to maintain resident hydration.
- (e) Therapeutic diets. (1) Therapeutic diets must be prescribed by the attending physician. (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.
- (f) Frequency of meals. (1) Each resident must receive and the facility must provide 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 when a nourishing snack is served 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. (3) Suitable, nourishing alternative meals and snacks must be provided to residents



A 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.

who want to eat at non-traditional times or outside of scheduled meal service times, consistent with the resident plan of care.

- (g) 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.
- (h) Paid feeding assistants—(1) State-approved training course. A facility may use a paid feeding assistant, as defined in §488.301 of this chapter, if— (i) The feeding assistant has successfully completed a State-approved training course that meets the requirements of §483.160 before feeding residents; and (ii) The use of feeding assistants is consistent with State law. (2) Supervision. (i) A feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse

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(LPN). (ii) In an emergency, a feeding assistant must call a supervisory nurse for help. (3) Resident selection criteria. (i) A facility must ensure that a feeding assistant provides dining assistance only for residents who have no complicated feeding problems. (ii) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings. (iii) The facility must base resident selection on the interdisciplinary team's assessment and the resident's latest assessment and plan of care. Appropriateness for this program should be reflected in the comprehensive care plan.

(i) Food safety requirements. The facility must—

- (1) Procure food from sources approved or considered satisfactory by federal, state, or local authorities; (i) This may include food items obtained directly from local producers subject to applicable State and local laws or 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 foods not procured by the facility.
- (2) Store, prepare, distribute, and serve food in accordance with professional standards for food service safety.

- (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, and
- (4) Dispose of garbage and refuse properly.

CONCLUSION AND RECOMMENDATIONS

The Final Rule for Long-Term Care Facilities has been published and it's vital that we share the same commitment as CMS in their response that "Effective management and oversight of the food and nutrition service is critical to the safety and well-being of all residents of a nursing facility." Being familiar with the specifics in the regulations and providing leadership to assist facilities in incorporating "person-centered" and "best practice food and nutrition services" is more important than ever. **E**



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REFERENCES

1. Federal Register/Vol. 81, No. 192/Tuesday, October 4, 2016/Rules and Regulations
2. Department of Health and Human Services, Centers for Medicare & Medicaid Services
3. 42 CFR Parts 405, 431, 447, 482, 483, 485, 488, and 489 [CMS-3260-F] RIN 0938-AR61 Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS. ACTION: Final rule.

Additional Resources

- The Final Rule was published in the Federal Register/Vol. 81, No. 192/Tuesday, October 4, 2016/Rules and Regulations and is available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-23503.pdf>
- Centers for Medicare & Medicaid Services Press Release: CMS finalizes improvements in care, safety, and consumer protections for long-term care facility residents Date: 9/28/2016. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2016-Press-releases-items/2016-09-28.html>
- Association of Nutrition & Foodservice Professionals <http://www.anfponline.org/>
- Academy of Nutrition and Dietetics <http://www.eatrightpro.org/> and Dietetics in Health Care Facilities (Academy Dietetic Practice Group) <http://www.dhccdp.org/>
- American Health Care Association <https://www.ahcancal.org/Pages/Default.aspx>
- Leading Age <http://www.leadingage.org/>



Review Questions

NUTRITION CONNECTION

Reading *New CMS Long-Term Care Requirements: Food, Nutrition, and Dining are Critical Components* 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, select "Publication," then select "CE article" at left, then search the title "New CMS Long-Term Care Requirements: Food, Nutrition, and Dining are Critical Components" and purchase the article.



- The effective date for Phase 1 of the Final Rule is:
 - January 28, 2017
 - March 28, 2017
 - November 28, 2016
- The specific language for Food and Nutrition Services is located in:
 - \$483.60 Food and nutrition services
 - \$483.60 Dietary services
 - \$483.60 Food services
- A member of the Food and Nutrition Services staff must participate on the:
 - Wound care team
 - Interdisciplinary team
 - Paid feeding assistants team
- Menus must meet the nutritional needs of residents in accordance with established _____ guidelines.
 - Industry
 - Retail
 - National
- Each resident receives and the facility provides drinks including _____ and other liquids consistent with resident needs and preferences, and sufficient to maintain hydration.
 - Ice
 - Water
 - Popsicles
- Food safety requirements for the facility include to store, prepare, distribute, and serve food in accordance with _____ food service safety standards.
 - Restaurant
 - Local
 - Professional
- Facilities may use produce grown in facility gardens, subject to compliance with applicable _____ practices.
 - Safe growing and food-handling
 - Soil pH and acidity result
 - Weather and climate factor

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