

## **CMS LTC FINAL RULE**

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Long-term care (LTC) regulations were first published in 1989 and have not been comprehensively updated since 1991. The Centers for Medicare & Medicaid Services (CMS) has undergone a comprehensive update of the regulations to reflect the advances in theory and practice of service delivery and safety for LTC residence. These updates will be introduced over three phase periods from 2016-2019. Updating these regulations is an effort to improve Quality of Life, Health Care, Services and Patient safety. CMS recognizes the population has become more diverse and clinically complex, and the new regulations reflect an understanding of this change. An underlying theme of the new regulations is Person-centered care with the resident having control of their care and making choices over their daily lives.

The new regulations will be phased-in over the next three years. Phase 1 includes new regulatory language added to existing F-tags. Phase 2 will include F-tag renumbering and additional regulations with interpretive guidance. The QIS and Traditional survey process will be updated in phase 2 with a new survey process that will be utilized in all states. Phase 3 will be the implementation of the final new regulations.

<b>Phase 1:</b>	The effective date of the final rule	11/28/16
<b>Phase 2:</b>	1 year following the effective date of the final rule	11/28/17
<b>Phase 3:</b>	3 years following the effective date of the final rule	11/28/19

CMS released S&C memo 17-07 NH that includes links for training and 3 resources. The draft appendix PP will provide an update of the new regulations only. The changes in appendix PP will be noted in Red. The Interpretive guidelines have not been updated at this time. The link for this Memo and resources is: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-17-07.html>

CMS has published a Training Link: <http://surveyortraining.cms.hhs.gov/pubs/ProviderTraining.aspx> Select **Phase 1 Implementation of New Nursing Home Regulations for Providers**. The training contains information regarding Phase 1 of the New Nursing Home Regulations that became effective starting November 28, 2016. This information addresses the new language included in the New Nursing Home Regulations, and how Phase 1 will be implemented. The interpretive guidelines have not been updated at this time, and will be released at a later date according to the release.

Let's review a few areas that have been updated. All existing resident rights have been retained and a number of additions to resident rights have been added including F162 residents receiving services under Medicaid and Medicare are not charged for Food and Nutrition services. A number of the rights added describe the rights of choice for the residents in different aspects of their care.

Resident assessment changes are scheduled for Phase 1. Assessment should include resident's strengths, goals, life history, and preferences. The assessment must include direct observation and communication with the resident, as well as communication with direct care staff on all shifts. Nutritional status should include but not limited to weight, height, hematological and biochemical assessments, clinical observations of nutrition, nutrition intake, resident eating habits and preferences, dietary restrictions, supplements and use of adaptive appliances.

Comprehensive Person-Centered Care Planning now requires a Nurse aide and member of the Food and Nutrition Services staff to be a member of the Interdisciplinary team that develops the patient care plans. Other members include the attending physician, RN, resident, resident representative, and other appropriate staff determined by the residents needs or requested by the resident. Discharge Planning is a new focus of the care planning process which should be initiated at admission. The discharge plan should represent the resident discharge goals and needs.

The Baseline Care Plans will be implemented in **Phase II**. The Baseline care plan must be developed within 48 hours of admission. Minimum healthcare information will need to be provided but not limited to: initial goals based on admission orders, physician orders, dietary orders, therapy services, social services, and PASARR recommendations if applicable. Communities may decide to develop a Comprehensive Care Plan in place of the baseline care plan within 48 hours. The resident and resident representative is to be provided with the baseline care plan.

**483.30 Order Writing** - 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 as defined by State law and is under the supervision of the physician. The surveyors training indicates the surveyor must verify the states regulations regarding order writing status and dietitians cannot write orders if not allowed under State law.

**483.60 Food and Nutrition Services** Dietary has been renamed Food and Nutrition Services (FNS) in the regulations! (Items that are new are italicized)

Overall theme of 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*. Please note that preference is a very important theme in the new regulations.

The facility must employ *sufficient staff with appropriate competencies and skills sets to carry out the functions of the food and nutrition services, 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*. Sufficient staff may be defined as ability to provide timely meal service, food that is served at an appropriate temperature and in an appetizing form, available assistance for

residents who require assistance to eat a meal, as well as resident –specific issues such as unintended weight loss and dehydration may all be indicators considered when determining if a facility has sufficient staffing. The facility assessment tool noted above will be conducted in phase 2 and should be utilized to determine sufficient staff based on the resident population and other pertinent information.

The requirement is that a facility employ a qualified dietitian or *other clinically qualified nutrition professional* on a full-time, part-time or consultant basis. The regulations specify the requirements to meet the designation of qualified dietitian or clinically qualified nutrition professional and allowed up to 5 years if hired or contracted prior to November 28, 2016 to meet these requirements. Allowed 1 year if hired after November 28, 2016.

FNS If there is not a full-time *dietitian or clinically qualified nutrition professional*, then there must be one of the following:

- *a CDM or CFSM or similar national certification for food service management and safety from a national certifying body, or*
- *has an Associate degree or higher in FS management or in hospitality if the course study includes Food Service or Restaurant management and if required, by the State requirements if applicable.*
- *Receives frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional.*

*The Director of Food and Nutrition Services hired prior to November 28, 2016, has 5 years for the facility to ensure they have the regulatory required qualifications. The FNS Director hired after November 28, 2016 has one year to ensure they have the regulatory required qualifications.*

**F322 Assisted Nutrition and Hydration** (Includes NG, gastrostomy tubes, both percutaneous endoscopic gastrostomy and percutaneous endoscopic jejunostomy and enteral fluids). The updated information requires a facility to ensure a resident who has been able to eat enough alone or with assistance is not fed by enteral methods unless the resident clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident. 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.

**F325 Assisted Nutrition and Hydration** – Based on a resident’s comprehensive assessment the facility must ensure that a resident maintains acceptable parameters of nutrition 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. Is offered* a therapeutic diet when there is a nutritional problem *and the health care provider orders a therapeutic diet.*

**F327 Assisted Nutrition and Hydration.** Based on a Residents comprehensive assessment, the facility must ensure that resident is offered sufficient fluid intake to maintain proper hydration and health. The change in the regulation is the term “offered”. The intent of this regulation is to assure that the resident offered sufficient amount of fluids based on individual needs to prevent dehydration.

An example they provided, water pitchers in the room may not be sufficient if not offered to the resident.

**F363** Menus should *reflect based on facility's reasonable efforts the religious, cultural and ethnic needs of the resident population as well as input received from residents or resident groups*. Beverages should meet the resident's preferences and their hydration needs. Menus must meet the nutritional needs of residents in accordance with *established national guidelines*. Prepared in advance, be followed, *be updated periodically, and be reviewed by the facility dietitian or other clinically qualified nutrition professional for nutritional adequacy*. *Nothing should limit the resident's right to make personal dietary choice*. The new regulations clearly state the resident right to make choice is a high priority. The facility assessment in phase II should be utilized to plan menus based on religious, cultural and ethnic needs.

**F364** Food is prepared by methods that conserve nutritive value, flavor or appearance. Food and drink is palatable, attractive and served at a *safe and appetizing temperature*. Food is prepared in a form designed to meet individual needs (texture). *Food and beverage should accommodate resident allergies, intolerance and preferences*. Drinks, including water and other liquids are consistent with resident needs and preferences and sufficient to maintain resident hydration.

**F368 Meal Frequency** – Residents 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*. There must be no more than 14 hours between a substantial evening meal and breakfast that following day, except when a nourishing snack is served *at bedtime*, up to 16 hours may elapse if resident group agrees to this meal plan.

The facility must *provide suitable nourishing alternative meals and snacks for each resident who want to eat at non-traditional times or outside of the facility's scheduled meal service times in accordance with their respective plans of care*. *Food must be suitable nourishing and consistent with care plan*.

**F369** The facility must provide special eating equipment and utensils provide for residents who need these devices and provide *the appropriate staff assistance to ensure these residents can use the assistive devices when consuming meals and snacks*. The change noted in this tag is the resident ability to use the adaptive equipment and the need for the equipment at meals and snacks.

**F371 Food Safety Requirements** - *Clarifies that facilities could procure food directly from local producers, farmers or growers in accordance with state and local laws or regulations*. *Clarifying would not prohibit or prevent facilities from using produce grown in facility gardens, subject to compliance with applicable safe growing and handling practices such as the use of pesticides in accordance with manufacturer's instructions*. **NEW** – *require a facility to have a policy in place regarding use and storage of foods brought to residents by visitors to ensure safe and sanitary handling*.

Facility must store, prepare, distribute and serve food *in accordance with professional standards for food service safety*.

**F373 Paid feeding assistants** - the interdisciplinary team (*IDT*) is responsible to determination of whether a paid feeding assistant would be appropriate for a resident. Training and supervision is defined in the regulations.

**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 is designed in phase 3. Phase 2 the 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.

**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).

**483.55 Dental Services** - Must have a policy identifying those circumstances when the loss or damage of dentures is the facility responsibility and may not charge a resident for the loss or damage of dentures determined in accordance with facility policy (phase 2). Must promptly, within 3 days refer residents with lost or damaged dentures for dental services. If a referral does not occur within 3 days, the facility must provide documentation of what they did to ensure the resident could still eat and drink adequately while waiting dental services (phase 2)

Additional regulation changes are noted in appendix PP. I would suggest downloading the resources published by CMS to familiarize yourself with the new regulations. This will be a journey as the regulations, interpretive guidelines, and new survey process evolve over the next three years.

## **CMS Final Rule: Highlights for Food and Nutrition Services**

**Dana Fillmore, RD**

CMS recently released the Federal Register – Reform of Requirements for Long-Term Care Facilities Final Rule. Phase one of implementation was effective starting November 28th 2016. The State Operations Manual Appendix PP has been updated to highlight the new language for phase one. It is important to note that for this phase the F-tag numbering system will not change. The new regulatory language was incorporated into the existing numbering system.

The following is a summary of CHANGES in the regulations as they relates to Food and Nutrition Services.

- F284 The interdisciplinary team (IDT) must begin discharge planning on admission, including assessment of the resident's goals.
- F322 (Assisted Nutrition and Hydration) The updated information requires that a resident who has been able to eat enough is not fed by enteral methods unless the clinically indicated and consented to by the resident. 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.
- F325 (Assisted Nutrition and Hydration) Identifies acceptable parameters of nutrition status 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. Highlights that therapeutic diet is offered when a health care provider orders it.
- F327 (Assisted Nutrition and Hydration) The change is the addition of the word "offered" in the term "offered sufficient fluid intake." The intent is to assure that the resident is offered sufficient amount of fluids to prevent dehydration.
- F360 This section has been renamed from "Dietary" to "Food and nutrition services". The change is a focus on meeting preferences of each resident.
- F361 Explicit qualifications and timelines are listed for the Director of Food and Nutrition Services if a dietitian or "*other clinically qualified nutrition professional* " is not employed full-time. State requirements for food service or dietary managers must be followed. See the ANFP resources below for further information.
- F362 A member of the Food and nutrition services staff must participate on the interdisciplinary team. The words "safely and effectively" were added preceding "carry out the functions of the food and nutrition service." (Also reference F280)
- F363 Menus and Nutritional Adequacy - The updates to this section bring a few points to our attention.

- Clarifies that established national guidelines shall be used to assure menus meet nutritional needs. The previous version stated that the menus must be in accordance with the RDA of Food and Nutrition Board of the National Research Council, National Academy of Sciences
- Requires that you take reasonable efforts to assure menus meet the residents religious, cultural and ethnic needs. It also specifies that input must be received from residents.
- Mandates that menus should be updated periodically, and reviewed by approved staff.
- Highlights the residents right to make personal choices

- F364 This section was expanded to include meeting hydration needs and preferences regarding beverages. The language includes a new mention of “a safe and appetizing temperature for food and drink.
- F366 Explicit requirements are listed for accommodating allergies, intolerance and preferences to food and drink. A key word added here is that options for those that request of different meal choice must be “appealing”. This section also stresses beverages, including water, to maintain hydration.
- F367 The attending physician may delegate the task of prescribing a resident’s diet to a registered or licensed dietitian to the extent allowed by State law, and must be under supervision of the physician. (Also see F390)
- F368 The main change highlighted here is that alternative meals/snacks must be provided to residents that request to eat outside of traditional/scheduled times. These options should be meet preferences and be consistent with the care plan.
- F369 Appropriate assistance should be provided to those using assistive devices at meals and snacks.
- F371 This section clarifies three key points:
- Foods from local producers must meet applicable state/local rules.
  - Produce from own gardens must be handled safely.
  - Residents are able to have foods from outside. A policy is required regarding the use and storage of these foods.
- F373 The interdisciplinary team is responsible for assessing the need for a feeding assistant, and the rationale for use of feeding assistant program should be reflected in the care plan.
- F520 A quality assurance and performance improvement (QAPI) program must be in place by phase 3. Discussion in this section includes whether the facility has trained staff (including food and nutrition services) in how to communicate with and address behaviors in residents with dementia. (See F495, F497, F498)

## **Resources:**

### **Federal Register – Reform of Requirements for Long-Term Care Facilities Final Rule**

<https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>

**Advance Copy Appendix PP (including FTAG job aid)**

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-17-07.html?DLPage=1&DLEntries=10&DLSort=2&DLSortDir=descending>

**CMS Surveyor Training Phase 1 Implementation of New Nursing Home Regulations for Providers**

<http://surveyortraining.cms.hhs.gov/pubs/ProviderTraining.aspx>

**Academy of Nutrition and Dietetics** "Practice Tips: Reform Requirements for the RDN in Long Term Care Facilities," <http://www.eatrightpro.org/resource/news-center/in-practice/quality-and-coverage/practice-tip-released-in-preparation-for-cms-regulations>

**Dietetics in Healthcare Communities** [www.dhccdpg.org](http://www.dhccdpg.org)

**Association for Nutrition and Food Professionals**

<http://www.anfponline.org/news-resources/anfp-news/news-details/2016/09/30/cms-finalizes-new-ltc-regulations>