

Regulating Food Service in North Carolina's Long-Term Care Facilities

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*Based on a resident's comprehensive assessment, the facility must ensure that a resident: maintains acceptable parameters of nutritional status, such as body weight and protein levels... The facility must [also] provide each resident with sufficient fluid intake to maintain proper hydration and health.*¹ — United States Code of Federal Regulations

The provision of food service to residents is among the many regulated services in long-term care facilities. Long-term care facilities face a challenging task in providing three tasty, nutritious meals a day to their nearly 43,000 residents, each with special needs and preferences. In order to ensure that North Carolina's long-term care facilities provide these meals appropriately, North Carolina's long-term care facilities are regulated by the federal Centers for Medicaid and Medicare Services (CMS) through special delegated authority to the North Carolina Division of Facilities Services (DFS).

To understand how long-term care food services are regulated, one must first understand how these facilities are regulated in general. As part of the Social Security Act, Congress included a minimum set of quality and performance standards to regulate all long-term care facilities certified to receive Medicaid and Medicare funding.² This legislation covers everything from resident assessments to survey and certification processes to dietary services.

The duty of enforcing this legislation falls under the Centers for Medicare and Medicaid Services (CMS). CMS is also charged with drafting the specific regulations and manuals needed to implement the law. Title 42 of United States Code of Federal Regulations¹ contains the specific regulations long-term care facilities must comply with in order to qualify for federal reimbursement under Medicaid and Medicare. CMS contracts

with each state to inspect facilities, assess their regulatory compliance, and to oversee the licensure process. In North Carolina, the state Division of Facility Services (DFS) performs these functions.

Within the North Carolina DFS, the Licensure and Certification Section's primary responsibility is to ensure that citizens of North Carolina receive safe and adequate healthcare. The Section does this by conducting annual inspections of healthcare facilities, agencies, and clinical laboratories. Eighty percent of the Section's 150 employees are dedicated to performing these inspections, most of which take place in long-term care facilities.

This commentary provides an overview of federal (CMS) regulations pertaining to food service provision in nursing homes* and the criteria by which these services are evaluated. It also discusses how state regulatory processes address issues of food service and hydration in long-term care facilities, along with examples of how most facilities are dealing with common challenges in this area.

Understanding Federal and State Regulations

The federal regulations related to long-term care dining issues can be found in the United States Code of Federal Regulations, §483.15 (Quality of Life); §483.25 (Quality of Care); and §483.35 (Dietary Services).¹ To interpret the regulations, states use the CMS *State Operations Manual*, which includes detailed instructions to surveyors.³

* In this commentary, the term "nursing home" refers to an in-patient facility that provides skilled-nursing care 24 hours-per-day by licensed registered nurses.

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Preserving Resident Quality of Life

The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.¹

Each resident of a long-term care facility has the right to be treated with dignity and respect. Preserving resident dignity involves activities that help residents maintain their self-esteem and self-worth (i.e., assisting with grooming and appearance, promoting independence in dining). CMS expects the dining environment to be pleasant and for residents to have a positive dining experience. The dining room should be clean, people at the same tables should all be served at the same time, and the staff providing dining service should be courteous and helpful (i.e., not yelling across the room for assistance). Residents should not have to wear "bibs," and facilities should not serve food on paper plates or use plastic forks on a regular basis.

Tying in directly with the regulation to preserve dignity is a regulation to preserve resident food and beverage choice. Each resident has the right to make choices about his/her life and healthcare in the facility. Their choices include *where* they want to eat (e.g., in their room or in the dining room) and *what* they want to eat. The facility should educate residents about the risks of choosing not to follow a prescribed therapeutic diet. For example, diabetic residents often do not want to eat the 1,800-calorie American Dietetic Association diet. Most facilities have an NCS diet (No Concentrated Sweets) that is intended for diabetic residents. The NCS diet allows residents more food choices and freedom. Facilities also have the flexibility to change the types of foods offered at meals to accommodate the resident's choice.

The resident can choose to eat in his/her room versus in the dining room. If a resident would like to sleep late in the morning without skipping breakfast, this is their right. The facility should work with residents to honor this request and still have some type of breakfast available. It might not be the same breakfast that was served to the other residents at the scheduled mealtime, but as long as it meets the nutritional guidelines, it would be acceptable under federal and state regulations. Family members are also permitted to bring the resident food from home or restaurant. Family members are not permitted to bring food to be served to other long-term care residents.

Maintaining Quality Care

Each resident must receive, and the facility must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial

well-being, in accordance with the comprehensive assessment and plan of care.¹

With regard to dining, providing quality care is geared around the resident's ability to consume foods and fluids. Nursing homes are required to maintain acceptable parameters of nutrition, such as body weight and protein levels, based on the resident's clinical condition and risk status. This means that, if a resident experiences unplanned weight loss, the facility has to assess and implement strategies to ensure that the weight loss is not because of some avoidable issue, such as a resident having mouth pain while he/she eats. The facility has the responsibility of assuring that weight loss is clinically unavoidable. If the resident is losing weight because of a clinical condition, the facility still should assess and attempt interventions to maintain resident weight. Along with this comes the issue of the resident having the right to refuse food. In some instances

the resident may have a terminal illness and may opt to refuse food. Regardless of the resident's condition, all residents have the right to refuse food. If this happens, the facility should discuss food refusal with the resident (when possible), the resident's family, and the resident's physician to make sure that the resident's wishes are being honored. The facility should document the discussion in the resident's record

and support the decision that was reached.

Dehydration falls under the same regulatory requirements. The facility has to provide sufficient fluid intake to assure proper hydration and health. If residents with dementia cannot maintain their own hydration, facilities must offer fluids to these residents throughout the day, not just at meal times. If a resident decides to refuse liquids, he/she has the right to do so. Facilities should document the resident's desire to refuse liquids in his/her record. Facilities should also document that this choice has been discussed with the resident (when possible), the resident's family, and physician. The resident's wishes should be honored.

Dietary Services

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.¹

Regulations specified under Dietary Services address the following areas of food service provision: staffing, menus and nutritional adequacy, food, therapeutic diets, frequency of meals, assistive devices, sanitary conditions, and feeding tubes.

Staffing

Regulations for dietary services are designed with the general intent for facilities to provide each resident with a nourishing,

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palatable, well-balanced diet, which also meets the individual daily nutritional and special dietary needs of each resident. CMS requires facilities to have a qualified dietitian as indicated by Dietetic Registration of the American Dietetic Association or have the basis of education, training, and experience to identify residents' dietary needs, appropriately assess and plan, and help implement the dietary program. A qualified dietitian is not required to be at the facility on a full-time basis. Facilities that do not employ a full-time dietitian, must designate a person to serve as the director of food services. The director of food services must receive frequent consultation from a qualified dietitian. The regulations do not specify how often a consultation should occur, but consultations usually occur on a monthly basis. The facility must also employ sufficient support personnel who are competent to carry out the functions of the dietary services. DFS judges whether a facility has sufficient dining staff based on their ability to prepare and provide meals in a timely (e.g., quickly enough to ensure the food is served warm) and in an appropriate manner (e.g., all residents at one table are served at the same time). Facilities determine what works for them in terms of sufficient staffing.

Menus and Nutritional Adequacy

Facilities are required to have menus that meet the nutritional needs of residents in accordance with the recommended dietary allowance of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. In addition, all menus are to be prepared in advance and carefully followed.

Food

Each resident should receive food prepared by methods that conserve its nutritive values, flavor, and appearance. Food must be palatable, attractive, and served at the proper temperature. In other words, the facility has to cook the food in such a manner that it looks, tastes, and smells appetizing. To ensure that food is prepared and served in an appetizing manner, DFS depends, in large part, on the residents' and the residents' families' feedback to survey teams on how the resident and/or family perceives the food. How does the food taste? What does it look like? Does it smell good?

DFS surveyors find that food is a serious concern to residents. Mealtime is a social time and a time when residents interact with each other. DFS survey teams routinely ask resident's how they like the food. The question opens up an important dialog between surveyors and residents and helps establish credibility for surveyors. Meal times are a highlight of many residents' days, and it is important that residents are satisfied with this general category of service offered by the facility in which they live.

Therapeutic Diets

The food has to be prepared in a form designed to meet individual needs. Some residents, for example, have no teeth, and therefore must have their food chopped or pureed (mechanically altered). A physician, in conjunction with the nursing home staff, may prescribe a therapeutic or mechanically altered diet.

The facility must have substitution foods of similar nutritive value available to residents who refuse to eat the foods routinely served in their prescribed diets. The staff should offer these substitutions to the resident whenever this occurs.

Frequency of Meals and Snacks

CMS regulations require long-term care facilities to provide three meals a day at regularly scheduled times, which are comparable to mealtimes in the community. There must be no more than 14 hours between a substantial evening meal and breakfast the following day. Each day a snack must be offered at bedtime. When a nourishing snack is provided at bedtime, then the facility may have 16 hours between the evening meal and breakfast the following day, if a resident group agrees to this meal span. Snacks vary from graham crackers and juice to fruit and milk to other types of healthy snacks. The facility must offer snacks to residents each night. Residents also may have their own snacks in the facility. Proper storage is an important consideration to lessen the chance of pests. The key idea related to both meals and snacks is choice. Facilities in North Carolina have gone to great lengths not to impose simple "one-size-fits-all" approaches with regard to both meals and snacks.

Assistive Devices

Assistive devices, or special eating equipment, may help residents who have functional limitations. The facility must provide special eating equipment and utensils for residents who need them. This would include items such as large-handled/easy grip forks and spoons, plate guards that help keep food on the plate, or postural supports that help residents with positioning.

Sanitary Conditions

In addition to federal laws, long-term care facilities must also follow state laws with regard to sanitation and safe food handling. The Departments of Environment and Natural Resources and the Division of Public Health work together to meet this public health need. County inspectors grade all the nursing home food service departments just like they do restaurants.

To comply with federal regulations, long-term care facilities must procure food from sources approved or considered satisfactory by federal, state, or local authorities. Food must be stored, prepared, distributed, and served under sanitary conditions. The facility must also properly dispose of garbage and refuse. Elderly people are often immuno-compromised and, therefore, are more susceptible to food-borne illnesses, so these stringent requirements are applied. However, this does not mean that families cannot bring food into the facility. Many families bring food to residents, and it is an acceptable practice. In addition, facilities may have fresh seasonable vegetables and other seasonal meals as long as they come from approved sources. There are no regulations that prohibit this practice. Facilities have great latitude in being able to provide meals that meet standard nutritional guidelines, but still meet the unique likes and dislikes of their specific resident populations.

Feeding Tubes

Residents who have feeding tubes or are at risk for weight loss or dehydration must also have special protections. Facilities are not to place and feed a resident by naso-gastric tube unless the resident's clinical condition makes it unavoidable, and if a resident requires this type of feeding over the long term, a gastrostomy tube would be considered. These regulations also make sure the facility is providing the correct treatment and services to maintain this form of feeding. This includes placement of the tubes, monitoring of intake for proper nutritive levels, and total management of the feeding tube functionality.

State Survey Teams

DFS survey teams visit each facility periodically (no less than once per year) to ensure that all facilities comply with the regulations pertaining to the operation of a nursing home. Federal survey teams may also visit these same nursing homes. While federal survey teams typically visit a facility only after a state survey team has noted deficiencies, federal survey teams may visit facilities at any time for any reason.

DFS surveys teams generally include four-to-five professionals—a combination of nurses, dietitians, social workers, and pharmacists. The annual surveys inspect the overall care in the nursing home, which includes using a variety of indicators, such as pressure sores, dehydration, abuse, and nutrition. Inspections typically take three days, and DFS conducts at least 15% of the inspections during weekends, evening, and/or early morning hours. Surveyors observe; review facility documentation; and interview residents, families, and staff to make their determinations. To determine if there is a “deficiency,” the surveyors consider the outcome, what occurred, why it occurred, how often it occurs, the impact, whether the facility has resolved the problem, if they facility knew there was a problem, etc.

If the survey team finds that a nursing home is out of compliance with any regulation or standard (including patients' rights violations), DFS cites the facility for a violation. The facility must then submit a response/plan of correction to DFS

for approval. DFS will conduct another survey to make sure the facility implemented corrective action. If a facility fails to implement corrective action, they may be subject to state and/or federal sanctions and fines. In worst case scenarios, facilities might be required to suspend new admissions, have a temporary manager appointed to operate the facility, or have their license revoked. Fines range from \$50.00 to \$10,000.00 a day. However, in most cases, the facility corrects the problem promptly and is not sanctioned or fined. Facilities also have the right to appeal any deficiency that they incur.

Summary

Other commentaries in this issue of the *North Carolina Medical Journal* describe innovative food and dining practices in some of our state's long-term care facilities.^{4,5} Federal and state regulations do not prohibit these innovations, and DFS supports the concept of “enhancements” of the dining experience in these facilities. The Division of Facilities Services, therefore, encourages facilities to assess and operationalize various dining methods, allowing residents to select their foods, dining times, dining partners, and other preferences. The regulations allow facilities to utilize innovative dining approaches, such as buffet lines, or family-style serving options, which allow residents to order at the table as they would in a restaurant. The regulations do not dictate whether facilities should serve food to residents on trays, in buffet lines, or in a family style. While there are many regulations, they leave room for innovative new ideas as long as these ideas do not compromise resident health or safety.

Food consumption and the dining experience are an integral part of the resident's life in a nursing facility. It is important that resident preferences are being honored, and the dining experience is as pleasant and home-like as possible. The facility's responsibility is to provide adequate nutrition and hydration that assures the resident is at his/her highest level of functioning emotionally, functionally, and physically. Meeting the unique needs of each resident in a facility can be a daunting task, but one of immense importance to the quality long-term care. **NCMedJ**

REFERENCES

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