



Office of Inspector General/Office
of Health Facility Licensure &
Certification

Public Comments on the Nursing Home Licensure Rule
(71CSR15)

#	Rule Section	By Whom?	Comment	Response to Comment
1	8.15.4	West Virginia Academy of Nutrition and Dietetics	The current regulations require that therapeutic diets be ordered by a physician. While the West Virginia Academy of Nutrition and Dietetics supports maintaining the physician's authority in this area, we recommend amending the regulations to allow registered dietitians, when delegated by a physician, to order diets. Specific language was also recommended.	The Office of Inspector General has reviewed this comment. Existing provisions in this rule address this issue sufficiently, therefore, no changes were made. We are unaware of nursing homes experiencing problems obtaining diets prescribed by a physician. We do acknowledge that dietitians, as well as other disciplines such as speech therapy teams, all play an integral part in working with the physician to provide recommendations related to, but not limited to, diet type, texture modifications, nutrient restrictions, and specialized needs, and develop appropriate diets for nursing home residents.
2	8.15.5	West Virginia Academy of Nutrition and Dietetics	The current regulations require that therapeutic diets be ordered by a physician. While the West Virginia Academy of Nutrition and Dietetics supports maintaining the physician's authority in this area, we recommend amending the regulations to allow registered dietitians, when delegated by a physician, to order diets. Specific language was also recommended.	The Office of Inspector General has reviewed this comment. Existing provisions in this rule address this issue sufficiently, therefore, no changes were made. We are unaware of nursing homes experiencing problems obtaining diets prescribed by a physician. We do acknowledge that dietitians, as well as other disciplines such as speech therapy teams, all play an integral part in working with the physician to provide recommendations related to, but not limited to, diet type, texture modifications, nutrient restrictions, and specialized needs, and develop appropriate diets for nursing home residents.

July 23, 2025

Jessica Y. Whitmore
Jessica.y.whitmore@wv.gov
State Capitol complex

Re: Nursing Home Licensure

Dear Ms. Whitmore:

The West Virginia Academy of Nutrition and Dietetics (the “WV Academy”) is pleased to provide comments on proposed amendments to the Nursing Home Licensure regulations. Representing 409 registered dietitians (RDs), and dietetic technicians, registered (DTRs), the WV Academy is committed to accelerating improvements in global health and well-being through food and nutrition.

We appreciate the Office of the Inspector General’s (the “Office”) aim to update and clarify the regulations for nursing homes with the intent of making them consistent with federal regulations. We are supportive of many of these changes and believe these revisions will support the Office in achieving its stated aims. With that acknowledged, we offer the following comments for consideration to further align these rules with federal regulations.

8.15. Dietary Services

8.15.5.

The current regulations provide that regular and therapeutic diets shall be ordered by a physician. While we support the physician having authority to order therapeutic diets, consistent with the scope of practice of the registered dietitian, we recommend adding dietitians, as delegated by the physician, to the list of providers who may order a diet.

In 2014 the Center for Medicare Services (CMS) made changes to Title 42, § 482.28 of the Code of Federal Regulations, which addresses hospitals, to provide, “All patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff and in accordance with State law governing dietitians and nutrition professionals.” (emphasis added) Following much of the same reasoning that was laid out in the 2014 rules, in 2016 CMS published **a final long-term care rule under Title 42 of § 483.60(e)** that provides:

- (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.¹

In justifying this change, CMS stated:

We believe qualified dietitians and other clinically qualified nutrition professionals are well qualified to assess a resident's nutritional status and design and implement a nutritional treatment plan in consultation with the resident's interdisciplinary team. In order for residents to receive timely nutritional care, the qualified dietitian or other clinically qualified nutrition professional must be viewed as an integral member of the IDT [Interdisciplinary Team] who, as the team's clinical nutrition expert, is responsible for a resident's nutritional evaluation and treatment in light of the resident's medical diagnosis.²

CMS recognized dietitians as the “clinical nutrition expert” and “integral member of the interdisciplinary team” and as such, authorized a practical and accountable mechanism for efficaciously ordering patient diets in long-term care facilities.³ Registered Dietitian (RD) training and education best qualifies them to order patient diets both upon admission and after a nutrition assessment that considers the connection between patients’ complex medical problems, nutrition status, and actual nutrition risk.

CMS’s authorization comports with the Academy of Nutrition and Dietetics’ Revised 2024 Scope of Practice for the Registered Dietitian (RD), which specifies the RD may “[o]rder and monitor evidence-based nutrition interventions to meet person-/population-centered nutrient and energy needs, including but not limited to prescribed diets; medical food/nutrition supplements; dietary supplements; nutrition support therapies such as enteral nutrition and parenteral nutrition support, nasoenteric feeding tube placement, and provide feeding therapy (pediatric oral aversion).”

When dietitians can independently enter a therapeutic diet order, nutritional delays are reduced and fewer burdens are placed on providers. Although CMS acknowledged in the final long-term care rule that it did not have data to accurately estimate the savings that would be produced by allowing dietitians to order therapeutic diets,⁴ in the 2014 hospital therapeutic diet order rule CMS

¹ It is noted the rule indicates that the “attending physician” must be the one to delegate the authority for writing therapeutic diet orders to the dietitian. However, in the “Revision to State Operations Manual (SOM) Appendix PP for Phase 2, F-Tag Revisions, and Related Issues” effective November 28, 2017, CMS provided guidance on this issue as part of F808. In long-term care facilities, the terms “attending physician” or “physician” also include a non-physician provider (physician assistant, nurse practitioner, or clinical nurse specialist) involved in the management of the resident's care.”

² Medicare and Medicaid Programs; Reform of Requirements for Long-Term Facilities, 80 Fed. Reg. 42168 (July 16, 2015) (codified at 42 CFR 483.60), available at <https://www.federalregister.gov/d/2015-17207> (hereinafter, “CMS Long-Term Care TDO Proposed Rule”).

³ CMS Long-Term Care TDO Proposed Rule.

⁴ Medicare and Medicaid Programs; Reform of Requirements for Long-Term Facilities, 81 Fed. Reg. 68845 (October 4, 2016) (codified at 42 CFR 483.60), available at <https://www.federalregister.gov/d/2016-23503/page-68845> (hereinafter, “CMS Long-Term Care TDO Final Rule”).

cited studies that confirmed allowing dietitians to independently write diet orders, so long as consistent with state law, would produce substantial cost savings for hospitals, allow dietitians to see and treat more patients, and reduce delays in the ordering of therapeutic diets (including nutritional supplements), particularly PN and EN diet orders, complex infant formula orders, and in the monitoring of associated lab parameters.⁵

As such, CMS made clear the benefits it believed were conferred by the long-term care rule: “Without allowing for the delegation for writing diet orders to qualified dietitians or other clinically qualified nutrition professionals, nursing homes will not be able to effectively realize the improved resident outcomes and overall cost savings that we believe would be possible with these changes.”⁶ However, CMS highlighted that this rule did not eliminate the need for oversight, accountability, and state authority. Specifically, CMS stated:

While the statute requires physician supervision of each resident's nursing home care, we believe that the physician can delegate authority to a dietitian or other clinically qualified nutrition professional to write dietary orders, so long as the authority is consistent with dietitian or other clinically qualified nutrition professional practice allowed under state law. In this instance, the physician is responsible for making the decision of whether or not to delegate this task and remains responsible for the resident's care even if the task is delegated. Further, if necessary, the physician would be able to modify a diet order with a subsequent physician order. We believe this is consistent with other tasks that the physician may delegate and may allow for more efficient use of physician time and effort and more frequent assessment and updating of diet orders by an on-site dietitian or other clinically qualified nutrition professional.⁷

CMS's final rule recognizes both the need and rationale for dietitians' broadly autonomous practice in this regard, while assuring oversight and accountability.⁸

Recommendations

8.15.4. Food. A nursing home shall provide each resident with:

8.15.4.a. Food prepared by methods that conserve nutritive value, flavor, and appearance;

⁵ Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II, 79 Fed. Reg. 27105 (May 12, 2014) (codified at 42 CFR 482.28), available at: <https://www.federalregister.gov/d/2014-10687> (hereinafter, “CMS Hospital TDO Final Rule”). There are significant cost savings when dietitians order and monitor PN usage. The appropriate selection of route of nutrition support (i.e., EN versus PN) can be associated with decreased complications and mortality rates. It also decreases costs; CMS references the Peterson et al study noting a 50% reduction in inappropriate PN usage during pre- and post-ordering privilege periods produces a 20% cost savings in PN usage totaling \$300,000 over two years for a single hospital. Peterson SJ, Chen Y, Sullivan CA, et al. Assessing the influence of registered dietician order--writing privileges on parenteral nutrition use. JAM Diet Assoc. 2010; 110; 1702–1711, doi: <https://doi.org/10.1016/j.jada.2010.08.003>

⁶ CMS Long-Term Care TDO Proposed Rule.

⁷ CMS Long-Term Care TDO Proposed Rule.

⁸ See CMS Long-Term Care TDO Final Rule.

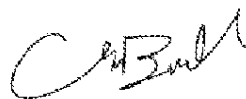
- 8.15.4.b. Meals shall be prepared and served the same day;
- 8.15.4.c. Food that is palatable, attractive, and at the proper temperature;
- 8.15.4.d. At the time of receipt by the resident, foods shall be at a temperature of no less than 120° F for hot foods and at no more than 50° F for cold foods;
- 8.15.4.e. Food prepared in a form designed to meet individual needs;
- 8.15.4.f. Food substitutes of similar nutritive value for food the resident refuses;
- 8.15.4.g. Food prepared with seasoning, unless contraindicated by a physician's or dietitian's order; and
- 8.15.4.h. Iodized salt, if used.
- 8.15.5. Diets including regular diets. All residents shall have a physician's order for the specific type of diet he or she is to receive as set forth in the nursing home's diet manual. Physicians may delegate the authority to order regular and therapeutic diets to a dietitian.
 - 8.15.5.a. Therapeutic and texture modified diets shall be served to residents in accordance with physician's or dietitian's orders.
 - 8.15.5.b. Nursing personnel shall advise food service in writing of each resident's diet order, and a copy of the order shall be kept on file for at least one year.
 - 8.15.5.c. Therapeutic Diets. Therapeutic diets shall be prescribed by the attending ~~physician-~~ physician, or by a dietitian to whom the physician has delegated this authority. A current therapeutic diet manual that is not more than five years old and is approved by the dietitian shall be available for nursing personnel and physicians.
 - 8.15.5.d. Recognizing that the resident has the right to refuse medical treatment, all residents have the right to request substitute foods even when this violates the physician's or dietitian's orders.
 - 8.15.5.d.1. A nursing home shall provide education to the resident regarding the benefits of the prescribed diet and consequences of his or her refusal to eat the prescribed diet.
 - 8.15.5.d.2. A nursing home shall document the informed decision in the resident's clinical record.

The WV Academy appreciates the opportunity to provide these comments and is happy to work with the Office to provide further explanation as to any of our comments. Please feel free to reach out to Rebecca Dattola or Charla Burill with any questions or requests for additional information.

Sincerely,



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