PRACTICE TIPS: Reform Requirements for RDNs and NDTRs in Long Term Care Facilities

STEPS to prepare for implementation of revised Regulations

1. CMS released revised Requirements for Participation for Medicare and Medicaid-certified nursing facilities on September 28, 2016. Review the FINAL RULE by the Centers for Medicare & Medicaid Services (CMS) - Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities. Use the CMS Final Rule link to review: https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaidprograms-reform-of-requirements-for-long-term-care-facilities

   • Most regulatory sections have been revised and re-designated per the final rule. The regulation text is effective November 28, 2016.
   • Table 1: Title 42 Cross-Reference to Part 483 Subpart B in the final rule lists the previous and new regulation.
   • Most regulations groups were re-designated and have new numbers.
   • Revisions to State Operations Manual (SOM) Appendix PP: CMS has incorporated revised regulation text into the SOM Appendix PP.
   • Revised F-Tags: The current F-Tags have been revised to include the requirements and regulation text as is presented in the final rule.
   • The final rule also stipulated that regulations will be effective through three different phases from November 28, 2016 through November 28, 2019. The phases and their effective dates are as follows:
     1) Phase 1 – November 28, 2016 = upon the effective date of the final rule.
     2) Phase 2 – November 28, 2017 = 1 year following the effective date of the final rule.
     3) Phase 3 – November 29, 2019 = 3 years following the effective date of the final rule.

2. Assess State Practice Act, Certification, or Title Protection laws for Dietitian Nutritionist for the State in which you provide care and services.
   • Find your State Law – Practice Acts, Title Protection or Certification via the State Licensure Agency Contact List link: http://www.eatrightpro.org/resource/advocacy/quality-health-care/consumer-protection-and-licensure/state-licensure-agency-contact-list
   • Outcome of review will determine how the RDN practitioner who is license or certified in the State will proceed.

4. Contact your **State Affiliate Academy of Nutrition and Dietetics** to work with the RDN members of their Public Policy Panel for latest update. Use the **Affiliate** link to select your State: [http://www.eatrightpro.org/resource/membership/academy-groups/affiliates/state-affiliates](http://www.eatrightpro.org/resource/membership/academy-groups/affiliates/state-affiliates).


6. Note service, responsibilities and job function changes in regulations pertaining to food service, dietitians and other nutrition professionals which includes dietetic technicians as well as support and administrative staff in Long Term Care facilities.

   - Revisions in the **State Operations Manual (SOM), Appendix PP Revised Regulations and Tags** are *italicized* and in **red color**.

7. **Listed below are highlighted sections to Note for Food and Nutrition Services – RDNs and NDTRs in the State Operations Manual (SOM):**

   1) Pages 44 – 45 - §483.10(f)(11) - The facility must not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts).

   - (i) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, facilities must not charge a resident for the following categories of items and services: (A) Nursing services as required at §483.35. (B) Food and Nutrition services as required at §483.60.

   - (L) Except as provided in (e)(11)(ii)(L)(1) and (2) of this section, specially prepared or alternative food requested instead of the food and meals generally prepared by the facility, as required by §483.60. (1) The facility may not charge for special foods and meals, including medically prescribed dietary supplements, ordered by the resident’s physician, physician assistant, nurse practitioner, or clinical nurse specialist, as these are included per §483.60. (2) In accordance with §483.60(c) through (f), when preparing foods and meals, a facility must take into consideration residents’ needs...
and preferences and the overall cultural and religious make-up of the facility’s population.

2) Page 170 - F289 - §483.21(b)(3) Comprehensive Care Plans

• §483.21(b)(3) Comprehensive Care Plans - The services provided or arranged by the facility, as outlined by the comprehensive care plan, must— (i) Meet professional standards of quality. Intent The intent of this regulation is to assure that services being provided meet professional standards of quality (in accordance with the definition provided below) and are provided by appropriate qualified persons (e.g., licensed, certified).

Interpretive Guidelines

• “Professional standards of quality” means services that are provided according to accepted standards of clinical practice.
  o Standards may apply to care provided by a particular clinical discipline or in a specific clinical situation or setting.
  o Standards regarding quality care practices may be published by a professional organization, licensing board, accreditation body or other regulatory agency.
  o Recommended practices to achieve desired resident outcomes may also be found in clinical literature.
  o Possible reference sources for standards of practice include:
    • Current manuals or textbooks on nursing, social work, physical therapy, etc.
    • Standards published by professional organizations such as the American Dietetic Association, American Medical Association, American Medical Directors Association, American Nurses Association, National Association of Activity Professionals, National Association of Social Work, etc.
    • Clinical practice guidelines published by the Agency of Health Care Policy and Research.
    • Current professional journal articles

3) Pages 142 -146 - F272 - §483.20(b) Comprehensive Assessments

• (1) Resident Assessment Instrument. A facility must make a comprehensive assessment of a resident’s needs, strengths, goals, life history and preferences, using the resident assessment instrument (RAI) specified by CMS.
• The assessment must include at least the following: (i) Identification and demographic information (ii) Customary routine (iii) Cognitive patterns (iv) Communication (v) Vision (vi) Mood and behavior patterns (vii) Psychological well-being (viii) Physical functioning and structural problems (ix) Continence (x) Disease diagnosis and health conditions (xi) Dental and nutritional status (xii) Skin Conditions (xiii) Activity pursuit (xiv) Medications (xv) Special treatments and procedures (xvi) Discharge planning (xvii) Documentation of summary information regarding the additional assessment performed on the care areas triggered by the completion of the Minimum Data Set (MDS). (xviii) Documentation of participation in assessment. The assessment process must include direct observation and communication with the resident, as well as communication with licensed and non-licensed direct care staff members on all shifts.
  o (xv) Special treatments and procedures
    a. “Special treatments and procedures” refers to treatments and procedures that are not part of basic services provided. For example, treatment for pressure sores, naso-gastric feedings, specialized rehabilitation services, respiratory care, or devices and restraints.
  o (xi) Dental and nutritional status
    a. “Dental condition status” refers to the condition of the teeth, gums, and other structures of the oral cavity that may affect a resident’s nutritional status, communication abilities, or quality of life. The assessment should include the need for, and use of, dentures or other dental appliances.
    b. “Nutritional status” refers to weight, height, hematologic and biochemical assessments, clinical observations of nutrition, nutritional intake, resident’s eating habits and preferences, dietary restrictions, supplements, and use of appliances.

4) Pages 378-405 - F325 - § 483.25(g) Assisted nutrition and hydration (Includes naso-gastric and gastrostomy tubes, both percutaneous endoscopic gastrostomy and percutaneous endoscopic jejunostomy, and enteral fluids). Based on a resident’s comprehensive assessment, the facility must ensure that a resident—
   • (1) Maintains acceptable parameters of nutritional status, such as usual body weight or desirable body weight range and electrolyte balance, unless the resident’s clinical condition demonstrates that this is not possible or resident preferences indicate otherwise;
   • (3) Is offered a therapeutic diet when there is a nutritional problem and the health care provider orders a therapeutic diet.
INTENT
The intent of this requirement is that the resident maintains, to the extent possible, acceptable parameters of nutritional status and that the facility:
• Provides nutritional care and services to each resident, consistent with the resident’s comprehensive assessment;
• Recognizes, evaluates, and addresses the needs of every resident, including but not limited to, the resident at risk or already experiencing impaired nutrition; and
• Provides a therapeutic diet that takes into account the resident’s clinical condition, and preferences, when there is a nutritional indication.

DEFINITIONS
Definitions are provided to clarify clinical terms related to nutritional status.
• “Acceptable parameters of nutritional status” refers to factors that reflect that an individual’s nutritional status is adequate, relative to his/her overall condition and prognosis.
• “Albumin” is the body’s major plasma protein, essential for maintaining osmotic pressure and also serving as a transport protein.
• “Anemia” refers to a condition of low hemoglobin concentration caused by decreased production, increased loss, or destruction of red blood cells.
• “Anorexia” refers to loss of appetite, including loss of interest in seeking and consuming food.
• “Artificial nutrition” refers to nutrition that is provided through routes other than the usual oral route, typically by placing a tube directly into the stomach, the intestine or a vein.
• “Avoidable/Unavoidable” failure to maintain acceptable parameters of nutritional status:
  o “Avoidable” means that the resident did not maintain acceptable parameters of nutritional status and that the facility did not do one or more of the following: evaluate the resident’s clinical condition and nutritional risk factors; define and implement interventions that are consistent with resident needs, resident goals and recognized standards of practice; monitor and evaluate the impact of the interventions; or revise the interventions as appropriate.
  o “Unavoidable” means that the resident did not maintain acceptable parameters of nutritional status even though the facility had evaluated the resident’s clinical condition and nutritional risk factors; defined and implemented interventions that are consistent with resident needs, goals and recognized standards of practice; monitored and evaluated the impact of the interventions; and revised the approaches as appropriate.
• “Clinically significant” refers to effects, results, or consequences that materially affect or are likely to affect an individual’s physical, mental, or psychosocial well-being either positively by preventing, stabilizing, or improving a condition or reducing a risk, or negatively by exacerbating, causing, or contributing to a symptom, illness, or decline in status.
• “Current standards of practice” refers to approaches to care, procedures, techniques, treatments, etc., that are based on research or expert consensus and that are contained in current manuals, textbooks, or publications, or that are accepted, adopted or promulgated by recognized professional organizations or national accrediting bodies.
• “Dietary supplements” refers to nutrients (e.g., vitamins, minerals, amino acids, and herbs) that are added to a person’s diet when they are missing or not consumed in enough quantity.
• “Insidious weight loss” refers to a gradual, unintended, progressive weight loss over time.
• “Nutritional Supplements” refers to products that are used to complement a resident’s dietary needs (e.g., total parenteral products, enteral products, and meal replacement products).
• “Parameters of nutritional status” refers to factors (e.g., weight, food/fluid intake, and pertinent laboratory values) that reflect the resident’s nutritional status.
• “Qualified dietitian” refers to one who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association or as permitted by State law, on the basis of education, training, or experience in identification of dietary needs, planning, and implementation of dietary programs.
• “Therapeutic diet” refers to a diet ordered by a health care practitioner as part of the treatment for a disease or clinical condition, to eliminate, decrease, or increase certain substances in the diet (e.g., sodium or potassium), or to provide mechanically altered food when indicated.
• “Usual body weight” refers to the resident’s usual weight through adult life or a stable weight over time.

5) Pages 489-528

F360 - §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.

F361 - §483.60(a) Staffing. SEE information on what this includes: Pages 490-492.
The facility must employ sufficient staff with the appropriate competencies and skills 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) [As linked to Facility Assessment, §483.70(e), will be implemented beginning November 28, 2017 (Phase 2)]]
Pages 493-494 - F363 - §483.60(c) Menus and nutritional adequacy.

Pages 495-496 - F364 - §483.60(d) Food and drink.

Page 496 - F365 - §483.60(d)(3) Food prepared in a form designed to meet individual needs.

Pages 496-497 - F367 - §483.60(e) Therapeutic Diets §483.60(e)(1) Therapeutic diets must be prescribed by the attending physician.

Pages 497-498 - F368 - §483.60(f) Frequency of Meals.

Pages 498-499 - F369 - §483.60(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.

Pages 499-526 - F371 - §483.60(i) Food safety requirements.

Page 526 - F372 - §483.60(i)(4)- Dispose of garbage and refuse.

Pages 526-528 - F373 - §483.60(h) Paid feeding assistants.
- §483.60(h)(1) State approved training course.

6) Pages 548 – 549 – F390 - §483.30(e) Physician delegation of tasks in SNFs.
- §483.30 (1) - Except as specified in paragraph (e)(4) of this section, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who—
  - (i) Meets the applicable definition in §491.2 of this chapter or, in the case of a clinical nurse specialist, is licensed as such by the State;
  - (ii) Is acting within the scope of practice as defined by State law; and
  - (iii) Is under the supervision of the physician.

- §483.30(e)(2) - A resident’s attending physician may delegate the task of writing dietary orders, consistent with §483.60, to a qualified dietitian or other clinically qualified nutrition professional who—
  - (i) Is acting within the scope of practice as defined by State law; and
  - (ii) Is under the supervision of the physician.
• §483.30(e)(3) - A resident’s attending physician may delegate the task of writing therapy orders, consistent with §483.65, to a qualified therapist who—
  o (i) Is acting within the scope of practice as defined by State law; and
  o (ii) Is under the supervision of the physician

• §483.30(4) - A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility’s own policies.

• §483.30(f) - Performance of physician tasks in NFs. At the option of State, any required physician task in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.

• Definitions
  o “Nurse practitioner” is a registered professional nurse now licensed to practice in the State and who meets the State’s requirements governing the qualification of nurse practitioners.
  o “Clinical nurse specialist” is a registered professional nurse currently in practice in the State and who meets the State’s requirements governing the qualifications of clinical nurse specialists.
  o “Physician assistant” is a person who meets the applicable State requirements governing the qualifications for assistants to physician

7) Pages 714-730 - F520 - §483.75 Quality assurance and performance improvement.
• §483.75 and all subparts will be implemented beginning November 28, 2019 (Phase 3), unless otherwise specified
• §483.75(a) Quality assurance and performance improvement (QAPI) program.