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Long-Term Care Survey Alert

Compliance: Ready or not: New Dining Practice Standards are Now Official

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Surveyors are set to view and evaluate your dining services through a clear new lens.

Early in March, the **Centers for Medicare and Medicaid Services** officially and explicitly recognized a progressive set of new "dining practice standards" for nursing homes. Issued in 2011 by an interdisciplinary task force representing 12 industry groups, the 60-plus page document makes resident choice the primary consideration for care planners charged with guiding residents' nutritional intake.

In issuing Survey & Certification Memo 13-13-NH on March 1, CMS cast a spotlight for surveyors on the new dining practice standards and the call for self-directed and individualized care.

Translated: When it comes to dining services in nursing homes, one size definitely no longer fits all.

"Since CMS surveyors review Quality of Care compliance based on standards of practice, we recommend that all long-term care surveyors and supervisors are made aware of these important changes to long-standing standards and practices," directs the memo.

Key Concept

Central to the new standards is the idea that residents should be able to decide when, what, and how to eat from opting out of that early rise-and-shine breakfast schedule to forgoing the tube feeding the doctor ordered.

For each of 10 specific standards outlined in the document, the default recommendation is "All decisions default to the person," reminds **Linda Handy,** a task force member, retired surveyor and principal of **Handy Dietary Consulting** in San Marcos, California.

If all decisions default to the resident, does that mean your job just got easier? Hardly, caution experts close to the surveyor process and the complex realities in the nation's nursing homes. Although many hail the merits of the new standards, the realities they are ushering in mean that diligent care planning and documentation are likely to be more important than ever.

To make sure the care you provide equates with compliance, it is first essential to understand what has and hasn't changed, coaches Handy.

Essential background

The standards, published as the New Dining Practice Standards by the **Pioneer Network**, were developed by an interdisciplinary task force composed of 12 national clinically focused organizations with interests in long-term care. Formed in 2011, the Pioneer Network's Food and Dining Clinical Standards Task Force: A Rothschild Regulatory Task Force included representatives of CMS, the U.S. **Food and Drug Administration**, and the **Centers for Disease Control and Prevention**, as well as key long-term care stakeholders including the **American Medical Directors Association** and the **National Association of Directors of Nursing Administration in Long Term Care**.

When the standards were released in September 2011, the Pioneer Network suggested in a press release that CMS would eventually "refer to these new agreed-upon standards of practice within long term care interpretive guidance

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where they fit as CMS usually refers to the current standards of practice set by the clinicians who work within the long term care field."

Not so fast. In reality, CMS stopped short at least so far from altering any regulatory language/interpretive guidance, opting instead to issue the S&C memo, which stipulates that "these practice standards do not represent CMS requirements."

CMS directs that "surveyors should not issue deficiency citations simply because a facility is not following these particular recommended practices." However, the agency goes on to say that it stands behind facilities that seek to follow the standards: "[F]acilities that opt to adhere to these practice standards may rely on such adherence in response to questions regarding any changes from more restrictive diet protocols previously used."

Significantly, the agency also asserts in the memo, "Research presented [in the new standards] reveal[s] little benefit to many older individuals with chronic conditions from restrictions in dietary sugar and sodium, as well as little benefit from tube feedings, pureed diets, and thickened liquids. The new standards recommend to clinicians and prescribers that a regular diet become the default with only a small number of individuals needing restrictions."

Providers should become familiar with the dining practice standards themselves as well as the training video that CMS released late in February, urges **Janet Feldkamp**, Columbus, Ohio-based attorney with the law firm **Benesch** and a former surveyor, nursing home administrator, and director of nursing.

Tool: The surveyor training video is available for viewing at surveyortraining.cms.hhs.gov/index.aspx.

In releasing the video, CMS states that it is interested in making all stakeholders aware of the standards: the provider community and surveyors.

"That's why we made this broadcast, explained retired CMS official **Karen Schoeneman**, moderating the surveyor training session. "So that surveyors who need to evaluate compliance with quality of care based on standards of practice are up to date on these important changes."

Taken together, the release of the standards, the S&C Memo, and the training video definitely support a shift to "greater self-determination" in the nursing home, agrees Handy.

While that doesn't mean abandoning all special diets and pulling the plug on all tube feeding, it does mean that providers have an increasing burden to "educate, explain, and offer alternatives" related to food and nutrition choices, says Handy.

And if a resident opts out of a traditional diabetic diet, for example, the facility still has an obligation, of course, to plan care with caution. The common refrain of "document, document, document" definitely applies, stressed Feldkamp, who expresses concern that the shift to the new standards could come with increased legal liability.

Proceed With Caution

The key to protecting your interests will be rock solid care planning and an excellent understanding of the new standards, says Feldkamp, adding that it will be vital that both the resident and his or her legal representatives are included in discussions about diet and nutrition.

In addition, keep in mind that perhaps more than ever providers need to strike a balance between meeting residents' medical needs while honoring resident rights (think F242, Self Determination and Participation, and F280, Resident Participation in Care Plans). Furthermore, assume an increased role for nurses in guiding the optimal approach to diet and dining for individual residents.

"Instead of labeling [a resident] as 'noncompliant,' nurses [must] work with physicians to eliminate 'orders' for restrictive diets residents don't eat and instead create plans with the person that work for the person," reads one recommendation for the "Standard of Practice for Individualized Honoring Choices."

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Help Is Just Ahead

A second related task force has already convened, reports Handy, a task force member. The charge for the new group: Develop a toolkit for use by providers who want to step up their compliance with the new practice standards.

Expected release date: November 2013.

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