Medicare & Medicaid: Paid Feeding Assistants Approved For Long Term Care Facilities.

SUMMARY: This final rule permits a long term care facility to use paid feeding assistants to supplement the services of certified nurse aides under certain conditions.

States must approve training programs for feeding assistants using Federal requirements as minimum standards. Feeding assistants must successfully complete a State-approved training program and work under the supervision of a registered nurse or licensed practical nurse.

The intent is to provide more residents with help in eating and drinking and reduce the incidence of unplanned weight loss and dehydration.

EFFECTIVE DATE: These regulations are effective on October 27, 2003.

Subpart B--Requirements for Long Term Care Facilities
Sec. 483.35 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.

(h) Paid feeding assistants.--(1) State-approved training course. A facility may use a paid feeding assistant, as defined in Sec. 488.301 of this chapter, if--
(i) The feeding assistant has successfully completed a State-approved training course that meets the requirements of Sec. 483.160 before feeding residents; and
(ii) The use of feeding assistants is consistent with State law.
(2) Supervision. (i) A feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse (LPN).
(ii) In an emergency, a feeding assistant must call a supervisory nurse for help on the resident call system.
(3) Resident selection criteria.
(i) A facility must ensure that a feeding assistant feeds only residents who have no complicated feeding problems.
(ii) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

The US Centers for Medicare & Medicaid Services has announced new regulations permitting the use of paid feeding assistants in long-term care facilities.

Volunteers who feed residents, who are usually family members, are not mentioned in the new regulations. CMS’s official comments say unpaid volunteers can still feed residents. Volunteers are encouraged but not required to complete the eight-hour feeding assistant training course. Facilities are potentially liable for the errors and omissions of unpaid volunteers.

The entire text of the CMS announcement is on their website at http://www.nursinglaw.com/feeding.pdf. It includes a detailed statement from CMS about the rationale for the use of feeding assistants.

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Sec. 483.75 [The definition of nurses aides as used generally in the Federal regulations for long-term care facilities does not include those individuals who furnish services to residents only as paid feeding assistants as defined in Sec. 488.301 of this chapter. [That is, an individual must be fully trained as a nurses aide to function as a nurses aide.]]

(q) Required training of feeding assistants. A facility must not use any individual working in the facility as a paid feeding assistant unless that individual has successfully completed a State-approved training program for feeding assistants, as specified in Sec. 483.160 of this part.

Subpart D--Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation; and Paid Feeding Assistants:
Sec. 483.160 Requirements for training of paid feeding assistants.
(a) Minimum training course contents. A State-approved training course for paid feeding assistants must include at a minimum, 8 hours of training in the following:
(1) Feeding techniques.
(2) Assistance with feeding and hydration.
(3) Communication and interpersonal skills.
(4) Appropriate responses to resident behavior.
(5) Safety and emergency procedures, including the Heimlich maneuver.
(6) Infection control.
(7) Resident rights.
(8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) Maintenance of records. A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.
Paid Feeding Assistants In Long-Term Care (Continued.)

Editor’s Note: Please refer to Asphyxiation Death: Court Says A Family Member Should Not Have Fed The Patient. Legal Eagle Eye Newsletter for the Nursing Profession, (8)1, Jan. 00, p. 1.

This article is on our website at http://www.nursinglaw.com/asphyxiation.pdf.

In that case a certified nursing assistant left a food tray in a resident’s room. The skilled-nursing patient had been assessed as incapable of feeding himself. A certified nurses aide was supposed to feed him, note what and how much he had eaten so that it could be charted, and then remove the food tray from his room.

However, his elderly wife came in and tried to feed him from his meal tray and he choked and died. The wife apparently had no idea there was any potential danger in what she was doing.

The Supreme Court of Alabama ruled the skilled nursing facility was negligent.

The court stressed that it is inappropriate to allow individuals who have not been trained to appreciate the danger of asphyxiation, to do the Heimlich maneuver, to suction or to have someone immediately suction a choking person, or who at least know to call 911 when there is an emergency, to feed certain patients.

We covered the issue of feeding assistants in Medicare/Medicaid: Regulations Proposed To Allow State Funding For Paid Feeding Assistants In Long-Term Care. Legal Eagle Eye Newsletter for the Nursing Profession, (10)5, May 02, p. 4.

The regulations just announced in final mandatory form, more so than the regulations that were merely a proposal last year, stress the importance of correct nursing judgment in the screening of residents who are appropriate to be fed by feeding assistants as opposed to certified nurses aides or licensed personnel.

Gender Discrimination: Male Nurse’s Lawsuit Dismissed.

A male nurse, who works in a mostly female profession, is covered by Title VII of the US Civil Rights Act which outlaws gender discrimination in employment.

In legal parlance a male nurse, like racial minorities, is said to be a member of a protected class of persons.

Belonging to a protected class is only the first prong of the four-pronged legal analysis to determine if discrimination has occurred.

The male nurse must also have been performing his job to his employer’s satisfaction, and in spite of meeting his employer’s legitimate expectations he must be disciplined or terminated, and he must be treated less favorably than similar female employees with respect to discipline or termination.

There were no female nursing employees whose behavior was similar in all relevant respects to serve as a basis of comparison.

Two female nurses did request not to be placed on call, but they requested it right away rather than waiting until the day before, and they did not act out in a demanding and insubordinate manner.

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