CMS Final Rule on Therapeutic Diet Orders Means New Opportunities for RDNs

THE DOORWAY TO OPPORTUnity has opened wider yet as registered dietitian nutritionists (RDNs) have earned the ability to order therapeutic diets in the hospital setting.

A new rule issued by the Centers for Medicare and Medicaid Services (CMS) took effect July 11, 2014, that will allow qualified RDNs and qualified food and nutrition practitioners* working in hospitals to order therapeutic diets independent of a physician's supervision. Hospitals will also be able to privilege RDNs to order nutrition-related laboratory tests for the monitoring and modification of therapeutic diet plans with or without the supervision of a physician.† The result of a long and hard-fought struggle by leaders within the Academy of Nutrition and Dietetics (the Academy), those involved agree the new rule will resolve ongoing frustrations of many RDNs and create a good deal of opportunity in many areas, as the process evolves in each hospital across the nation.

Sharon McCauley, MS, MBA, RDN, LDN, FADA, FAND, director of Quality Management for the Academy, described the rule as a first step toward positioning RDNs in the care coordination environment to ensure nutrition is an essential component of client/patient/customer transitions of care. "The door is opening for [RDNs]," she said, adding her department will issue practice tips and implementation-related information for RDNs wanting to go this route.

STREAMLINING HEALTH CARE

Pursuant to Executive Order 13563, this rule represents the latest move by the CMS to increase flexibility for health care providers to improve care and save on costs.

"This final rule reforms Medicare regulations that CMS has identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers, as well as certain regulations under the Clinical Laboratory Improvement Amendments of 1988. This final rule also increases the ability of health care professionals to devote resources to improving patient care by eliminating or reducing requirements that impede quality patient care or that divert resources away from providing high quality patient care," the rule states.[1]

Other provisions of the rule include the elimination of regulations governing ambulatory surgical centers with respect to radiological services, the enabling of trained nuclear medicine technicians in hospitals to prepare radiopharmaceuticals for nuclear medicine without the supervising physician or pharmacist being present, and the elimination of various data submission requirements and survey processes for transplant centers.[2] CMS officials hope to save upward of $6 billion in 5 years with these changes.[2]

In terms of the scope of permissible dietary practice, the CMS rule had previously stated that RDNs or other qualified food and nutrition practitioners hired by hospitals‡ could assess patients' nutritional needs and provide recommendations and consultations, but the diet itself could be prescribed only by the practitioner responsible for the patients' care despite RDNs demonstrated efficacy in ordering diets. The Academy provided the CMS with substantial published evidence showing that this resulted in wasted time and resources, delaying appropriate nutrition services such as feeding tube formula or supplement issuance while RDNs sought out physicians or nurse practitioners to write the orders. The Academy also highlighted the increased chance of hazardous complications that have resulted from inappropriate diet orders written by other practitioners, such as choking and allergic reactions. The new rule, initially proposed in February 2013, will allow RDNs who are privileged by their hospital to independently order therapeutic diets and nutrition-related laboratory tests without a co-signature by physician, physician assistant, or nurse practitioner.

Pepin Tuma, JD, director of Regulatory Affairs for the Academy, said the inclusion of RDNs in the rule is a substantial move forward for Academy members, the profession, and the health of Americans. "Our members identified the inability to independently order therapeutic diets as one of the most pressing problems as they practiced. It was inefficient, harmful to patients, and frankly incongruous with

*"*Qualification is determined on the basis of education, experience, specialized training, state licensure or registration when applicable, and maintaining professional standards of practice." http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf.*

†*Ordering privileges for laboratory tests are determined by hospitals and their medical staffs in accordance with state law as well as any other requirements and/or incentives that CMS or other insurers might have.*

‡*CMS has a long-standing interpretive guideline that hospitals may technically hire non-RDNs with sufficient qualifications for dietary and nutrition services. Under the new rule regarding therapeutic diet orders the Academy is confident hospitals will continue to demand the expertise and competencies assured by the RDN credential, despite having the option of hiring non-RDNs.*

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RDNs' expertise and training as the nutrition experts on the multidisciplinary team." In an effort to solve this problem while working in accordance with long-standing federal law, such as who can provide nutrition services in the hospitals, the Academy worked continuously with members and the CMS for several years on the policy language and is pleased with the final outcome.

Meanwhile, much work remains to be done as the rule defers to hospitals "for determining its regulatory flexibility to either appoint RDNs to the medical staff and grant them specific nutritional ordering privileges or to authorize the ordering privileges without appointment to the medical staff, all through the hospital's appropriate medical staff rules, regulations, and bylaws in order for patients to have access to the timely nutritional care that can be provided by RDNs."[1] As each facility is governed by different rules state by state, statutes and regulations will need to be aligned with the new CMS regulation before RDNs can order therapeutic diets. The Academy will continue working with affiliates, state hospital associations, and regulators to establish definitions and rules in place to allow RDNs to take advantage of this opportunity.

The Academy's Policy Initiatives and Advocacy and Quality Management teams renewed efforts to this end in 2010, first creating a detailed analysis of the legal and practice issues surrounding therapeutic diets on all levels and outlining potential strategies. In addition to those teams, the Legislative and Public Policy Committee, the Quality Management Committee, and the Academy's CMS Workgroup, as well as numerous individual members conducting research, contributed to the effort. Tuma said that extending this authority to RDNs working in long-term care facilities is high on the group's agenda going forward, especially considering the vulnerable population that resides in these establishments. Meetings with CMS have already taken place to address the regulatory barrier to effective nutrition care in this health care setting.

AN EVOLUTION IN OPPORTUNITY

McCauley said the key to realizing this rule's full potential lies with the RDNs themselves. With this rule, each facility will have discretion to determine how, and if, they want to allow RDNs to order therapeutic diets independent of the physician. Some hospitals will choose to credential RDNs as members of their medical staff, whereas other facilities will devise different procedures, and some might not want to be involved, she said, adding that changes of this nature will require the facility to modify its medical staff rules, regulations, and bylaws. Whether the credentialing and privileging process will be handled by the facility's medical board or human resources department will also vary, she said. The privileging process begins upon request from the individual RDN. Then the facility determines the current knowledge, skill, competence, and statutory scope of

practice, if applicable, of the requesting RDN to perform specific scope of care services and grants authorization to perform identified client/patient care services within that facility for a defined period of time concurrent with any specified performance review procedures.[3]

This all begs the question of liability, and McCauley said that also is a work in progress, to be determined by each facility and practitioner. Depending on how the facility handles the process, RDNs might be wise to consider securing their own malpractice coverage, and those with practices that are contracted with facilities or outsourced might need to adjust the coverage if these facilities decide to allow employed or contracted RDNs to participate. As part of those discussions, RDNs need to determine the impact this will have on their nutrition consult call coverage. An example may be to determine whether or not RDNs will be required to advise medical or nursing staff on a therapeutic diet order for a client/patient recovering from trauma surgery who is now ready for a feeding tube insertion and formula prescription occurring in the early morning hours. RDNs will need to decide their desired responsibilities when entering into scope of care privileged negotiations, she said.

RDNs must strategize their approach in their respective facilities. "You have to understand your facility and its culture," she explained, advising RDNs to seek out their champions, those physicians and colleagues who recognize and support their work. Not all medical staffs will be immediately receptive to granting RDNs privileges to write orders for therapeutic diets, and at the same time, not all RDNs will want the additional accountability, as it could alter their individual scope of practice significantly. Not all RDNs practice to the full extent of the range of nutrition and dietetics practice, she said.

McCauley said the Academy has prepared practice tips (www.eatright.org/HealthProfessionals/content.aspx?id=6866) and implementation considerations on how best to approach hospitals and secure an advantageous arrangement. The manner in which RDNs approach their administration and medical staff will be critical in securing a good outcome, she said.

DEFINITION OF THERAPEUTIC DIET

Meanwhile, the term *therapeutic diet* is not defined by the new CMS rule in terms of the hospital setting. However, the Academy's definition is in place and lists key considerations with regard to long-term care/nursing home facilities. McCauley said the Academy is working to solidify that within this context to state that a therapeutic diet is, "A diet intervention ordered by a health care practitioner as part of the treatment for a disease or clinical condition manifesting an altered nutritional status, to eliminate, decrease, or increase certain substances in the diet." The Academy's Quality Management Committee is now drafting definitions for nutrition supplements and dietary supplements to assist RDNs in practice.

McCauley agreed that one of the Academy's goals is to secure this ability across all clinical settings, including long-term care facilities as well as outpatient programs. Given that the overall goal is to streamline health care, it only makes sense to standardize care, particularly in the case of nutrition, as these patients frequently transition between hospitals, rehabilitation centers, and long-term care facilities.

Thus, the opportunity for RDNs to define their own future role in clinical settings is wide open, and a proactive approach is necessary. In addition to an expanded role regarding therapeutic diets, RDNs can achieve more input in the management of their facilities and ultimately create more positions within those administrations. Although there is still more work to be done to implement this ruling within different hospitals across various states, those involved agree that it's bright and positive in the long run.

For more information, visit the Academy's FAQ on the CMS Final Rule related to therapeutic diet orders at: www.eatright.org/dietorders.

References

1. Federal Register. Medicare and Medicaid programs; regulatory provisions to promote program efficiency, transparency, and burden reduction; part II. https://www.federalregister.gov/articles/2014/05/12/2014-10687/medicare-and-medicaid-programs-regulatory-provisions-to-promote-program-efficiency-transparency-and. Published May 12, 2014. Accessed May 29, 2014.

2. Centers for Medicare and Medicaid Services. Reforms of regulatory requirements to save health care providers $660 million annually. http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2014-Press-releases-items/2014-05-07.html. Published May 7, 2014. Accessed May 29, 2014.

3. Academy of Nutrition and Dietetics. Definition of terms. http://www.eatright.org/scope. Accessed June 24, 2014.