

FEEDING ASSISTANT REGULATIONS

Talking Points:

Why HHS's Feeding Assistant Regulations Endanger Residents

The U.S. Department of Health and Human Services has used a number of misleading claims to assure the public that its regulations permitting paid feeding assistants will help residents. Following are some of the reasons the National Citizens' Coalition for Nursing Home Reform believes that most paid feeding assistant programs will not fit the benign picture that HHS paints.

Claim: Feeding assistants will supplement, not replace, qualified nursing assistants.

Fact:

- The regulations do not prohibit nursing homes from reducing the number of qualified nursing assistants they employ and replacing them with feeding assistants who require only about a 10th of the training, no screening or competency evaluation, lower wages, and no benefits.
- HHS says explicitly that there will be no additional funding under Medicare, which pays nursing homes a flat rate for different types of care, to hire feeding assistants.
- Under Medicaid, HHS says, "it would be up to individual States to determine whether they would need to change their payment rates for those facilities that use feeding assistants and how the rates would be changed. However, because feeding assistants will likely be paid at a minimum wage, which is less than the wage paid to nurse aides, facilities participating in Medicare and Medicaid that use feeding assistants may incur less cost than if they hired additional certified nurse aides to perform feeding and hydration duties."
- Nursing homes can employ paid feeding assistants through temporary agencies, suggesting that they are not intended to be the kindly neighborhood retirees, homemakers, and students that HHS maintains have been successfully used in other states.

Claim: Assisting nursing home residents with eating is not a nursing or nursing-related skill, which would require it to be done by a nurse aide, because only residents who are identified by the charge nurse and the resident assessment and care plan as not having "medically complicated feeding problems" will be assisted.

Fact:

- CMS itself asserts that nursing homes have "a frailer nursing home population than previously, with residents who are more dependent on nursing staff for basic needs." The preamble to the final regulations says also, "The reason for this existing policy [requiring a licensed health care professional or certified nurse aide to perform nursing or nursing-related functions] is to ensure that residents who cannot, or do not, feed themselves are fed by nursing staff who have medical training. This is intended to protect residents from unskilled workers who might injure a resident by not recognizing serious medical complications associated with eating."
- Last July 17, HHS's Acting Principal Deputy Inspector General, Dara Corrigan, testified before a Senate Finance Committee hearing on nursing home enforcement that more than half of nursing homes had deficiencies related to resident assessments. "Without reliable assessments, residents' needs cannot be appropriately addressed and they may therefore not get the care they need," Corrigan testified.

- One of the nation's leading researchers on malnutrition and dehydration among nursing home residents, Dr. Jeanie Kayser-Jones of the University of California/San Francisco, estimates that 40 to 60 percent of institutionalized elderly have dysphagia or swallowing disorders; however, in her studies, only between one-fourth and one-fifth of the residents she identified with these disorders had been evaluated by a professional.

Claim: The experience of states like Wisconsin has shown that "proper training and medical direction of these feeding assistants minimizes the risk to residents, while providing substantial benefits to residents." Wisconsin requires (1) training by a registered nurse and registered dietitian; (2) skills demonstration and passing a written test; and (3) confining feeding assistants to assisting residents in the dining room under the direction of a RN or LPN.

Fact: CMS's regulations (1) do not require training to be conducted by a licensed professional; (2) do not require any kind of test or demonstration of competence; and (3) explicitly say that feeding assistants may feed residents in their rooms without direct supervision. In fact, the only "supervision" that the regulations require is, "In an emergency, a feeding assistant must call a supervisory nurse for help on the resident call system." *Failure of nursing staff to answer call bells has been the single most common complaint long term care ombudsmen receive since 1997. In 2001 alone, ombudsmen received more than 10,000 complaints from residents and family members regarding nursing home staff's failure to respond to call lights.*

Claim: The paid feeding assistant regulations do not violate the Nursing Home Reform Act requirement that nursing and nursing-related functions be performed by licensed health care professionals or certified nursing assistants because "we do not consider the kinds of tasks facilities may ask feeding assistants to provide as either nursing or nursing-related."

Fact: On July 5, 2001, HHS itself sent state survey agencies a memo that said, "We have identified transporting residents as the only nursing home service that does not require the use of nurse aides with 75 hours of training so that those with training are available for resident care that requires their training."

Claim: Feeding assistants are needed to free up nurse aides' time "for more complex tasks, such as bathing, toileting, and dressing changes, as well as urgent medical care."

Fact: There are ways nursing homes can make more time for nursing assistants to assist residents at mealtimes without this draconian change in the regulations:

- Nursing homes can employ people as feeding assistants who meet the 75-hour nurse aide training, competency evaluation, and registry requirements.
- Nurse aides are required to do many housekeeping chores, such as making unoccupied beds and cleaning, that could be done by hiring additional housekeeping staff. Eliminating nurse aides' housekeeping responsibilities would free them to do the more complex task of assisting residents at meals.
- HHS itself says it considered an alternative that would give nursing assistants more time to assist residents at meals – expanding the number of hours in which a meal is offered so that residents have more choice about what time they eat and staff are not rushed to finish serving. This system is used by advocates of culture change and supports resident choices required by the Nursing Home Reform Act. CMS said it rejected expanded mealtimes because they can be accomplished under existing rules and "other than a few innovative facilities, nursing homes have not chosen to use this method. The current preference of most nursing homes is for an institutional approach in which meals are served to all residents early morning, noon, and evening at fixed hours. As a result, the nursing home industry prefers the use of feeding assistants rather than an expanded meal service."

Claim: Feeding assistants are needed because there is a nurse aide “shortage.”

Fact: This assertion is questionable. State data show that there are thousands of qualified nurse aides in the workforce who are not working as nurse aides. For example, a North Carolina study showed that less than half the 180,000 people trained in that state were currently certified to work as nurse aides. The real problem is that nursing homes cannot retain workers because the pay and work environment are so poor. The government’s authorization of feeding assistants may exacerbate this problem by reducing wages and job satisfaction. Many nurse aides say working with residents at mealtimes is one of the most pleasant aspects of their job; giving this responsibility to feeding assistants will increase the proportion of heavier tasks carried out by nurse aides.

Grassley, Waxman Seek Halt to New Nursing Home Feeding Regulation

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WASHINGTON -- Sen. Chuck Grassley, chairman of the Committee on Finance, and Rep. Henry A. Waxman, ranking member of the Committee on Government Reform, today asked the Health and Human Services Department to reconsider implementing a new regulation that will allow a new category of low paid, little-trained workers to feed nursing home residents.

The text of the Grassley-Waxman letter to the Health and Human Services Department [available here in PDF](#)