

rights; and special problems associated with Dementia (specialized feeding and intake problems). Participants who complete the training must demonstrate skills and pass a written test with a score of 80 percent or better. Feeding assistants are used solely for feeding residents who have no feeding complications. They are permitted to feed residents only in the dining room and operate under the direction of a registered nurse or licensed practical nurse. Feeding assistants serve to supplement care delivered by certified nurse aides, which frees up more extensively trained aides to perform more complex resident care tasks.

North Dakota has used paid feeding assistants for a number of years and has a slightly less formal program than that of Wisconsin. The residents to be fed are selected by the dietary and nursing staff. If a facility has a nurse aide training program, the training coordinator and dietitian work together to train new feeding assistants individually. After training and orientation, a new feeding assistant is assigned to one resident who needs minimal assistance. As the assistant gains skill and confidence, he or she is assigned to more residents at a meal or to a resident who requires a higher level of skill to feed. Typically, feeding assistants work only about 1½ hours per day, providing assistance at either the noon or evening meal.

Conclusion

We are committed to ensuring that long term care residents receive the best possible care. We recognize that a shortage of certified nurse aides may adversely affect resident care and prevent many residents from receiving adequate help with eating and drinking. Further, we are persuaded by the experience of States that have used paid feeding assistants, that proper training and medical direction of these feeding assistants minimizes the risk to residents, while providing substantial benefits to residents. After thoroughly considering this issue, we believe that the benefits to residents outweigh the potential risks. We believe that a policy change to allow the use of feeding assistants can be accommodated under existing statute. There is nothing in the statute governing requirements for long term care facilities (sections 1819 and 1919 of the Act) that would preclude the use of these workers and we believe that there is no conflict with other statutory requirements.

II. Provisions of the Proposed Regulations

We proposed that feeding assistants must complete successfully a State-

approved training course that meets minimum Federal requirements specified in proposed § 483.160. These course requirements would consist of relevant items from the nurse aide training curriculum and would include feeding techniques; assistance with feeding and hydration; communication and interpersonal skills; appropriate responses to resident behavior; safety and emergency procedures, including the Heimlich Maneuver; infection control; resident rights; and recognizing changes in residents that are inconsistent with their normal behavior, and the importance of reporting those changes to the supervisory nurse. Facilities or States may want to add items to these minimum requirements.

We proposed that each facility that uses feeding assistants maintain a record of the individuals who have successfully completed the feeding assistance training. Facilities would be required to report to the State any incidents in which a feeding assistant has been found to neglect or abuse a resident, or misappropriate a resident's property. The State must then maintain a record of all reported incidents.

We proposed that a facility may use a paid feeding assistant to feed residents who do not have a clinical condition that would require the training of a nurse or nurse aide. Selection of residents to be fed would be made by the professional nursing staff, using the comprehensive assessment. Nurses or nurse aides would continue to feed residents who require the assistance of staff with more specialized training, such as those residents with recurrent lung aspirations, difficulty swallowing, or those residents on feeding tubes or parenteral/IV feedings. Feeding assistants would work under the direct supervision of registered nurses (RN) or licensed practical nurses (LPN), who are in the unit or on the floor where the feeding assistance is furnished. In proposed § 483.75(e), we revised the definition of "nurse aide" to clarify that paid feeding assistants are not performing nursing or nursing-related tasks.

Feeding assistants could be paid by the facility or paid under an arrangement with another agency or organization (§ 488.301). Facilities would be able to use staff who are not health care personnel as feeding assistants if they successfully complete the training program. This might include the administrator, activity staff, clerical, laundry, housekeeping staff, or others who see residents on a daily basis. However, feeding assistants are intended to supplement certified nurse

aides, not substitute for certified or licensed nursing staff.

We proposed that these requirements would not apply to volunteers and family members.

III. Analysis of and Responses to Public Comments

We received over 6,000 public comments on the proposed rule. About 99 percent of commenters were overwhelmingly supportive of the proposal, but raised a large number of issues and offered many suggestions for clarifications and revisions to the final regulation. Commenters supporting the proposal included for-profit and not-for-profit nursing homes, national and State nursing home associations, national and State health care associations, State health and human services agencies, United States Congresspersons, and private citizens. Many beneficiary advocates and employee unions opposed giving facilities the option to use paid feeding assistants. A summary of the major issues and our responses follow.

Facility Option To Use Feeding Assistants

Comment: One commenter recommended that we conduct a pilot study or do further research before finalizing the proposal because there is a lack of data that would support the proposal. Another commenter suggested that we implement the proposal, but reevaluate the policy in 3 years to see if the objective is being met.

Response: We believe that the experience of Wisconsin and North Dakota has provided a demonstration of the merits of the use of paid feeding assistants. Both States have reported that in facilities that use feeding assistants, the benefits to residents include fewer cases of unexplained weight loss and dehydration than in facilities that do not use feeding assistants, with no reported ill effects.

Comment: Some commenters believed that the proposal is illegal, that is, there is no basis in the law to support the use of paid feeding assistants.

Response: Our review of the law indicates that there is nothing that would prohibit the use of feeding assistants and we believe that we have the authority and discretion under the law to implement this practice. Although commenters have focused on the language of the statute, at sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act that requires persons engaged in nursing or nursing related care to be trained either as a nurse or nurse aide, we do not consider the kinds of tasks facilities may ask feeding assistants to