

provide as either nursing or nursing related. While feeding has been part of the nurse aide training curriculum, that requirement was predicated on the nurse aide having to tend to persons with pronounced eating complications (such as swallowing disorders) for which specialized training is essential. What facilities would be free to do as a result of this rule, however, is to use persons who have had a lesser level of training to assist residents who have no feeding issues that require any specialized attention. Thus, we do not consider feeding assistants who may be used by facilities under this rule to be engaged in nursing or nursing related activities.

*Comment:* Several commenters cited the lack of Federal oversight built into the proposal.

*Response:* The survey process will provide the Federal oversight of facilities' use of feeding assistants, as it does for other participation requirements. During surveys of nursing homes, surveyors will observe the meal or snack service to note if any of the residents receiving feeding assistance are having trouble, such as coughing or choking. If this is observed, surveyors will investigate to determine if this is an unusual occurrence or a chronic problem and whether feeding assistants have successfully completed the 8-hour training course. Surveyors will also determine if the resident receiving the feeding assistance is one who has no complicated feeding problems. This will be done by a review of medical charts and discussion with the professional nursing staff. Similarly, surveyors will note concerns about supervision of paid feeding assistants and investigate how the facility provides supervision by interviewing staff during meal or snack times and drawing their own conclusions from observations. Deficiencies will be cited by surveyors when they identify problems. By retaining training and employment records of feeding assistants, a facility will help document its compliance with Federal requirements, and have a record that surveyors may review when they survey the facility.

*Comment:* Some commenters were convinced that the use of feeding assistants will not improve the quality of care and may, in fact, lower it. One commenter contended that Wisconsin's use of feeding assistants did not lead to a documented improvement in quality of care. Others commented that use of feeding assistants would disrupt the continuity of care and reduce quality by creating an assembly line atmosphere.

*Response:* We are not aware of any data that would suggest that there is an

improvement in the quality of care when residents are helped to eat by feeding assistants, nor are we aware of any data that would suggest a decline in quality of care. We are relying on support for the use of paid feeding assistants that has been provided by the Wisconsin and North Dakota survey agencies. Neither agency has indicated that use of feeding assistants has resulted in diminished quality of care.

*Comment:* A few commenters recommended that we prohibit a facility from training feeding assistants when it has certain deficiencies, in the same way we currently prohibit a facility from training nurse aides. For example, commenters suggested that we prohibit facilities from training feeding assistants if the facility has (1) any deficiency at level F or above; (2) a deficiency at any level in the area of nutrition, staffing, and residents' rights; (3) imposed against it a per instance civil money penalty (CMP) of \$5,000 or more, a per day CMP of \$5,000 or more cumulatively, a State monitor, or temporary manager; (4) an approved nurse-staffing waiver.

Several consumer advocacy groups recommended that we limit the authority for a facility to use feeding assistants to facilities that are authorized to conduct nurse aide training programs. In other words, if a facility loses the right to train nurse aides, it should also lose the right to train feeding assistants. Many providers took the opposite position, that a facility that loses nurse aide training rights should retain the right to train feeding assistants.

*Response:* The prohibition to which commenters refer is a statutory requirement that causes a facility to lose the right to train nurse aides when the facility has certain deficiencies specified in the law. We disagree with commenters and believe that each State needs the flexibility to respond to specific situations and make its own decision whether or not to permit a facility to train and use feeding assistants.

Facilities that have an approved nurse-staffing waiver, which waives requirements in § 483.30 to have a RN on staff 8 hours per day, 7 days per week, are still required to have adequate numbers of LPNs on staff at all times. Thus, even if RNs are unavailable, the supervision requirement for feeding assistants would be met by having LPNs on duty.

*Comment:* Many commenters said that they did not want us to limit hours worked by feeding assistants to mealtimes and advocated permitting feeding assistants to work whenever

needed by a facility. Some facilities thought that feeding assistants could be used full time to provide snacks and liquids to residents, particularly those who cannot leave their room. These commenters believed that this would be a good way to reduce the potential for dehydration since assistants would have time to deliver liquids, provide social stimulation, and encourage bedfast residents to drink more fluids.

*Response:* The text of the regulations does not limit working hours to mealtimes. According to § 483.35(h), facilities may use feeding assistants at any time that the supervision requirements are met.

*Comment:* Many providers and individuals expressed strong support for the use of existing staff as feeding assistants, after proper training. A large number of providers reported that they favor this because existing staff, such as clerical, dietary, and housekeeping staff, are already trained in facility policies, are usually well acquainted with residents, and have time available to devote to feeding residents.

A number of other commenters were opposed to using existing staff as feeding assistants, citing their full-time responsibilities and concern about added burden.

*Response:* The text of the proposed regulations permits any individual to act as a feeding assistant if he or she meets the training and supervision requirements (§ 483.35(h)). Each facility's administrator is responsible for allocating available staff to necessary tasks and we believe that it is reasonable to leave the decision to the administrator whether to use as feeding assistants staff who are not health care personnel.

*Comment:* Some commenters suggested requiring that facilities assign feeding assistants to certain residents to ensure continuity of care.

*Response:* We believe that this decision is best left to each facility and the supervisory nurses.

*Comment:* Consumer advocates were concerned that insufficiently trained feeding assistants would endanger residents. Other commenters were concerned that feeding assistants might make clinical judgments and take actions that are beyond their scope of training or be unable to handle emergency situations.

*Response:* The purpose of the training is to ensure that feeding assistants are properly prepared to feed residents and recognize emergency situations that need the immediate help of a supervisory nurse. We believe that a training program that meets the requirements listed in § 483.160 will