

ensure that a feeding assistant receives proper training.

Comment: One commenter suggested that we consider expanding the role and training of feeding assistants so that they can eventually assist in feeding residents with complex feeding problems.

Response: Individuals who have complex feeding problems, such as the need for IV or parenteral feedings, swallowing problems, and those with recurrent lung aspirations, need the assistance of professional nurses or certified nurses aides who have been trained to work with residents who have these needs. We do not believe that it is appropriate for feeding assistants to feed any residents other than those who are low risk and whose eating problems are uncomplicated.

Comment: Two senators and one congressman wrote in support of the proposal, noting the success of one state that used feeding assistants and experienced reduced weight loss and dehydration among nursing home residents. These commenters also reported that the Board of Nursing of one state had defined feeding as a nursing task and was concerned that this might prevent the state from using feeding assistants. (In the proposal, we indicated that feeding assistants would not be performing nursing or nursing-related tasks.) Another commenter believed that feeding is a nursing-related service and should not be performed by an individual with minimal training.

Response: The definition of the term, "nursing and nursing-related tasks," is frequently prescribed by State law and, therefore, we are declining to impose a Federal definition of this term on all States. We believe the matter should be left with the State in those situations in which State law or standards-setting organizations have established a definition that is more restrictive than the Federal definition permitting the use of feeding assistants. We suggest that the State investigate whether a revision to State law would resolve this issue.

Staffing Issues

Comment: One consumer advocacy group suggested that we require state survey agencies to use the investigative protocol for staffing from the *State Operations Manual* in all facilities that request to use or use feeding assistants. This protocol, used to identify problems that may be associated with insufficient nursing staff, would ensure that a facility has an appropriate number of RNs and LPNs to supervise feeding assistants.

Response: We believe that facilities that request to use or use feeding assistants should be surveyed in the same way as any other facility. Surveyors should use the investigative protocol for staffing only when systemic problems relate to insufficient nursing staff.

Comment: A consumer advocate asked that we require facilities to post information about the numbers of feeding assistants, in addition to the current requirement to post the number of licensed and unlicensed staff employed per shift. The commenter also suggested that we require that feeding assistants wear badges or name tags so that they will be clearly recognized by other staff.

Response: A provision in the Medicare, Medicaid & State Child Health Insurance Program (SCHIP) Benefits Improvement & Protection Act of 2000 (BIPA) requires facilities to post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This provision is effective January 1, 2003. Because paid feeding assistants do not qualify as licensed or unlicensed nursing staff, facilities do not need to post the numbers of feeding assistants used by the facility. However, we will consider at a later date whether this might be useful and what additional burden it may impose on facilities.

With regard to name tags, we believe it is probably a good idea, but leave that decision to each facility and do not see the need for us to make this a requirement.

Use of Volunteers

Comment: Several commenters suggested that we require volunteers to complete the training requirements for feeding residents, pointing out that it is inconsistent not to do so.

Response: While we believe that it is a good idea for family members and volunteers to take the training, and we encourage it, we are not making this a requirement. Many volunteers in facilities are family members who are only there to feed a relative. Often, family members have been feeding the ailing resident for years, both at home and in the facility. We are leaving it to each facility to determine whether or not to require volunteers and family members to complete feeding assistance training. Ultimately, facilities are responsible for the care and safety of residents, even if the resident is fed by a relative or friend.

Payment Issues

Comment: Some providers were concerned about how they would be

paid for the training and services of feeding assistants. A few commenters recommended that we allocate payment for feeding assistants to the nursing cost center.

Response: Skilled nursing facilities will not receive additional Medicare payment for the costs of using feeding assistants. Medicare payment for residents in skilled nursing facilities is made through a prospective payment system, which covers all costs (routine, ancillary, and capital) of covered skilled nursing facility services furnished to beneficiaries under Part A of the Medicare program. For Medicare payment, the term and concept, "nursing cost center," is outdated, but still may be used in some State Medicaid programs. The Medicare SNF PPS per diem payment rate is based, in part, on levels of care and resources required and received by residents, established by the resident assessment instrument specified in § 483.20. The system does not require that tasks performed by a staff person fit within a direct care or indirect care category (such as a nursing cost center).

Medicaid payments for nursing facilities are established by each State. Therefore, 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 certified nurse aides, facilities participating in Medicare and Medicaid may incur less cost than if they had hired additional certified nurse aides to perform feeding and hydration duties.

Comment: One provider reported using workers who pass out trays, provide beverages and condiments, talk to and encourage residents, record food intake, and perform routine dining room tasks. The commenter asked if the facility would be able to continue to use these workers.

Response: A facility may continue to use workers who perform the dietary service functions described by the commenter. They need not be trained as feeding assistants if they do not feed residents. Facilities are required to employ sufficient support personnel to carry out the functions of the dietary service. If these workers successfully complete the feeding assistant training course, the facility may also use them to feed residents. However, as we indicated in the last response, the Medicare program pays skilled nursing facilities a prospectively determined per diem rate, which does not require that