

assistants, control over how to structure the process of the approval of facility feeding assistant programs, and over elements of training, including instructor qualifications. In this way, States can establish policies that fit their unique circumstances. We believe that this rule will not have a substantial effect on State or local governments.

#### *B. Anticipated Effects*

These provisions will affect long term care facilities. We expect the provisions to be a substantial benefit both to facilities that are short-staffed and to residents who need help with eating and drinking. By using feeding assistants to help residents with eating and drinking, facilities can use trained, certified nurse aides to perform other, more complex resident care tasks.

Based on the large number of comments we received from nursing homes in a variety of States, we now believe that there is widespread support for the proposal and widespread intent to implement the provisions. However, because this is an optional provision, and some States may have legal barriers to implementation, we do not know how many States or facilities may implement these provisions, or how many feeding assistants will be used by facilities. Based on public comments, we anticipate that some facilities may hire no additional staff as feeding assistants, opting instead to use existing staff whose primary function is not direct care of residents, such as administrative or activities staff. We believe that feeding assistant training most likely will be conducted by existing facility staff and that there will be some nominal training costs to the facility since training requires time away from other duties that other staff may have to perform.

#### *State-Approved Training Programs*

We require that a feeding assistant successfully complete an 8-hour State-approved training course, which meets the Federal requirements in § 483.160(a). We have established no requirements on how States are to approve these programs, thereby giving each State the flexibility to decide what method makes the most sense in terms of use of its resources. There are several ways in which States may approach approval of training programs. States might choose to develop a model training program that complies with Federal requirements and require that any facility that trains and uses feeding assistants use that specific program. One model might be based on an existing training program already established, such as those conducted in Wisconsin

or North Dakota. A State might choose to do a paper review of each facility's training program, or the State might insist on a site visit to review a facility's program. Lastly, a State might initially deem each facility's training program approved and then review the program when the facility is next surveyed. For some of these options, a State may need additional staff hours to review and approve training programs. However, States already review and approve training programs for nurse aides, so there is an existing administrative structure in place. There is the potential for increased State costs associated with review and approval of facility feeding assistant programs. However, any cost will depend on the approval method that is chosen by each State.

#### *1. Effects on the Medicare and Medicaid programs.*

There are approximately 17,000 facilities nationally. Long term care facilities that participate in the Medicare and Medicaid programs must provide the necessary care and services to residents so that they attain or maintain the highest practicable physical, mental, and psychosocial well being. To do this, facilities must employ sufficient staff on a 24-hour basis, including nursing staff, administrative, medically-related social services, dietary, housekeeping, and maintenance staff.

The Medicare program pays for skilled nursing facility services to eligible beneficiaries through a prospective payment system that covers all costs of covered services furnished to residents on a per diem basis. This Medicare SNF PPS per diem payment rate is based, in part, on levels of care and resources required and received by residents. The payment rate covers all care required and received by a resident and does not require that tasks performed by a staff person fit within a direct or indirect care category. Therefore, the Medicare program would not pay a skilled nursing facility any additional funds if the facility chooses to use feeding assistants.

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.

#### *C. Alternatives Considered*

There has been a continuing shortage of certified nurse aides in recent years, along with a shortage of RNs and LPNs willing to work in nursing homes. Certified nurse aides perform the

majority of resident care in a long term care facility and are the lowest paid workers, while RNs and LPNs receive higher wages commensurate with their advanced training, experience, and supervisory responsibilities.

One alternative to the use of paid feeding assistants is to broaden the hours during which meals are served so that everyone is not fed at the same time within a one-hour mealtime. Expanded meal service, covering perhaps a 3-hour mealtime, or a restaurant model, where meals are available most of the time, would allow existing staff more time to help feed residents. However, this option already exists in regulations, and other than a few innovative facilities, nursing homes have chosen not 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. The other alternative is not to publish a regulation on the use of feeding assistants and, instead, make greater use of volunteers to assist with feeding. The use of volunteers to assist with feeding assistance is permitted in the current regulations. However, it is questionable whether facilities could find sufficient numbers of volunteers to meet their needs.

#### *D. Conclusion*

We believe that both residents and providers will benefit from these provisions. Residents will receive more assistance with eating and drinking, both at meals and at snack time. Facilities will be able to use existing staff to assist at mealtimes and hire additional staff to meet the needs of residents, freeing certified nurse aides to perform more complex tasks that require their training.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### *List of Subjects*

##### *42 CFR Part 483*

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

##### *42 CFR Part 488*

Health facilities, Medicare, Reporting and recordkeeping requirements.