

APA-1
4/18

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Alabama Department of Public Health

Rule Number 420-5-10-.12

Rule Title Dietary Services

New XXXX Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facts of the rulemaking process designed solely for the purpose of and so they have as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of §41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of Certifying Officer P. Reinhold Date 1/14/2022

REC'D & FILED

JAN 20 2022

LEGISLATIVE SVC AGENCY

**FORM APA2
10/17**

**STATE BOARD OF HEALTH
NOTICE OF INTENDED ACTION**

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-5-10-.12, Dietary Services

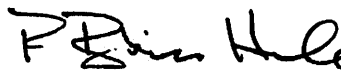
INTENDED ACTION: To amend the current rules.

SUBSTANCE OF PROPOSED ACTION: These rules provide changes to certain sections of the department's rule governing Nursing Facilities which would permit licensed dietitians or nutritionists to prescribe special diets for residents if authorized to do so by the facilities' medical director.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held on February 16, 2022, at 9:00 a.m., at the RSA Tower, Suite 1586, 201 Monroe Street, Montgomery, AL 36104.

FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE: Written or oral comments will be received until the close of the record at 5:00 p.m. on March 7, 2022. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Dana Billingsley, Office of General Counsel, Department of Public Health, P.O. Box 303017, Montgomery, Alabama 36130-3017, Telephone number: (334) 206-5209.



P. Brian Hale, Agency Secretary

420-5-10-.12 Dietary Services.

(1) The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(a) **Staffing.** The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

1. If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service who receives frequently scheduled consultation from a qualified dietitian.

2. "Qualified Dietitian" -- Is means one who is currently licensed in the State of Alabama in accordance with the provisions contained in current state statutes as governed by the Alabama Board of Examiners for Dietetic/Nutrition Practice.

(2) **Sufficient staff.** The facility must employ sufficient support personnel competent to carry out the functions of the dietary service.

(3) **Menus and nutritional adequacy.** Menus must—;

(a) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(b) Be prepared in advance; and

(c) Be followed.

(4) **Food.** Each resident receives and the facility provides:

(a) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(b) Food that is palatable, attractive, and at the proper temperature;

(c) Food prepared in a form designed to meet individual needs; and

(d) Substitutes offered of similar nutritive value to residents who refuse food served.

(5) **Therapeutic diets.** Therapeutic diets must be prescribed by the attending physician or by a dietician licensed by the Alabama Board of Examiners for Dietetics and Nutritionists as authorized by the medical director.

(6) **Frequency of meals.**

(a) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(b) There must be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in (d) below.

(c) The facility must offer snacks at bedtime daily.

(d) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal, and breakfast the following day, if a resident group agrees to this meal span, and a nourishing snack is served.

(7) **Assistive devices.** The facility must provide special eating equipment and utensils for residents who need them.

(8) **Sanitary conditions.** The facility must:

(a) Procure food from sources approved or considered satisfactory by Ffederal, Sstate, or local authorities;

(b) Store, prepare, distribute, and serve food under sanitary conditions; and

(c) Dispose of garbage and refuse properly.

(9) **Feeding Assistant Program Requirements.**

(a) Facility staff who are not health care personnel, (the facility administrator, activity staff, clerical staff, laundry and housekeeping staff, or other), can be used as feeding assistants upon successful completion of an approved training program.

1. Volunteers and family members may assist residents with feeding and drinking, without completing an approved training program. A feeding assistant shall only assist residents to eat or drink who have no complicated feeding problems and who have no known behaviors at meal time. If a resident is determined, by the facility, to meet the criteria of having a feeding assistant, then the facility must specify that the resident will be assisted by a feeding assistant on the care plan.

(b) Examples of complicated feeding problems include: difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings. Residents with a clinical condition, such as the conditions listed above, require the employee providing feeding or hydration services to be a licensed health care professional or certified nurse aide.

(c) The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care. A feeding assistant must work under the direct supervision of a registered nurse or licensed practical nurse in a dining room or other common area.

(d) The feeding assistant is not permitted to perform other nursing or nursing-related duties (for example, measuring or recording output, transferring, and toileting). In an emergency, a feeding assistant must immediately call a supervisory nurse on the resident call system, or other appropriate means of emergency notification.

(e) **Feeding Assistant Definition.** Paid feeding assistant means a person who does not meet the definition of health care personnel and who is paid by a nursing home, to assist residents who have no feeding complications with the activities of eating and drinking. The feeding assistant is not permitted to provide any other nursing or nursing related service. Paid

feeding assistants must be at least ~~sixteen~~ **16** years old. A feeding assistant must work under the direct supervision of a registered nurse or licensed practical nurse in a dining room or other common area.

1. Nurse aides who are on the nurse aide abuse ~~register~~ registry and who have been disqualified from working as a nurse aide may not work as a feeding assistant. A feeding assistant does not include a person who is a:

- (i) Licensed health professional or registered dietitian;
- (ii) Volunteers without money compensation; or families;
- (iii) Certified nurse aide.
- (f) **Feeding Assistant Training Requirements.**

(1) Feeding assistant training programs must require enrolled individuals to successfully complete an approved training program, which includes the following federally-mandated topics, covered during ~~nine~~ **(9)** hours of classroom instruction and hands on training.

- (i) Feeding techniques.
- (ii) Assistance with feeding and hydration.
- (iii) Communication and interpersonal skills.
- (iv) Appropriate responses to resident behavior.
- (v) Safety and emergency procedures, including the Heimlich maneuver.
- (vi) Infection control.
- (vii) Resident rights.
- (viii) Recognizing changes in residents that are inconsistent with their normal behaviors and the importance of reporting these changes to the supervisory nurse.
- (ix) Abuse, neglect and misappropriation of resident property including reporting requirements.
- (x) Dementia.

2. Training must include an experienced staff member demonstrating the correct way to feed a resident who requires minimal assistance with feeding, including appropriate cueing, moderate assistance with feeding, and a resident who requires total assistance with feeding.

3. The feeding assistant training program must also provide instruction on the following topics:

(i) The resident population who will be served by the feeding assistant in a facility-based program. The facility-based training program curriculum must include training specific to

the identified population type(s). This training must include, but is not limited to:

I. Characteristics of the population, such as the population member's physical, social and mental health needs, and specific medications or treatment needed by the residents.

II. Meeting the needs of persons with a dual diagnosis (co-occurrences of mental health disorders and alcohol and/or drug dependence or abuse), and maintaining or increasing his or her social participation.

4. Feeding assistants who have been trained by another facility's training program, must be trained for the specific needs of a facility's population.

5. Programs may choose to add increased training requirements.

6. Training programs must stress the only direct, hands-on duty a feeding assistant is permitted to perform is assisting residents to eat or drink who have no complicated feeding problems and who has no known behaviors at meal time.

7. Feeding assistant training programs must use a training curriculum, which has been pre-approved by the Department and determined to comply with the federal requirements. Entities are allowed to choose one of the following pre-approved, standardized curriculum models:

Assisting with Nutrition and Hydration in Long-Term Care. Hartman Publishing Inc. 2004.

Assisted Dining: The Role and Skills of Feeding Assistants. Walker, Bonnie L and Cole, Claire S. American Health Care Association. 2004.

8. In addition to the pre-approved, standardized curriculum models facilities must also utilize the following Dementia Education Training Act Care Series videotapes:

Tape 1 - Understanding Dementia

Tape 2 - Staff Communication

Tape 4 - Feeding Techniques and Nutrition

Tape 5 - Assuring Proper Hydration

Tape 11 - Recognizing Changes in Health Status

Tape 12 - Keeping Dementia Residents Within the Safety of the Facility

9. Although the pre-approved standardized training curriculums include additional skill information (e.g., output, special care needs for resident with dysphagia, etc.), the instructor must stress the feeding assistant will not be permitted to perform any other hands-on duty, beyond assisting residents to eat and drink who have no complicated feeding problems and who have no known behaviors at meals.

10. An individual may not provide hands-on assistance with feeding or hydrating residents unless the individual has successfully ~~completed~~ completed the following:

(i) A Sstate-approved training program for feeding assistants, including additional instruction on any selected resident population.

(ii) After completing the training course, the individual must pass a Sstate-approved standardized written quiz with a minimum score of 80% percent. The individual may request the quiz to be administered orally. Instructors should consider the needs of persons who have limited English proficiency or reading difficulties

(iii) Successfully completing demonstration of 1) feeding residents with minimal assistance/moderate assistance with cueing and total feeding of resident; 2) Heimlich maneuver; and 3) ~~A~~ appropriate hand washing techniques

11. Programs may choose to add increased testing requirements.

12. Students who do not successfully pass the initial competency evaluation will be allowed the opportunity to review the training materials and retake the test a maximum of ~~two~~ 2 additional times. Therefore, the student may only take the test a total of ~~three~~ 3 times. The program must document the failure, opportunity for review, and subsequent retake testing date.

g. **Feeding Assistant Instructor Requirements.** Only the following licensed health care professionals can serve as lead instructors: R.N., L.P.N., R.D., S.T., O.T. These individuals must have experience in ~~LTC~~ long term care with ~~six~~ 6 months experience in the management of persons with dementia. Experienced Certified Nursing Assistants (CNAs) and other individuals may assist with the training and feeding demonstrations, if appropriately supervised.

(h) **Records.** Feeding assistants must receive an annual inservice on relevant feeding assistant topics (any topic area included in the curriculum is appropriate). In addition, feeding assistants must be evaluated on a yearly basis to document that skill performance and feeding competence is satisfactory.

1. Feeding assistant training programs must maintain the following records:

(i) For a minimum of ~~three~~ (3) years, all students' written examinations, (skills checklists) and other relevant training records.

(ii) Documentation of the training conducted and identification of the instructor conducting the training.

(iii) Record of all individuals who have successfully completed the feeding assistant training and competency testing program.

2. Training programs must maintain the security of the test materials to ensure disclosure or forgery does not occur.

3. Facilities employing feeding assistants must maintain the following records:

(i) Feeding assistants must have in their personnel file evidence of the following:

I. Evidence of having successfully completed an approved feeding assistant training and competency testing program.

II. Evidence of annual inservice sessions(s), relating to feeding assistant duties.

III. Evidence of an annual evaluation, determining a feeding assistant's continued competence in feeding residents.

(ii) Feeding assistant roster, recording all individuals employed by the facility as feeding assistants who successfully completed the feeding assistant training and competency evaluation.

(iii) The selected resident's medical record, documenting no complicated feeding condition exists.

(i) Approval Process of Feeding Assistant Training Programs. A facility must submit to the Division of Health Care Facilities (DHCF) in writing the curriculum the facility will utilize in their feeding assistant training program.

Author: Rick Harris

STATUTORY AUTHORITY: Code of Ala. 1975, §§ 22-21-20, et seq.

HISTORY: Repealed and Replaced: Filed July 19, 1996; effective August 23, 1996.

Amended: Filed April 20, 2005; effective May 25, 2005. Amended: Filed XX-XX-XXXX; effective XX-XX-XXXX.