



December 30, 2016

Amanda Thomas
Health Policy Analyst for Regulatory Affairs
State of Maryland
Department of Health and Mental Hygiene
Office of Health Care Quality
Spring Grove Center
Bland Bryant Building
55 Wade Avenue
Catonsville, MD 21228

Dear Ms. Thomas,

Re: Additional Proposed Changes to Maryland (9/30/16) COMAR 10.07.14 Assisted Living Facilities (ALF)

Maryland Dietetics in Health Care Communities (MD DHCC), a state practice representing licensed registered dietitians working in long term care, assisted living facilities and correctional institutions, has reviewed the 9/30/16 proposed changes to the Maryland ALF Regulations. We are very appreciative to have this second opportunity to provide you with additional comments and proposed changes on behalf of our membership. We have also encouraged our licensed registered dietitian members individually to also voice their thoughts, opinions and proposals for these regulations to you and your office.

MD-DHCC supports initial changes in the 9/30/16 ALF regulations that include –

- definition of a “licensed registered dietitian” ([page 13 of 9/30/16 ALF proposed regulations](#))
- addition of “monthly weight monitoring” ([page 83 of 9/30/16 ALF proposed regulations](#))
- addition of “water” to emergency and disaster plans ([page 120 of 9/30/16 ALF proposed regulations](#))
- addition of COMAR 10.15.13 food temps in Kitchens ([page 130 of 9/30/16 ALF proposed regulations](#))

We propose the additional changes with the following supportive documentation.

[.13] Staffing. E. A program shall have staff with the ability to: - [Page 44 \(9/30/16 version of Proposed ALF regs\)](#)

Recommendation – add “*new section*” between existing (5) “Administer necessary Medication...” and (6) “Monitor and provide...” – to read as

(6) *Recognize and provide comprehensive support to maintain adequate hydration and nutrition status.*

(7)) “Monitor and provide...”

Rationale - Recent lack of identification of failing nutrition and failing hydration status has resulted in unplanned morbidity, unplanned hospitalizations, and in limited cases morbidity-related lawsuits. Law offices are now advertising on the Internet seeking clients who have family members that believe their loved one has been harmed by dehydration in ALF or LTC facilities. Supportive documentation, which may need to be glued and pasted into a browser, includes:

- <http://www.pbs.org/wgbh/pages/frontline/social-issues/life-and-death-in-assisted-living/catherine-hawes-assisted-living-is-a-ticking-time-bomb>
- <http://blog.csa.us/2016/03/older-adults-can-be-at-risk-of.html>
- <http://panursinghomelawyers.com/dehydration-malnutrition/>
- <http://nursinghomeabuseguide.com/abuse-injuries/dehydration>

Further since the [Resident Assessment Tool \(revised version 7/3/13\)](#) – page 3, 5th line requires the evaluator to determine “*Is there any evidence of or a risk for malnutrition or dehydration*” – it would seem appropriate that both nursing and the facility manager be able to recognize this clinical problem.

.17 – Manager Training Course; A.5: Clinical Management, 20 hours, including - Page 57 (6/19/2015 version of Proposed ALF regs)

Recommendation: Revise “*section p: pressure ulcer*”

Change section p from “pressure ulcer” to “*pressure ulcer (pressure injury) staging and management*”

Rationale – Staff need to be trained to identify and manage persons with pressure ulcers/injury; they need to understand what pressure ulcers are and how they must be treated. We would also recommend use of the National Pressure Ulcer Advisory Panel (NPUAP), a national organization focused on diagnosing and evaluating pressure ulcer/ pressure injury, terminology of “pressure injury” rather than the older term “pressure ulcer”. NPUAP URL -

<http://www.npuap.org/resources/educational-and-clinical-resources/npuap-pressure-injury-stages/>

.17 – Manager Training; A.7- Nutrition and food safety, 8 hours, including.... - Page 58 (6/19/2015 version of Proposed ALF regs)

Recommendation: Add “*new section*” between existing section “(7e) – therapeutic diets” and “(7f) Dehydration”

New section would be - (7e) therapeutic diets

(7f) *disease-related malnutrition*

(7g) dehydration

Rationale - Recent lack of identification of failing nutrition and hydration status has resulted in unplanned morbidity, unplanned hospitalizations, and in limited cases morbidity with lawsuits. Further since the [Resident Assessment Tool \(revised version 7/3/13\)](#) – page 3, 5th line requires the evaluator to determine “*Is there any evidence of or a risk for malnutrition or dehydration*” – it would seem appropriate that both nursing and the facility manager be able to recognize this clinical problem. The American Society for Parenteral and Enteral Nutrition (ASPEN), a multidisciplinary group of physicians, nurses, dietitians and pharmacists, has developed a tool kit for malnutrition diagnosis - <http://www.nutritioncare.org/maltoolkit>.

.20 Admission Requirements: A: An assisted living program may not provide services to individuals who at the time of initial admission, as established by the initial assessment, would require... - page 67 (9/30/2016 version of Proposed ALF regs)

Recommendation – Re-word "section A" to read

"An assisted living may not admit or provide services to: (1) more than intermittent nursing care; (2) treatment of stage three or stage four pressure ulcers, (3) ventilator services, etc."

Rationale: The Maryland Office on Aging recommended this wording in earlier comments. Current staffing and staff training do not allow ALF facilities to effectively manage Stage 3 and Stage 4 pressure injuries (formerly termed pressure ulcers or decubitus ulcers) if these injuries are significant in size or extent. Further please consider inclusion of terminology change; the National Pressure Ulcer Advisory Board in April 2016 changed the term pressure ulcer(s) to pressure injury - <https://www.npuap.org/national-pressure-ulcer-advisory-panel-npuap-announces-a-change-in-terminology-from-pressure-ulcer-to-pressure-injury-and-updates-the-stages-of-pressure-injury/>

[.28] .24 Services; A. Meals; - page 85 (9/30/2016 version of Proposed ALF regs)

(1)The manager shall ensure that:

Recommendation - Add "new section" after section (e) "Residents have access to snack as..." as

(f) "A Copy of the State Diet Manual, free of charge as a download, shall be available for resident and family review."

Rationale – Residents and families have a right to understand the medical basis for therapeutic diets. This information should be readily available at all times. Page 34 of the "OHCQ AL Comments final" indicate this suggestion was accepted, but it did not appear in the revised 9/30/16 regulations.

(1)The manager shall ensure that: Recommendation - Add a new section after section (e) "Residents have access to snack as..." as (f) "A Copy of the State Diet Manual, free of charge as a download, shall be available for resident and family review."	Residents and families have a right to understand the medical basis for therapeutic diets. This information should be readily available at all times.	Phyllis McShane	Maryland Dietetics in Health Care Communities	Agree.
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[.28] .24 Services; A. Meals; (2) Menus (approval) - page 85 (9/30/2016 version of Proposed ALF regs)

Recommendation – Retain/DO NOT REMOVE the section entitled (2) Menus, "but change language to read as":

- (a) Menus shall be written at least 1 week in advance with portion sizes tailored to resident
- (b) Menus shall be maintained on file, as served for two months
- (c) *As part of the licensure approval and renewal process, an applicant shall submit a 4-week menu cycle with documentation by a licensed registered dietitian that the menus are nutritionally adequate. The licensed registered dietitian shall review menus on quarterly visits to the facility.*

Rationale – As the (sickness) acuity level has increased in Assisted Living Facilities over the past 10 years, it has become even more important that clients living in these facilities receive and regularly consume nutritious foods to ensure they remain adequately nourished and optimally able to conduct their activities of daily living. The Maryland Office on Aging has submitted testimony that supports that the ALF menus need to be evaluated by a licensed, registered dietitian. Regarding quarterly visits - one national ALF chain with sites in Maryland already does provide/ require quarterly licensed registered dietitian visits, which it believes is necessary for good client outcomes. Recognizing adding a service to these regulations would increase costs, MD DHCC is willing to work with OHCQ and ALF providers to develop a checklist for ALF facilities to organize nutrition status

tracking to allow licensed registered dietitians to focus solely on any clients with significant weight loss, very poor intake, enteral feedings, significant tissue injury (formerly termed decubitus/ skin ulcers), and/or any other identified problems.

[.28] .24 Services; A. Meals; 6. Special Diets (a). (ii).; - page 86 (9/30/2016 version of Proposed ALF regs)

Recommendation – “Change wording” from “special diets” to “therapeutic diets” and “add additional text” to read as

Document therapeutic diets in the resident’s record. The licensed registered dietitian shall review therapeutic diets on quarterly visits to the facility.

Rationale – Therapeutic Diets is the current terminology used by CMS; it is also used on page 58 of the 9/30/16 proposed ALF regulations (at .17.A.7.e). Regarding quarterly visits - one national ALF chain with sites in Maryland already does provide/ require quarterly licensed registered dietitian visits, which it believes is necessary for good client outcomes. Recognizing adding a service to these regulations would increase costs, MD DHCC is willing to work with OHCQ and providers to develop a checklist for ALF facilities to organize nutrition status tracking to allow licensed registered dietitians to focus on clients with significant weight loss, poor intake, enteral feedings, significant tissue injury (formerly termed decubitus/ skin ulcers), and any other identified problems.

[.28] .24 Services; F. Health Care and Social Service. 8: Dietary consultation and services - page 87 (9/30/2016 version of Proposed ALF regs)

Recommendation – “Change wording” to.

(a) “Dietary consultation and services”. *Quarterly visits by a licensed registered dietitian shall (at least) include review of menus, kitchen sanitation, therapeutic diets, residents with stage 3 or stage 4 pressure injury, residents receiving enteral (tube) feedings and monthly weight records for all residents.*

Rationale - Recent lack of identification of failing nutrition and hydration status has resulted in unplanned morbidity, unplanned hospitalizations, and in limited cases morbidity-related lawsuits. (<http://www.pbs.org/wgbh/pages/frontline/social-issues/life-and-death-in-assisted-living/catherine-hawes-assisted-living-is-a-ticking-time-bomb/>). Regarding quarterly visits - one national ALF chain with sites in Maryland already does provide/ require quarterly licensed registered dietitian visits, which it believes is necessary for good client outcomes. Recognizing adding a service to these regulations would increase costs, MD DHCC is willing to work with OHCQ and providers to develop a checklist for ALF facilities to organize nutrition status tracking to allow licensed registered dietitians to focus on clients with significant weight loss, poor intake, enteral feedings, significant tissue injury (formerly termed decubitus/ skin ulcers), and any other identified problems.

In closure, we remain very grateful for the opportunity to submit testimony we believe will assist in the well-being and care of Maryland residents in ALF.

Please contact us if we can provide any further information.

Sincerely,

Phyllis Fatzinger McShane, MS RD LDN
Past Chair, MD DHCC

Joyce Geer, RD LDN
Chair, MD DHCC

Cc: Anita Gathogo, Chair-elect, Joyce Rowley, MD DHCC Past, past Chair, MD DHCC Executive Board