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April 1, 2025

Zachary Garceau
Department of Health
3 Capitol Hill
Providence, RI 02908

Re: Licensing of Nursing Facilities; Rule Identifier 216-RICR-40-10-1

Dear Mr. Garceau:

The Rhode Island Academy of Nutrition and Dietetics (the "RIAND") is pleased to provide comments on proposed amendments to the Licensing of Nursing Facilities regulations. Representing 508 registered dietitians (RDs), and dietetic technicians, registered (DTRs), the RIAND is committed to accelerating improvements in global health and well-being through food and nutrition.

We appreciate the Department of Health's (the "Department") aim to update the regulations for licensing of nursing facilities to align with statutory language and provide other non-substantive changes. We are supportive of these changes. With that acknowledged, we offer the following comments and additional recommendations for consideration.

Licensing of Nursing Facilities

1.2 Incorporated Materials

In section B. the regulations provide that "The National Academic Press's 'Dietary Reference Intakes: The Essential Guide to Nutrient Requirements' (2006)" are incorporated by reference, "not including any further editions or amendments thereof . . . ." Many nursing homes and long-term care facilities no longer rely solely on *Dietary Reference Intakes: The Essential Guide to Nutrient Requirements* (published in 2006) as their primary reference for nutrient standards. While this guide is still a foundational reference, early in 2023, a Consensus Study Report on the Dietary Reference Intakes for Energy was released by the National Academies of Sciences, Engineering and Medicine. The DRIs for energy were the first of several updates commissioned by the United States and Canadian governments. DRIs for protein, carbohydrate, dietary fiber and fat are anticipated to be released in the future, once a review of current evidence is completed. Noting advancement in science and understanding of nutrition, we recommend rewriting this section as follows:

Recommended Change:

> B. These Regulations hereby adopt and incorporate ~~The National Academic Press's "Dietary Reference Intakes: The Essential Guide to Nutrient Requirements" (2006)~~ the latest Dietary Reference Intakes published by the National Academies of Sciences, Engineering and Medicine by reference, ~~not including any further editions or amendments~~

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~~thereof and~~ only to the extent that the provisions therein are not inconsistent with these Regulations.

1.3 Definitions & 1.17.3 Dietetic Services

Section C.2.

It is noted under 1.17.3 (C.)(2.) reference is made to meeting all residents needs in accordance with *Dietary Reference Intakes: The Essential Guide to Nutrient Requirements*. Given the above noted rationale, we recommend rewriting this section as follows:

Recommended Change:

2. Reviewing food service policies, procedures and menus to ensure the nutritional needs of all residents are met in accordance with the latest Dietary Reference ~~Intakes: The Essential Guide to Nutrient Requirements;~~ Intakes published by the National Academies of Sciences, Engineering and Medicine, with adjustments for specific medical conditions and preferences.

Section C.5. of 1.17.3 Dietetic Services

Section 1.17.3 (C.)(5.) provides the responsibilities of the qualified dietitian include "providing dietary counseling to residents when necessary." Although dietary counseling is a portion of what dietitians do, it is only part of their scope of services when it comes to patient care. A more accurate description of the scope of services dietitians deliver is "medical nutrition therapy." Per the Commission on Dietetic Registration's Definition of Terms List, *medical nutrition therapy* is: "an evidence-based application of the Nutrition Care Process. The provision of MNT (to a patient/client) may include one or more of the following: nutrition assessment/reassessment, nutrition diagnosis, nutrition intervention and nutrition monitoring and evaluation that typically results in the prevention, delay or management of diseases and/or conditions." Dietitians uses the nutrition care process and other workflow elements to individualize and evaluate care and service processes within organization systems specific to the discipline of nutrition and dietetics. As such, we recommend revising Section C.5. of 1.17.3 to provide:

Recommended Change:

5. Providing ~~dietary counseling~~ medical nutrition therapy to residents when necessary;

We also recommend adding to *Section 1.3 Definitions*, the term *Medical Nutrition Therapy* providing:

> "Medical Nutrition Therapy" means an evidence-based application of the nutrition care process. The provision of medical nutrition therapy to a patient may include one or more of the following: nutrition assessment and reassessment, nutrition diagnosis, nutrition intervention and nutrition monitoring and evaluation that typically results in the prevention, delay or management of diseases and/or conditions.

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Section E.2. & H of 1.17.3 Dietetic Services

Again, noting the rationale explained under *1.2 Incorporated Materials*, we recommend replacing the reference to "Dietary Reference Intakes: The Essential Guide to Nutrient Requirements," provided for in E.2. and H. With these changes these sections would be rewritten to provide:

Recommended Change:

> E. 2. Standards for nutritional care in accordance with the latest Dietary Reference ~~Intakes: The Essential Guide to Nutrient Requirements;~~ Intakes published by the National Academies of Sciences, Engineering and Medicine, with adjustments for specific medical conditions and preferences;
>
> H. All menus including alternate choices shall be planned at least one (1) week in advance, to meet the standards for nutritional care in accordance with the latest Dietary Reference ~~Intakes: The Essential Guide to Nutrient Requirements~~ Intakes published by the National Academies of Sciences, Engineering and Medicine, with adjustments for specific medical conditions and to provide for a variety of foods, adjusted for seasonal changes, and reflecting the dietary preferences of residents.

Section I

Section I provides that "all diets shall be ordered in writing by the attending physician." While we support all qualified medical providers writing diet orders, in accordance with the scope of practice of the registered dietitian, we recommend adding dietitians, as appropriate medical staff - who may order a therapeutic diet.

In 2014 the Center for Medicare Services (CMS) made changes to Title 42, § 482.28 of the Code of Federal Regulations, which addresses hospitals, to provide, "All patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, *or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff and in accordance with State law governing dietitians and nutrition professionals*." (emphasis added) Following much of the same reasoning that was laid out in the 2014 rules, in 2016 CMS published a final long-term care rule under Title 42 of § 483.60(e) that provides:

> ***e. Therapeutic diets.***
> 1. Therapeutic diets must be prescribed by the attending physician.
> 2. The attending physician may delegate to a registered or licensed dietitian the task of prescribing a resident's diet, including a therapeutic diet, to the extent allowed by State law.

In justifying this change, CMS stated:

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> We believe qualified dietitians and other clinically qualified nutrition professional are well qualified to assess a resident's nutritional status and design and implement a nutritional treatment plan in consultation with the resident's interdisciplinary team. In order for residents to receive timely nutritional care, the qualified dietitian or other clinically qualified nutrition professional must be viewed as an integral member of the IDT [Interdisciplinary Team] who, as the team's clinical nutrition expert, is responsible for a resident's nutritional evaluation and treatment in light of the resident's medical diagnosis.

CMS recognized dietitians as the "clinical nutrition expert" and "integral member of the interdisciplinary team" and as such, authorized a practical and accountable mechanism for efficaciously ordering patient diets in long-term care facilities. Registered Dietitian (RD) training and education best qualifies them to order patient diets both upon admission and after a nutrition assessment that considers the connection between patients' complex medical problems, nutrition status, and actual nutrition risk.

CMS's authorization comports with the Academy of Nutrition and Dietetics' Revised 2024 Scope of Practice for the Registered Dietitian (RD), which specifies the RD may "[o]rder and monitor evidence-based nutrition interventions to meet person-/population-centered nutrient and energy needs, including but not limited to prescribed diets; medical food/nutrition supplements; dietary supplements; nutrition support therapies such as enteral nutrition and parenteral nutrition support, nasoenteric feeding tube placement, and provide feeding therapy (pediatric oral aversion)."

When dietitians can independently enter a therapeutic diet order, nutritional delays are reduced and fewer burdens are placed on providers. Although CMS acknowledged in the final long-term care rule that it did not have data to accurately estimate the savings that would be produced by allowing dietitians to order therapeutic diets, in the 2014 hospital therapeutic diet order rule CMS cited studies that confirmed allowing dietitians to independently write diet orders, so long as consistent with state law, would produce substantial cost savings for hospitals, allow dietitians to see and treat more patients, and reduce delays in the ordering of therapeutic diets (including nutritional supplements), particularly PN and EN diet orders, complex infant formula orders, and in the monitoring of associated lab parameters.

As such, CMS made clear the benefits it believed were conferred by the long-term care rule: "Without allowing for the delegation for writing diet orders to qualified dietitians or other clinically qualified nutrition professionals, nursing homes will not be able to effectively realize the improved resident outcomes and overall cost savings that we believe would be possible with these changes."[6] However, CMS highlighted that this rule did not eliminate the need for oversight, accountability, and state authority. Specifically, CMS stated:

> While the statute requires physician supervision of each resident's nursing home care, we believe that the physician can delegate authority to a dietitian or other clinically qualified nutrition professional to write dietary orders, so long as the authority is consistent with dietitian or other clinically qualified nutrition professional practice allowed under state law. In this instance, the physician is responsible for making the decision of whether or not to delegate this task and remains responsible for the resident's care even if the task is delegated. Further, if necessary, the physician would be able to modify a diet order with a

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subsequent physician order. We believe this is consistent with other tasks that the physician may delegate and may allow for more efficient use of physician time and effort and more frequent assessment and updating of diet orders by an on-site dietitian or other clinically qualified nutrition professional.

CMS's final rule recognizes both the need and rationale for dietitians' broadly autonomous practice in this regard, while assuring oversight and accountability.

Recommended Change:

With the above rationale, we recommend the following rewrite of section *I under 1.17.3 Dietetic Services*:

I. All diets shall be ordered in writing by the attending physician or a licensed dietitian/nutritionist as delegated by medical staff.
   1. All diets shall be planned, prepared and served to conform to the ~~physician's~~ physician or dietitian's orders and to meet the standards of Dietary Reference ~~Intakes: The Essential Guide to Nutrient Requirements to the extent medically possible.~~ Intakes published by the National Academies of Sciences, Engineering and Medicine, with adjustments for specific medical conditions and preferences.
   2. Diet orders shall be reviewed by the attending physician on same schedule as other physician orders.

The Rhode Island Academy of Nutrition and Dietetics appreciates the opportunity to provide these comments and is happy to work with the Department to provide further explanation as to any of our comments. Please feel free to reach out to Shira Hirshberg or Charla Burill with any questions or requests for additional information.

Sincerely,

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