



March 11, 2026

New Mexico Health Care Authority  
Office of the Secretary  
ATTN: Medical Assistance Division  
Public Comments  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348  
HCA-madrules@hca.nm.gov

*Re: Medicaid Eligibility – Institutional Care - Title 8, Chapter 370 Oversight of Licensed Healthcare Facilities and Community Based Waiver Programs, Part 16 Requirements for Long Term Care Facilities and Title 8 Social Services Chapter 371 Developmental Disabilities Part 2 Requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities*

Dear New Mexico Health Care Authority:

The New Mexico Academy of Nutrition and Dietetics (the “New Mexico Academy”) is pleased to provide comments on proposed amendments to Title 8, Chapter 370 Oversight of Licensed Healthcare Facilities and Community Based Waiver Programs, Part 16 Requirements for Long Term Care Facilities and Title 8 Social Services Chapter 371 Developmental Disabilities Part 2 Requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities. Representing 486 registered dietitians (RDs), and dietetic technicians, registered (DTRs), the New Mexico Academy is committed to accelerating improvements in global health and well-being through food and nutrition.

We appreciate the New Mexico Health Care Authority’s (the “HCA”) aims of these rule revisions. We are supportive of this work but request revision of some of the rules under Title 8, Chapter 370 Oversight of Licensed Healthcare Facilities and Title 8, Chapter 371 Developmental Disabilities to support the provision of timely, qualified nutrition services within these facilities.

**Title 8, Chapter 370 Oversight of Licensed Healthcare Facilities and Community Based Waiver Programs, Part 16 Requirements for Long Term Care Facilities**

**8.370.16.7 Definitions**

Section 8.370.16.7D.(2) provides the following:

“**Dietitian**” means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982.

While we agree with the intent of this definition, it should be updated to provide:

“**Dietitian**” means a person who is ~~eligible for registration~~ registered as a dietitian by the commission on dietetic registration of the ~~American dietetic association under its requirements in effect on January 17, 1982.~~ academy of nutrition and dietetics and licensed as a dietitian under the New Mexico Nutrition and Dietetics Practice Act.

### **8.370.16.333 Other Records, 8.370.16.42 Individual Care, & 8.370.16.52 Dietary Services**

First, for consistency, we would recommend updating the spelling of “dietician” in 8.370.16.33E.(1) and 8.370.16.42E.(4) to the preferred spelling of “dietitian.”

Moreover, 8.370.16.42E.(1) Individual Care provides:

Nourishment:

- (1) Diets: Residents shall be served diets as prescribed by a physician

Similarly, section 8.370.16.52D. Dietary Service provides:

- (1) Therapeutic diets shall be served only on order of the physician and shall be consistent with such orders.
- (2) Therapeutic menus shall be planned with supervision or consultation from a qualified dietitian.
- (3) Vitamin and mineral supplements shall be given only on order of the physician.

And, under E. Meal Service, it states: “All diets shall be prescribed by the attending physician.”

While we support the physician having authority to order therapeutic diets and prescribe diets, we ask the HCA to consider replacing the singular term “physician” in these sections with “physician, nurse practitioner, or physician’s assistant.” Referring exclusively to physicians may unintentionally exclude other New Mexico licensed medical professionals who are responsible for patient management. This change would increase access to qualified, timely care and align with the provisions of [§ 483.30 \(e\) and \(f\)](#) of the Code of Federal Regulations.

Additionally, consistent with the provisions of Title 42, § 482.28 of the Code of Federal Regulations and the [scope of practice](#) of the registered dietitian, we recommend adding licensed dietitians, as delegated by medical staff, to the list of providers 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, “[a]ll 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.<sup>1</sup>

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<sup>1</sup> It is noted the rule indicates that the “attending physician” must be the one to delegate the authority for writing therapeutic diet orders to the dietitian. However, in the “Revision to State Operations Manual (SOM) Appendix PP for Phase 2, F-Tag Revisions, and Related Issues” effective November 28, 2017, CMS provided guidance on this issue as part of F808. In long-term care facilities,

In justifying this change, CMS stated:

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.<sup>2</sup>

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.<sup>3</sup> Registered dietitian (RD) training and education best qualifies such individuals 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, nasogastric 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,<sup>4</sup> 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 parenteral and enteral nutrition diet orders, complex infant formula orders, and in the monitoring of associated lab parameters.<sup>5</sup>

As such, CMS made clear the benefits it believed were conferred by the long-term care rule: “Without

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the terms "attending physician" or "physician" also include a non-physician provider (physician assistant, nurse practitioner, or clinical nurse specialist) involved in the management of the resident's care."

<sup>2</sup> Medicare and Medicaid Programs; Reform of Requirements for Long-Term Facilities, 80 Fed. Reg. 42168 (July 16, 2015) (codified at 42 CFR 483.60), available at <https://www.federalregister.gov/d/2015-17207> (hereinafter, “CMS Long-Term Care TDO Proposed Rule”).

<sup>3</sup> CMS Long-Term Care TDO Proposed Rule.

<sup>4</sup> Medicare and Medicaid Programs; Reform of Requirements for Long-Term Facilities, 81 Fed. Reg. 68845 (October 4, 2016) (codified at 42 CFR 483.60), available at <https://www.federalregister.gov/d/2016-23503/page-68845> (hereinafter, “CMS Long-Term Care TDO Final Rule”).

<sup>5</sup> Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II, 79 Fed. Reg. 27105 (May 12, 2014) (codified at 42 CFR 482.28), available at: <https://www.federalregister.gov/d/2014-10687> (hereinafter, “CMS Hospital TDO Final Rule”). There are significant cost savings when dietitians order and monitor PN usage. The appropriate selection of route of nutrition support (i.e., EN versus PN) can be associated with decreased complications and mortality rates. It also decreases costs; CMS references the Peterson et al study noting a 50% reduction in inappropriate PN usage during pre-and post-ordering privilege periods produces a 20% cost savings in PN usage totaling \$300,000 over two years for a single hospital. Peterson SJ, Chen Y, Sullivan CA, et al. Assessing the influence of registered dietitian order-writing privileges on parenteral nutrition use. J AM Diet Assoc. 2010; 110; 1702–1711, doi: <https://doi.org/10.1016/j.jada.2010.08.003>

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.”<sup>6</sup> However, CMS highlighted, 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 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.<sup>7</sup>

CMS’s final rule recognizes both the need and rationale for dietitians’ broadly autonomous practice in this regard, while assuring oversight and accountability.<sup>8</sup>

### **Recommended Revisions:**

Acknowledging the above, we recommend the following rewrite of section 8.370.16.42 Individual Care and 8.370.16.52 Dietary Service.

#### **8.370.16.42 Individual Care**

Nourishment:

(1) Diets: Residents shall be served diets as prescribed by a physician, nurse practitioner, or physician’s assistant or a licensed dietitian as delegated by an authorized medical provider

#### **8.370.16.52 Dietary Service**

D. Therapeutic diets:

(1) Therapeutic diets shall be served only on order of the physician, nurse practitioner, or physician’s assistant or a licensed dietitian as delegated by an authorized medical provider and shall be consistent with such orders.

(2) Therapeutic menus shall be planned with supervision or consultation from a qualified dietitian.

(3) Vitamin and mineral supplements shall be given only on order of the physician, nurse practitioner, or physician’s assistant or a licensed dietitian as delegated by an authorized medical provider.

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<sup>6</sup> CMS Long-Term Care TDO Proposed Rule.

<sup>7</sup> CMS Long-Term Care TDO Proposed Rule.

<sup>8</sup> See CMS Long-Term Care TDO Final Rule.

E. Meal service: All diets shall be prescribed by the attending physician, nurse practitioner, or physician's assistant or a licensed dietitian as delegated by an authorized medical provider.

**Title 8 Social Services Chapter 371 Developmental Disabilities Part 2 Requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities**

Currently, under 8.371.2.7 the definition of “dietitian” is proposed to be updated as follows:

D. Terms beginning with the letter “D”: “Dietitian” means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978, effective July 1, 1989.

We would recommend that whatever definition used in this section be written to align with the definition selected for Title 8, Chapter 370 Oversight of Licensed Healthcare Facilities and Community Based Waiver Programs, Part 16 Requirements for Long Term Care Facilities. If choosing to utilize the definition as written under 8.371.2.7, we would recommend the following update to be more consistent with other definitions in this section.

D. Terms beginning with the letter “D”: “Dietitian” means a person licensed under the New Mexico Nutrition and Dietetics Practice Act as a dietitian.

**8.371.2.95 Food and Nutrition Services**

Similar to our above recommendation, for consistency, we would suggest the spelling of “dietician” in 8.371.2.95A. be updated to the preferred spelling of “dietitian.”

The New Mexico Academy appreciates the opportunity to provide these comments and is happy to work with the HCA to provide further explanation as to any of our comments. Please feel free to reach out to Rebecca Lamoreux, New Mexico Academy of Nutrition and Dietetics Public Policy Coordinator and/or Dr.Pribis, New Mexico Academy of Nutrition and Dietetics President with any questions or requests for additional information.

Sincerely,

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