

173-4-06

**Older Americans Act nutrition program: diet orders.**

## (A) Definitions for this rule:

- (1) "Diet order" means a written order for a therapeutic diet, medical food, or food for special dietary use from a licensed healthcare professional whose scope of practice includes ordering these diets.
  - (2) "Food for special dietary use" has the same meaning as in 21 C.F.R. 105.3(a)(1) (April, 2015 edition).
  - (3) "Medical food" has the same meaning as in 21 U.S.C. 360ee(b)(3) (as accessed on December 9, 2015).
  - (4) "Therapeutic diet" means a calculated nutritive ~~regime~~ regimen including, the following regimens:
    - (a) Diabetic and other nutritive regimens requiring a daily specific calorie level.
    - (b) Renal nutritive regimens.
    - (c) Dysphagia nutritive regimens, excluding simple textural modifications.
    - (d) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients.
- (B) In every AAA-provider agreement for therapeutic diets, medical meals, or food for a special dietary use paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:
- (1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
  - (2) Diet orders:
    - (a) The provider shall only provide a therapeutic diet, medical food, or food for special dietary use to a consumer if the provider received a diet order for the consumer. If the therapeutic diet is a dysphagia nutritive

regimen, the provider shall only provide the therapeutic diet if the diet order ~~requires the meals to have~~ indicates whether the consumer requires thickening agents in his or her drinks, soups, etc. and indicates whether the consumer requires a level-one (puréed) or level-two (chopped or ground) dysphagia therapeutic diet.

- (b) The provider shall provide a therapeutic diet, medical food, or food for special dietary use to the consumer identified in the diet order for the shorter of the following two durations:
  - (i) The length of time authorized by the diet order.
  - (ii) One year from the date the diet order indicates the diet should begin.
- (c) If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet, medical food, or food for special dietary use according to the updated diet order.
- (d) The provider shall assure the therapeutic diet contains nutrients consistent with the diet order by either utilizing nutrient analysis or by using a meal-pattern plan approved by a dietitian.
- (e) The provider shall only provide a therapeutic diet, medical food, or food for special dietary use if the provider (or, if the consumer is in a care-coordination program, the AAA), retains a copy of the diet order.

(3) Dietitians:

- (a) The provider shall determine the need, feasibility, and cost-effectiveness of offering a therapeutic diet, medical food, or food for special dietary use by consulting with a licensed dietitian.
- (b) A provider shall only provide medical food and food for a special dietary use if the provider relies upon the oversight of a dietitian when providing medical food or food for a special dietary use.

(C) Nutrition services incentive program (NSIP) funding for medical food and food for special dietary use:

- (1) Stand-alone meals: If the medical food or food for a special dietary use is offered to a consumer as meals, the meals are eligible for payment with Older Americans Act funds as medical food or food for a special dietary purpose, but are not eligible for payment with Older Americans Act funds as congregate or home-delivered meals. Thus, if the medical food or food for a special dietary use is offered to consumers as meals, they would not qualify for NSIP incentive payments.
- (2) Supplements to meals: If the medical food or food for a special dietary purpose is offered to consumers as supplements to meals, the supplements are included in the cost of the meals. Meals with the supplement are eligible for payment with Older Americans Act funds as a congregate or home-delivered meals, both of which qualify for NSIP incentive payments.

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Certification

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Date

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Statutory Authority: 173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 70 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (July 1, 2016).  
Rule Amplifies: 173.392; Section 339 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016.  
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