



July 31, 2014

## CMS Ruling, CA Law, and SB 993

To: CDA Members and All California RD/ RDNs

RE: CMS Rule Related to Therapeutic Diet Orders, CA Regulations, and SB 993

The new CMS rule regarding independent writing of diet orders by hospital-privileged RD/RDNs went into effect on July 11, 2014. Since then, CDA has received questions about how this will apply in California. Many general questions about the CMS rule have been addressed on the Academy website (<http://www.eatright.org/dietorders/>). The Academy has also developed a state-focused analysis of the ruling, emphasizing that this federal law can be implemented *within the boundaries of state laws and regulations*, specifically those pertaining to scope of practice. We encourage you to read all of this information.

*Potential barriers to implementation of the new CMS rule in California are included in the Academy analysis.* The Academy analyzed our Business & Professions Code 2585 & 2586 (the CA law describing the scope of practice of RDs and other nutrition professionals) and Title 22 California Code of Regulations, Division 5, (the requirements for licensed acute care hospitals/facilities) and identified specific sections that could impact implementation of the new rule.

***As you may be aware, CDA's legislative efforts to update and revise our Business and Professions Codes (B&P codes 2585 & 2586) and seek licensure have been ongoing for more than 5 years!***

***CDA's current bill, SB 993, is a testament to our perseverance in an anti-licensure political climate in California.***

*SB 993 was drafted to address needed B&P code updates and is separate from the CMS rule.* Since the final rule announcement, we have continued to work with our lobbyist and our bill author, Senator Mitchell, to ensure that the language is favorable to this new federal law. For example, we have removed reference to "physician-prescribed diet orders." We are challenged by the legislative process and politics in California. If we attempt to make significant language changes at this advanced point in the bill's progress through the legislature, we cannot expect SB993 to be successful. Further amendments to the bill now would raise questions from our supporters and opponents about the intent of the bill, which could impact success of the bill and CDA's credibility in future legislative efforts.

***We are working hard, with all members' help, to achieve the passage of SB 993 through the California state legislature.***

*Another factor in implementing the new CMS rule in California, is the position held by CDPH Licensing and Certification Division, regarding clinical privileging.* They have informed CDA in the past that a prerequisite for clinical privileging in hospitals is the existence of a state-level oversight board such as a licensing board. The lack of an oversight board in California may continue to be a barrier to creating an acceptable process for granting privileges to hospital RD/RDNs to write diet orders. Although we will be engaging in conversation with CDPH, at this time we do not have reason to believe that their position has changed.

## ***What Does All This Mean to the RD/RDN Practicing in a Hospital in California?***

1. *The new CMS rule must be read in the context of existing state laws and regulations.* At the present time, California laws (B&P Codes) and regulations (Title 22) have not changed. The new federal ruling has not influenced California law, nor does it override existing California law and regulations.

2. *SB993 is addressing language cleanup of B&P codes 2585-2586.* Importantly, if passed in this legislative session, SB 993 will:

- Update verbiage regarding DTR qualifications, California Department of Public Health's proper name, insertion of RDN as another name for RD, etc.
- Add verbiage to make explicit what diet intervention options the RD/RDN has when performing MNT (lacking in the law now). This clarification will be valid regardless of who writes the diet order, and it helps the RD/RDN who will not get clinical privileges in their hospital, as well as RD/RDNs working in non-hospital licensed health care facilities.
- Serve as a bridge connecting CDA with the legislators, their staff, and like-minded organizations and associations that will certainly help us in our future steps towards licensure.

3. *Hospital dietitians who wish to explore the feasibility of writing therapeutic diet orders per the new CMS rule would be wise to take the information supplied by the Academy to their organization's regulatory/legal department for review.*

Hospitals have the right to pursue analysis of the new federal law and make decisions weighing risk/benefit in light of known state challenges and concerns. To the best of our knowledge there is no precedent we can cite, since the CMS rule is new and state surveys of hospitals with clinically privileged RDs/ RDNs have not yet occurred.

4. *RD/RDNs in California must recognize that clinical privileging is a process detailed in a hospital procedure that is approved by the governing body and reflected in the organization's bylaws, as opposed to a department policy.* It usually entails the hospital's medical staff individually evaluating each practitioner and determining that she or he has the qualifications and demonstrated competence to perform all of the specific tasks for which privileges are granted.

5. *This rule change applies only to RD/RDN practice in hospitals.* The rule does not apply in skilled nursing facilities or other settings.

Rest assured, we will continue communicating with you on this issue. The priority right now remains the passage of SB 993, to update our B&P codes. There will be final legislative action on SB 993 in August.

Please contact Heidi Kiehl or Pat Booth with any questions. ([ProfessionalPractice@dietitian.org](mailto:ProfessionalPractice@dietitian.org))

Regards,

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