1. **What does this final rule do?**

The Centers of Medicare and Medicaid Services (CMS) pre-published a [final rule](#) on May 7, 2014 finalizing a [proposed rule change](#) that would, among other things, “Save hospitals significant resources by permitting registered dietitians to order patient diets independently, which they are trained to do, without requiring the supervision or approval of a physician or other practitioner. This frees up time for physicians and other practitioners to care for patients.” According to CMS in the final rule, “[t]he addition of ordering privileges enhances the ability that RDNs already have to provide timely, cost-effective, and evidence-based nutrition services as the recognized nutrition experts on a hospital interdisciplinary team.” It is important to note this change only applies to RDs privileged by the hospital in which they work and that the rule is not effective until July 11, 2014.

As CMS previously noted, “Our intent in revising the provision was to provide the flexibility that hospitals need under federal law to maximize their medical staff opportunities for all practitioners, but within the regulatory boundaries of their State licensing and scope-of-practice laws. We believe that the greater flexibility for hospitals and medical staffs to enlist the services of non-physician practitioners to carry out the patient care duties for which they are trained and licensed will allow them to meet the needs of their patients most efficiently and effectively.”

Relevant portions of the final rule are on pages 5, 11, 13, 33, 43-52, 112, 144-145, 150-159, 177-178, and 186-187.

2. **Is this final rule a good thing?**

The final rule is a major policy success for the Academy and reflects the commitment of the Academy and its Board to achieving policy goals. Academy members consistently identified the regulatory impediment to ordering therapeutic diets as one of the most significant issues frustrating efficient, effective practice, as it prevented RDNs from performing at the height of their competencies.

The Academy’s Policy Initiatives and Advocacy team, in conjunction with Quality Management, reinitiated efforts to produce a regulatory change within CMS beginning in 2010, by producing a detailed analysis of the legal and practice issues surrounding therapeutic diets on both federal and state levels with recommendations for effecting a regulatory change at CMS. Since that time, the Academy has worked with CMS during multiple meetings, evidentiary offerings, and regulatory comments to bring about this tremendous success. The Legislative and Public Policy Committee, the Quality Management Committee, and the Academy’s CMS Workgroup have provided significant member input, support and guidance throughout the process.

3. **Does the rule do anything else in addition to making this change in diet ordering?**

Yes. The final rule specifically clarifies that RDNs may be included on the medical staff, as they “have equally important roles to play on a medical staff and on the quality of medical care provided to patients in the hospital.”

In addition, the final rule reviewed suggestions that would enable RDNs and other practitioners to furnish and bill for site telehealth services through rural health clinics (RHC) in a way that will not result in duplicate payment (once through the Medicare RHC cost report and again through the Medicare Part B physician fee schedule payment).
4. **What is the history of this final rule?**

This final rule responds directly to the President’s instructions in Executive Order 13563 urging federal agencies to reduce or revise outmoded or unnecessarily burdensome rules and regulations. Many of the rule’s provisions streamline the standards health care providers must meet in order to participate in the Medicare and Medicaid programs without jeopardizing beneficiary safety. The Academy submitted formal comments to CMS in December 2011 urging this very change, providing the evidentiary and scientific basis upon which CMS relied in drafting the rule.

5. **Who will be able to order therapeutic diets?**

Under the rule, qualified dietitians or qualified nutrition professionals will be explicitly permitted to become privileged by the hospital staff to (a) order patient diets, (b) order lab tests to monitor the effectiveness of dietary plans and orders, and (c) make subsequent modifications to those diets based on the lab tests, if in accordance with state laws including scope of practice laws. CMS made this change because it “believe[s] that RDs are the professionals who are best qualified to assess a patient’s nutritional status and to design and implement a nutritional treatment plan in consultation with the patient’s interdisciplinary care team.” CMS did note that lab ordering “privileges for dietitians and nutrition professionals are not required or specifically allowed by this requirement, but are instead an option left to hospitals and their medical staffs to determine in consideration of relevant State law as well as any other requirements and/or incentives that CMS or other insurers might have.”

6. **What is a “qualified dietitian or qualified nutrition professional”?**

The Conditions of Participation for hospitals do not unambiguously define the term “qualified dietitian,” but the interpretive guidelines indicate that “Qualification is determined on the basis of education, experience, specialized training, State licensure or registration when applicable, and maintaining professional standards of practice.” CMS defines “qualified dietitian” variously in long term care facilities (“A qualified dietitian is one who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association, or on the basis of education, training, or experience in identification of dietary needs, planning, and implementation of dietary programs.”) and transplant centers (“A qualified dietitian is an individual who meets practice requirements in the State in which he or she practices and is a registered dietitian with the Commission on Dietetic Registration.”). The final rule indicates it is CMS’s “intention ... to include all qualified dietitians and any other clinically qualified nutrition professionals, regardless of the modifying term (or lack thereof), as long as each qualified dietitian or clinically qualified nutrition professional meets the requirements of his or her respective State laws, regulations, or other appropriate professional standards.”

7. **How is “therapeutic diet” defined?**

There is not presently a definition of therapeutic diet in the Conditions of Participation regulating hospitals. CMS has previously adopted the Academy-approved “therapeutic diet” definition and interpretive guidance for the Resident Assessment Instrument Manual 3.0. The Academy will continue to work with CMS to encourage adoption of the definition for hospitals and across the continuum of care.

8. **When will I be able to start ordering therapeutic diets for my patients?**

Before an RDN will be legally permitted to order patient diets, the RDN must become part of the medical staff or be granted privileges by the hospital to order therapeutic diets. In addition, given the abundance of state laws and regulations that mirrored the restrictive regulation that CMS is revising here, it is important to be aware of the progress state legislatures and regulatory authorities will make.
Frequently Asked Questions—CMS Final Rule Related to Therapeutic Diet Orders

9. **What does it mean to have hospital privileges?**
   Privileging is the process by which a hospital’s medical staff individually evaluates each practitioner and determines that he or she has the qualifications and demonstrated competence to perform all of the specific tasks for which privileges are granted.

10. **Would this include the ordering of nutritional supplements, too?**
    Privileged RDNs should be able to order nutritional supplements for patients in accordance with state laws and regulations.

11. **How does this apply to RDNs in long term care facilities? Will I be able to order therapeutic diets or provide nutritional supplements to my residents?**
    This rule would apply only to RDNs privileged by hospitals. The Academy continues to work with CMS to urge a separate regulatory change that would apply to RDNs practicing in long term care or other facilities and it hopeful for success in the future.

12. **Our state does not license dietitians (or our state only certifies dietitians); does this rule change apply to RDs in our state?**
    The Academy believes that RDNs in states that do not currently license dietitians will be able to become privileged to order patient diets. CMS clearly states that “[i]n order for patients to have access to the timely nutritional care that can be provided by RDs, a hospital must have the regulatory flexibility either to appoint RDs to the medical staff and grant them specific nutritional ordering privileges or to authorize the ordering privileges without appointment to the medical staff, all through the hospital’s appropriate medical staff rules, regulations, and bylaws.” (Emphasis added.) State surveyors in states without licensure previously would not permit RDNs to become privileged predicated on their belief that without a dietetics licensure board, there was insufficient oversight for reporting improper dietetics practice. In this rule, CMS appears to rebut that premise, stating that whether through appointment to the medical staff or the granting of order writing privileges by the hospital, “medical staff oversight of RDNs and their ordering privileges would be ensured.” The Academy will keep members apprised of specific developments on this topic.

All hospitals in every state that deals with and receives reimbursement from CMS must follow the regulations and interpretive guidelines in the CMS State Operations Manual - specifically § 482.28 - Conditions of Participation (CoPs): Food and Dietetic Services.

13. **What are the next steps the Academy will take to help members with regard to therapeutic diet ordering?**
    In the near future and after digesting the intricacies of this final rule, the Academy will provide members with (1) suggestions for how to discuss this issue with employers and medical staff; (2) detailed processes and strategies for obtaining privileges; (3) model policies and procedures for privileging RDNs in the hospital setting and (4) analysis of the impact of state licensure laws and regulations on implementation. We remain committed to extending the ability to order therapeutic diets across the continuum of care, and will be working with CMS to allow RDNs in long term care settings to independently order therapeutic diets as well.