



SANDRA SHEWRY
Director

State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

June 12, 2006

AFL 06-05

**TO: SKILLED NURSING FACILITY ADMINISTRATOR
FACILITY REGISTERED DIETITIAN**

SUBJECT: DIETETIC SERVICE OPERATIONS STAFFING AND SUPERVISION

The purpose of this correspondence is to provide information about federal and state requirements of oversight of dietetic service operations and the qualification requirements for the dietitian and dietary service supervisor. It has been brought to our attention that some facilities may not be in compliance with California laws regarding the qualification requirements or aware of the limitations of Program Flexibility.

Title 42, Federal Code of Regulations section 483.35 requires a full-time dietitian be responsible for food service operations. Alternatively, section 483.5(a)(1) allows that if the dietitian is less than full time, then a director of dietary shall be employed to supervise food service operations with oversight and responsibility of operation maintained by the dietitian.

California Business and Professions Code section 2585 requires that a dietitian be registered. The Department of Health Services (DHS) has identified the Commission on Dietetic Registration as the entity to administer the examination.

Title 22 California Code of Regulations (CCR) section 72351 Dietetic Service Staff requires food service operation supervision by a registered dietitian or a full time dietary service supervisor with oversight by the registered dietitian. Title 22 CCR section 72351(b) requires the dietary service supervisor to have completed formal training from a state-approved program. This State approved program is offered through some California Community Colleges. See enclosed list.

In addition, title 22 CCR section 72035 identifies three additional training routes for an individual to meet the formal training requirements of a dietary service supervisor.

DHS, Licensing and Certification Program (L&C), has no authority to waive laws and regulations, regardless of whether or not they are outdated or obsolete as a result of changes in technology, procedure, etc. However, in order to serve the residents in health care facilities, L&C has a statutorily authorized concept called "Program Flexibility" which recognizes that regulations cannot keep pace with modern technology and that often new alternatives, approaches, and techniques which meet the intent of the regulation is preferable to strict compliance (Health and Safety Code section 1276). The Program reviews and grants program flexibility on a case-by-case basis and the approval is specific to an individual facility and regulation. However, regulations that are restatements of statutes cannot be granted program flexibility.

Pursuant to title 22 CCR section 72213, a facility may request program flexibility for an alternative way of meeting the intent of the regulation such as a dietary service supervisor employee candidate who has already completed training in health care dietary service supervision. An alternate formal/classroom training route should be equivalent to one of the pathways in sections 72035 or 72351(b). A written request with sufficient support information should be submitted to the appropriate L&C District Office for review and determination by L&C staff.

For questions regarding this letter, please contact, Patty Pasquarella, MS, RD, Chief, Nutrition Consultant Unit, at (916) 552-8689.

Sincerely,

Original Sign by Brenda G. Klutz

Brenda G. Klutz
Deputy Director

Enclosure