from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary is designated for snowmobile use. The Superintendent may open or close this route after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. During the winter use season of 2003–2004 a maximum of 25 snowmobiles are allowed to use this route each day.

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(g)(7)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m.

* * * * *

Dated: March 20, 2002.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–7707 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 36

Meeting of the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance

AGENCY: Indian Health Service, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of Health and Human Services (DHHS) published a proposed rule in the **Federal Register** (67 FR 6998, February 14, 2002) to implement Title V of the Tribal Self-Governance Amendments of 2000, Pub. L. 106–260 (the Act). The proposed rule was negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the DHHS and includes provisions governing how DHHS/Indian Health Service (IHS) carries out its responsibility to Indian Tribes under the Act and how Indian Tribes carry out their responsibilities under the Act. As required by section 517(b) of the Act, the DHHS developed the proposed rule with active Tribal participation of Indian Tribes, inter-Tribal consortia, Tribal organizations and individual Tribal members, using the guidance of the Negotiated Rulemaking Act, 5 U.S.C. 561 et seq.

The proposed rule was published in the **Federal Register** with a 60-day public comment period. Any interested party was invited to provide comment. To address comments received, a meeting is scheduled for the location and date provided below. As a result of the meeting, the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance (the Committee) may recommend changes in the proposed rule in response to comments received.

DATES: The Committee will meet as follows: April 15, 1:00 p.m.—6:00 p.m.,; April 16–17, 8:00 a.m.—6:00 p.m.; April 18, 8:30 a.m.—1:00 p.m., Bethesda, MD.

ADDRESSES: The location of the meeting is: Bethesda, MD—Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20817.

FOR FURTHER INFORMATION CONTACT: Paula Williams , Director, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Telephone 301–443–7821. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting to the extent time permits. A summary of the Committee meeting will be available for public inspection and copying ten days following the meeting at the address listed in the preceding paragraph.

Dated: March 25, 2002.

Duane L. Jeanotte,

Acting Director.

[FR Doc. 02–7527 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 483 and 488

[CMS–2131–P]

RIN 0938–AL04

Medicare and Medicaid Programs; Requirements for Paid Feeding Assistants in Long Term Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide States the flexibility to allow long term care facilities to use paid feeding assistants to supplement the services of certified nurse aides if their use is consistent with State law. If facilities choose this option, feeding assistants must complete a specified training program. This proposed rule would improve the quality of care in long term care facilities by ensuring that residents are assisted with eating and drinking as needed.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 28, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2131–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2131–P, PO Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nola Petrovich, (410) 786–4671.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–14–03 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD, on Monday through

Friday of each week from 8:30 a.m. to 4 p.m. (Phone (410) 786–7201).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Legislation

Sections 1819(a) through (e) and 1919(a) through (e) of the Social Security Act (the Act) set forth the requirements that long term care facilities must meet to participate in the Medicare and Medicaid programs, respectively. Sections 1819(f)(2) and 1919(f)(2) of the Act contain requirements for nurse aide training and competency evaluation programs (NATCEP). Sections 1819(g) and 1919(g) of the Act contain the criteria that we use to assess a facility's compliance with the requirements. These statutory provisions were mandated by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, enacted December 22, 1987). The requirements for long term care facilities are codified at 42 CFR part 483, subpart B; the nurse aide training and competency evaluation program requirements are codified at 42 CFR part 483, subpart D; and the survey, certification and enforcement procedures are codified at 42 CFR part 488, subparts E and F. Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act and regulations at § 483.75(e) define a nurse aide as any individual furnishing nursing or nursing-related services to residents in a facility, who is not a licensed health professional, a registered dietitian, or someone who volunteers to furnish services without pay. Sections 1819(f)(2) and 1919(f)(2) of the Act set forth the requirements for approval of a nurse aide training and competency evaluation program, but do not define ''nursing'' or ''nursing related'' skills. Section 483.152 of the regulations specifies nurse aide training requirements. These include, for example, basic nursing skills, personal care skills, communication and interpersonal skills, infection control, safety and emergency procedures, mental health and social service needs, residents' rights, care of cognitively impaired residents, and basic restorative services.

Current Program Experience

Currently, there is no provision in the regulations for the use of single-task workers, such as paid feeding assistants, in nursing homes. To ensure the safety of facility residents, we require that qualified nursing staff provide assistance with eating and drinking, although there is some question whether or not all residents need medical supervision. This group of personnel includes registered nurses, licensed practical nurses, and certified nurse aides who have completed 75 hours of training. However, volunteers, who are usually family members, may also feed residents, because the law and regulations exclude volunteers from the definition of certified nurse aide.

Nursing homes in many States report a continuing shortage of certified nurse aides. Nursing homes are finding it increasingly difficult to train and retain sufficient numbers of qualified nursing staff, especially certified nurse aides. Certified nurse aides perform the majority of resident care tasks. Other employers often pay similar wages for less physically and emotionally demanding jobs. This makes it harder for nursing homes to employ enough nursing staff to perform routine nursing care and to feed residents who need minimal help or just encouragement at mealtimes. Feeding residents is often a slow process and competes with more complex tasks, such as bathing, toileting, and dressing changes, as well as urgent medical care.

For many elderly nursing home residents, physical and psychological changes often interfere with eating ability and meal consumption. Residents may need assistance with feeding if they have, for example, cognitive impairment, impaired swallowing due to muscular weakness or paralysis, a tendency to aspirate or choke, poor teeth, ill-fitting dentures or partial plates, or poor muscular or neurological control of their arms or hands, as with Parkinson's disease.

Current Trends

Nursing homes are caring for an aging population that has more acute clinical conditions than in the past. The result is a higher percentage of nursing home residents who need higher levels of medical care, which takes more staff time and leaves less time for routine tasks, such as ensuring that residents eat their meals and drink enough fluids.

In addition, evidence suggests that there has been a recent increase in assisted living facilities that house many individuals with minimal medical needs who previously would have been cared for in nursing homes. Both of these trends have resulted in a frailer nursing home population than previously, with residents who are more dependent on nursing staff for basic needs, such as feeding and personal care. A critical shortage of certified nurse aides in many parts of the country has resulted in a need for staff who are specially trained to help residents eat at mealtimes, to supplement, not replace certified nurse aides.

Some residents only need encouragement or minimal assistance, which does not require medical training. Properly trained nonmedical personnel could provide this type of assistance. Nurse aides and other nursing staff receive training so that they are able to feed residents with all kinds of feeding problems. A higher level of training is required of nurse aides because they need to be able to deal with complicated feeding problems. However, when there is a nurse aide shortage, it is often the case that residents without complicated feeding problems receive little or no assistance at mealtimes with eating or drinking, while the nursing staff focuses on feeding residents with complicated problems. We believe there is a place in nursing homes for the use of feeding assistants who, after proper basic training in feeding techniques and working with the elderly, are able to feed residents who do not have complicated feeding problems. It is reasonable to require that feeding assistants receive a lower level of training than a nurse aide because feeding assistants would not handle complicated feeding cases. This would allow facilities, if they choose, to train other facility employees as feeding assistants so that available staff can feed residents at mealtimes.

Facility Staff Shortages

Because of the shortage of certified nurse aides and the increasingly complex medical needs of residents, facilities in some States have used paid

feeding assistants to supplement certified nurse aides to ensure that residents take in adequate food and fluids. Generally, feeding assistants used by these facilities are part-time workers, often retired individuals, or homemakers who are available for a few hours a day. They may also be older students who come into the facility between 1 and 2 hours either at the noon or evening meal. In other facilities, staff shortages are so acute that all nonmedical employees, including the administrator of the facility, are required to complete training and help feed residents at mealtimes. Training facility personnel for functions other than their primary position is known as cross-training. There is anecdotal evidence that cross-training of personnel increases coordination and continuity of care. It also contributes to increased morale and lower staff turnover.

There is no provision in Federal regulations for the employment of nursing home workers who perform only a single task without completing 75 hours of nurse aide training. Currently, residents must be fed by a registered nurse, licensed practical nurse, or a nurse aide who has completed 75 hours of medical training and who has been certified as competent to perform all nurse aide tasks. Volunteers may also feed residents. The reason for this existing policy is to ensure that residents who cannot, or do not, feed themselves are fed by nursing staff who have medical training. This is intended to protect residents from unskilled workers who might injure a resident by not recognizing serious medical complications associated with eating.

Wisconsin and North Dakota are two States in which nursing homes have had serious difficulty hiring enough certified nurse aides and have used feeding assistants as a supplement to certified nurse aides. Other States have expressed interest in using paid feeding assistants, including Ohio, Minnesota, Florida, California, and Illinois. Florida and Illinois have both passed laws that permit the use of single task workers in their States, but they have not yet implemented the provisions.

Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years. Wisconsin uses a structured, formal program that requires a facility wanting to implement a feeding assistant program to submit an application for approval by the State. The classes are taught by a registered nurse, with a registered dietitian teaching the dietary elements of the program. A facility's approved program must include the following core areas: Interpersonal communication and social interaction; Basic nursing skills (including infection control); Personal care skills (assisting with eating, hydration); Basic restorative services (assistive devices for eating); Resident rights; and special problems associated with Dementia (specialized feeding and intake problems). Participants who complete the training must demonstrate skills and pass a written test with a score of 80 percent or better. Feeding assistants are used solely for feeding residents who have no feeding complications. They are permitted to feed residents only in the dining room and operate under the direction of a registered nurse or licensed practical nurse. Feeding assistants serve to supplement care delivered by certified nurse aides, which frees up more extensively trained aides to perform more complex resident care tasks.

North Dakota has used paid feeding assistants for a number of years and has a slightly less formal program than that of Wisconsin. The residents to be fed are selected by the dietary and nursing staff. If a facility has a nurse aide training program, the training coordinator and dietitian work together to train new feeding assistants individually. After training and orientation, a new feeding assistant is assigned to one resident who needs minimal assistance. As the assistant gains skill and confidence, he or she is assigned to more residents at a meal or to a resident who requires a higher level of skill to feed. Typically, feeding assistants work only about 1½ hours per day, providing assistance at either the noon or evening meal.

Conclusion

We are committed to ensuring that long term care residents receive the best possible care. We recognize that a shortage of certified nurse aides adversely affects resident care and prevents many residents from receiving adequate help with eating and drinking. Further, we are persuaded by the experience of States that have used paid feeding assistants, that proper training and medical direction of these feeding assistants minimizes the risk to residents, while providing substantial benefits to residents. After thoroughly considering this issue, we believe that the benefits to residents outweigh the potential risks and so we are taking steps to resolve the issue by publishing this proposed rule. We believe that a policy change to allow the use of feeding assistants can be accommodated under existing statute. There is nothing in the statute governing requirements for long term care facilities (sections 1819 and 1919 of the Act) that would preclude the use of these workers and we believe that there is no conflict with other statutory requirements.

II. Provisions of the Proposed Regulations

We would provide States the flexibility to allow a facility the option to use paid feeding assistants to help residents with eating and drinking at mealtimes. In new § 483.35(h), we would specify that if a facility uses paid feeding assistants, the feeding assistants must complete a State-approved training course that meets minimum requirements. The proposed course requirements are listed in § 483.160 and would include only non-nursing-related services and items that are currently part of the nurse aide training requirements. In addition to training in proper feeding techniques and how to assist residents with eating and drinking, we would include in the training other basic skills necessary to work with elderly and disabled nursing home residents. These include communication and interpersonal skills; appropriate responses to resident behavior; safety and emergency procedures, including the Heimlich Maneuver; infection control; resident rights; and recognizing changes in patients that are inconsistent with their normal behavior, and the importance of reporting those changes to the supervisor. Some States may want to include other requirements in their training, for example, the use of assistive devices for the unique needs of the cognitively impaired. We are not, however, including these other requirements. We anticipate that this training could easily be implemented in any facility with an approved nurse aide training program because the requirements are not new. We note that these requirements are the minimum and States and facilities must use these as a baseline, but may add any others that they believe are appropriate to structure a feeding assistance program that meets their needs.

We would require that each facility maintain a record of individuals it uses as feeding assistants who have successfully completed the feeding assistance training. In keeping with other similar requirements, we would require States to require facilities to report to the States any incidents of feeding assistants who have been found to neglect or abuse a resident, or misappropriate a resident's property. The States must maintain records of all reported incidents. States are not required to maintain a formal registry, as required for nurse aides, but the intent is similar.

The facility may use paid feeding assistants to feed residents who do not have a clinical condition that would require the training of a nurse or nurse aide. It is important for the professional nursing staff in the facility to identify residents who need help eating and drinking and those who can be fed by feeding assistants. We believe that this can be established by the comprehensive assessment (§ 483.20). Often, residents need help on some days and not on others. This means that the nurse in charge may need to make feeding decisions on a daily basis. Nurses or certified nurse aides would continue to feed residents with clinical conditions that require nursing training, including for example, recurrent lung aspirations, difficulty swallowing, or those on feeding tubes or parenteral/IV feedings. All feeding assistants must work under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary. We would also revise ''nurse aide'' at § 483.75(e) to clarify that paid feeding assistants are not performing nursing or nursing-related tasks.

We would define ''paid feeding assistant'' in § 488.301, as an individual who is paid by a facility or paid under an arrangement with another agency or organization to feed residents and who meets the requirements specified in § 483.35(h). Any nonprofessional nursing home employee, including the administrator, activity staff, clerical, laundry, or housekeeping staff may be considered a feeding assistant and may feed residents at mealtimes if he or she has completed the training requirements in § 483.160.

These requirements would not apply to volunteers, including family members. Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act exempt volunteers from the definition of ''nurse aide'' and nurse aide training requirements, which are more stringent than feeding requirements. Therefore, we believe that it is logical to exempt volunteers from requirements concerning feeding assistants. However, volunteers may take the training if they wish, but there is no requirement that they do so.

Feeding assistants are intended to supplement certified nurse aides, not be a substitute for certified or licensed nursing staff. Therefore, feeding assistants may not be counted toward the minimum staffing requirements in § 483.30. Facilities that choose the option to use paid feeding assistants, when consistent with State law, remain responsible for any adverse actions resulting from the use of these assistants, as with any other employee.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Nursing homes in two States currently use feeding assistants. While we know of eight other States that have expressed an interest in implementing this policy, it is a facility option and we do not know how many facilities in which States will choose this option. There are approximately 17,000 nursing homes in the nation, and they are not evenly distributed within States. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 483.160(b)

1. Requirement

A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

2. Burden

Our rough estimate is that 10 States will implement this policy, that is, 20 percent of nursing homes (20 percent of 17,000 = 3400 facilities/respondents). We estimate that each facility will hire two feeding assistants, resulting in a total of 6,800 feeding assistants. Depending on the method chosen by a facility to collect this information, we believe that each facility (respondent) would spend no more than 30 minutes per month (6 hours per year) to enter feeding assistant information into its record-keeping system. Some months, facilities may have no information to add. With 3,400 facilities at 6 hours/year, the total would be 20,400 hours for facilities. Using a wage cost of $10 per hour, the total facility burden is estimated to be $204,000.

Section 483.160(c)

1. Requirement

Each State must require a facility to report to the State all incidents of any paid feeding assistant who has been found to neglect or abuse a resident or misappropriate a resident's property. Each State must maintain a record of all reported incidents.

2. Burden

We estimate that each facility and State will spend no more than 30 minutes per month to add new information to the system. This comes to 6 hours annually per facility and State $\times$ 10 facilities/States = 60 hours. Using a wage cost of $10 per hour, the total facility or State cost is estimated to be $600.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this proposed rule, as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

This proposed rule is not a major rule. It would not result in any budget impact. A facility could employ a feeding assistant under the current regulations. This proposed rule simply reduces the amount of training that would be required for an individual that would furnish only feeding assistance and provides States with the option of using paid feeding assistants, rather than CNAs, to provide feeding assistance.

The RFA requires agencies to determine whether a rule would have significant economic impact on a substantial number of small entities (analyze options for regulatory relief of small businesses). For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually (see 65 FR 69432). For purposes of the RFA, 85 percent of long term care facilities with revenues of $10.0 million or less are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this proposed rule would not have consequential effects on State, local, or tribal governments, or on the private sector. This proposal is an option that does not constitute an unfunded mandate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We believe that this proposed rule would not have a substantial effect on State or local governments. This proposal is an option, which facilities may choose to adopt if it is consistent with State law and the State promotes this option.

B. Anticipated Effects

These proposed provisions would affect long term care facilities. We expect the provisions to be a substantial benefit both to facilities that are short-staffed and to beneficiaries that need help with eating and drinking. By using feeding assistants, facilities can use trained certified nurse aides to perform more complex resident care tasks. There are approximately 17,000 long term care facilities participating in the Medicare and Medicaid programs. We do not know how many facilities would choose the option to hire feeding assistants. We know of two States that have used feeding assistants for a number of years. Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years, and North Dakota has used them since the 1980s. Several other States have passed laws, or indicated that they wish to implement a feeding assistant program, but have not yet done so (including Ohio, Minnesota, Florida, California, and Illinois). If these States adopt this option, they will realize the benefits of using paid feeding assistants. If we receive additional information from public comments about the number of States that may choose this option and costs to the States and facilities, we will summarize the information in the subsequent final rule.

We believe that both residents and providers would benefit from these provisions. Residents would receive more assistance with eating at meals. Facilities would have greater choices in hiring staff to meet their needs and the needs of residents, freeing certified nurse aides to perform more complex tasks that require their medical training.

C. Alternatives Considered

One alternative to this policy would be for facilities to hire more nursing staff, including nurse aides. However, not only would this cost more, but due to the continuing shortage of certified nurse aides, we know of no other alternatives at the moment that would meet our objectives. Certified nurse aides perform the majority of resident care in a long term care facility and frequent nurse aide shortages often result in less than adequate care for residents and greater stress on certified nurse aides and other staff.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42 CFR chapter IV as set forth below:

A. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B—Requirements for Long Term Care Facilities

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.35, the introductory text is republished, paragraph (h) is redesignated as paragraph (i) and republished, and a new paragraph (h) is added to read as follows:

§ 483.35 Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

* * * * *

(h) *Paid feeding assistants*—(1) *General rule.* A facility may use a paid feeding assistant, as defined in § 488.301 of this chapter, to feed

residents who meet the following conditions:

(i) Need assistance with eating and drinking.

(ii) Based on the comprehensive assessment, do not have a clinical condition that requires the assistance with eating and drinking of a registered nurse, licensed practical nurse, or nurse aide.

(2) *Requirements on facilities.* If a facility uses a paid feeding assistant, the facility must ensure that the feeding assistant meets the following requirements:

(i) *Training.* Completes a State-approved training course that meets the requirements of § 483.160.

(ii) Supervision. Works under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary.

(i) *Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

* * * * *

§ 483.75 [Amended]

3. In § 483.75(e), the definition of ''nurse aide'' is amended by adding the following sentence to the end of the definition: ''Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301 of this chapter.''

* * * * *

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation; and Paid Feeding Assistants

4. The heading of subpart D is revised to read as set forth above.

5. A new § 483.160 is added to read as follows:

§ 483.160 Requirements for training of paid feeding assistants.

(a) A State-approved training course for paid feeding assistants must include, at a minimum, the following:

(1) Feeding techniques.

(2) Assistance with feeding and hydration.

(3) Communication and interpersonal skills.

(4) Appropriate responses to resident behavior.

(5) Safety and emergency procedures, including the Heimlich maneuver.

(6) Infection control.

(7) Resident rights.

(8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

(c) A State must require a facility to report to the State all incidents of a paid feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property. The State must maintain a record of all reported incidents.

B. Part 488, subpart E is amended as follows:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

Subpart E—Survey and Certification of Long Term Care Facilities

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

2. Section 488.301 is amended by adding a new definition of ''Paid feeding assistant'' in alphabetical order to read as follows:

§ 488.301 Definitions.

As used in this subpart—

* * * * *

Paid feeding assistant means an individual who meets the requirements specified in § 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 14, 2001.

Tommy G. Thompson,

Secretary.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–11875]

RIN 2127–AI04

Federal Motor Vehicle Safety Standards; Rear Impact Guard Labels; Notice of Proposed Rulemaking; Grant in Part, Denial in Part of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; grant in part, denial in part of petition for rulemaking.

SUMMARY: This document responds to petitions for rulemaking from the Truck Trailer Manufacturers Association, American Trucking Associations, and Compass Transportation, Inc. Petitioners asked the agency to amend the Federal motor vehicle safety standard on rear impact guards by eliminating the labeling requirement. Under that requirement, rear impact guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' The petitioners asked that if NHTSA declined to eliminate the labeling requirement, the agency instead amend the labeling requirement by eliminating the requirement that the label be permanent, and allowing manufacturers to place the label where it may be the least exposed to damage.

This document denies petitioners' requests to eliminate the labeling requirement and the requirement that rear impact guards be permanently labeled, but grants petitioners' request to allow manufacturers to place the label on the rear impact guard where it may be least exposed to damage.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments should refer to the docket number above and be