

CMS Clarifies Hospital Menu Push Not Linked To CoP Enforcement As It Touts Voluntary Pledge

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CMS tells *Inside Health Policy* it is not enforcing the administration's new dietary guidelines through Medicare's Conditions of Participation (CoPs), clarifying its position as the agency now touts a voluntary hospital food pledge, months after a top adviser to the HHS secretary warned that hospitals could jeopardize their Medicare reimbursement if they failed to update their menus to incorporate the guidelines.

Tampa General Hospital last Thursday (July 16) became the first hospital to sign the Trump administration's "Make Hospital Food Healthier Pledge." HHS Secretary Robert F. Kennedy Jr. and Agriculture Secretary Brooke Rollins attended the ceremonial signing, which formally kicked off the voluntary initiative.

The pledge asks hospitals to incorporate more vegetables, fruits, whole grains and minimally processed proteins into their menus while limiting ultra-processed foods, sugar-sweetened beverages, processed meats, refined grains, foods high in added sugar or sodium, and deep-fried foods. Administration officials are encouraging other hospitals to follow suit.

The voluntary initiative follows a March 30 CMS memo that raised questions about whether the agency intended to enforce the administration's dietary guidelines through a Medicare CoP.

The memo reminded hospitals that they must meet patients' nutritional needs in accordance with "recognized dietary practices." But CMS also said hospitals "should review and revise" their menus, dietary protocols, nutrition policies and food-procurement practices to align with the administration's 2025-2030 Dietary Guidelines for Americans.

Public statements from administration officials added to the impression that hospitals could face consequences for failing to adopt the recommendations.

"If a hospital is serving patients sugary drinks, they are out of compliance with government standards and are putting their reimbursements in jeopardy," Calley Means, a top adviser to Kennedy, wrote on X shortly after the memo was released. "If you see patients being served sugary drinks, please post information below or let CMS know."

Means later warned that hospitals serving liquid nutrition products like Ensure "need to change or lose reimbursement" and once again encouraged the public to report them.

HHS spokesperson Andrew Nixon also previously characterized the March memo as a CoP “update” intended to ensure that hospital food complied with the dietary guidelines.

But in response to questions from *IHP* last week, CMS said the memo created no new requirements or penalties. CMS said the memo was intended only to clarify and reinforce the longstanding requirement that hospitals meet patients’ nutritional needs.

By getting hospitals to change their menus voluntarily, the administration can advance its nutrition priorities without going through rulemaking process. That’s notable because the agency just lost a case in April, when a federal judge in Oregon vacated a declaration from Kennedy that classified certain gender-affirming treatments for minors as unsafe and inconsistent with professionally recognized standards of care. The court found that HHS didn’t have the authority to create that policy without going through the rulemaking process.

The litigation did not concern hospital nutrition, however, and CMS did not say it influenced the agency’s decision to pursue a voluntary food pledge.

This also isn’t the first time the administration has turned to voluntary industry commitments instead of immediately pursuing more aggressive regulation. Last year, CMS Administrator Mehmet Oz repeatedly said he wanted health insurers to voluntarily reform their prior authorization practices, while warning that the agency could take more aggressive action if necessary.

During Thursday’s press conference, Kennedy notably complained that the Biden administration’s dietary guidelines were “453 pages long,” “incomprehensible” and reflected “mercantile impulses.”

“They were written by food industry lobbyists. The same impulse that has driven Froot Loops to the top of the old food pyramid -- which isn’t even a food,” Kennedy said of a previous administration’s official dietary guidelines. “It’s like a food-like substance.”

“We brought together the best scientists and nutritionists in the country from the biggest universities in this country, and we basically locked them in a room for a year,” Kennedy continued. “We said we want something under 10 pages that everybody could understand. And they came back. They met that metric, and every single recommendation is cited and sourced to scientific publications -- gold standard science.”

“You can summarize it all in three words: eat real food,” Kennedy finished. “That’s what’s going to make America healthy again.”

During the press conference, Kennedy took the time to praise Geoffrey Zakarian, the chef who helped redesign Tampa General’s menu. He said Zakarian showed him about a month ago how to cook an omelet that was “very fast and really good,” and that he’s been “eating that omelet every day.”

"I'm very lucky. I get to cook food for people," Zakarian said of the arrangement. "They actually put it in their mouth, ingest it, and I help them with their day, and they feel good when they eat well. So imagine doing that for a hospital patient."

Other officials at the press conference said Zakarian served them chicken noodle soup, a feta Greek salad, Moroccan hanger steak, a mezze platter, beef chili and olive oil cake. They said the redesigned meals will now be served to Tampa General patients.

John Couris, the hospital's president and CEO, said during the press conference that the food previously offered to patients was "not acceptable" and that the hospital is now serving food that "any one of you would eat in any fine restaurant in the city of Tampa."

But when asked how the hospital could afford to serve patients healthier, higher-quality food, Couris said Tampa General just had to reduce the number of menu options.

"By the way, a lot of them are not taking advantage of the food that we were offering, so we limited the menu," Couris said. "We doubled down on the quality of the food, and we've seen somewhere roughly a 5% to 7% increase in our expense overall for acquisition for food purchasing."