Agency for Health Care Administration's response to the question on the allowance of preset tableware with reference to the 2009 Food Code (February 2013)

4-904.13 Preset Tableware.
(A) Except as specified in paragraph (B) of this section, TABLEWARE that is preset shall be protected from contamination by being wrapped, covered, or inverted.
(B) Preset TABLEWARE may be exposed if:
(1) Unused settings are removed when a CONSUMER is seated; or
(2) Settings not removed when a CONSUMER is seated are cleaned and SANITIZED before further use. (Home-like solution).

This provides further explanation of the standard, from Annex 3, Public Health Reasons/Administrative Guidelines Preventing Contamination in the 2009 Food Code
4-904.11 Kitchenware and Tableware
4-904.12 Soiled and Clean Tableware.
4-904.13 Preset Tableware.
The presentation or setting of single-service and single-use articles and cleaned and sanitized utensils shall be done in a manner designed to prevent the contamination of food- and lip-contact surfaces.

There is no reference in the literature in the Food Code for this standard.

The standard requires that the preset tableware be covered or protected in a manner to prevent contamination . . . or they can set their table and not protect, but remove these utensils when the resident sits down and replaces the eating ware with a new set of sanitized eating ware (this is the home-like solution, but not the most practical).
Glasses should be inverted and the mouth and food contact surfaces of forks, knives, and spoons should be protected.
If plates are displayed they must be inverted – but that’s impractical and not attractive. That’s why many restaurants provide the plates after you are seated.
A charger plate doesn’t have to be inverted.

The bottom line, they can set the table when the resident is seated, or they can wrap, cover, and/or invert the tableware if they preset before the resident is seated.

Presetting tableware without protecting it some way is a good way to spread the flu and Norovirus.

Viruses can survive on environmental surfaces for a while. Norovirus in particular, can survive 2 weeks or more. So, if someone coughed or sneezed near the exposed tableware and the droplets fell on the exposed tableware lip contact surface - well - you get the picture!
In this case, the protection of public health trumps culture change.
Remember, the standards in the Food Code are for the most part based on science and research.
The Food Code applies to all retail foodservice settings, including restaurants, but it not all states adopt it into rule and enforce it as such.

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