415.1 Basis and scope.

...(b) General Information.

(1) Nursing homes, which shall include all facilities subject to Article 28 of the Public Health Law and providing residential skilled nursing care and services and residential health related care and services, shall provide such care and services in a manner and quality consistent with generally accepted standards of practice.

...(4) Nursing homes shall comply with all pertinent federal, state and local laws, regulations, codes, standards and principles including but not limited to those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, protection of human subjects of research and fraud and abuse and the Public Health Law, Mental Hygiene Law, Social Services Law and Education Law of the State of New York.

Section 415.26 Organization and administration. A nursing home shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(a) Administration.

(1) No nursing home shall operate unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license and registration, or temporary license, issued pursuant to Article 28-D of the Public Health Law. The administrator shall set an example for all staff members, consultants and others affiliated with the facility which recognizes that the institution exists to serve the interests of and the needs of the residents, which emphasizes the importance of a resident’s right to independence regarding all aspects of institutional life and encourages residents to participate together with staff in resolving conflicts and problems which frequently arise in a group residential setting. The administrator shall:

(i) be readily accessible to residents and staff for consultations;

(ii) involve the Resident Council in addressing the need to seek compromises between conflicting resident and staff interests and needs;

(iii) encourage professional and respectful behavior on the part of the staff toward residents; and

(iv) seek to involve staff at all levels in developing and implementing an interdisciplinary approach to resident services, in order to better serve the individual and group interests of residents.
(2) Administrator coverage.

(i) Nursing homes with 41 or more beds shall employ a full-time administrator.

(ii) Nursing homes with 40 beds or fewer shall designate in writing a licensed and registered administrator for an amount of time in accordance with the following:

(a) In no event shall an administrator be employed for fewer than twelve hours per week; such hours to be served during normal business hours of 7:00 a.m. to 5:30 p.m. Monday thru Friday.

(b) The Department may require employment greater than 12 hours per week based on:

(1) the size of the facility;
(2) the history and nature of any operating deficiencies; and
(3) any investigations or other problems brought to the attention of the Commissioner.

(iii) The governing body shall designate in writing a staff member to serve as alternate administrator for all hours that the administrator of record is absent from duty to ensure that all shifts, 24 hours-a-day, 7 days-a-week are covered by administrative supervision.

(iv) No person whose license to practice nursing home administration has been forfeited, revoked, annulled, or placed on inactive status or suspended shall be involved in the administration and direction of a nursing home either on a full-time, part-time or acting basis.

(3) When, by reason of death, resignation, incapacity, illness or other reason, the nursing home does not have a licensed and currently registered nursing home administrator capable of carrying out such functions, the governing body shall immediately notify the commissioner, assign such duties to a named individual acceptable to the commissioner in accordance with that individual’s training, experience and prior record of work performance at a nursing home, and provide for supervision of the nursing home by a licensed and currently registered nursing home administrator in accordance with the following:

(i) A plan for the supervision of the unlicensed acting nursing home administrator shall be submitted to the Department which provides that:

(a) The nursing home is making a bonafide effort to recruit a licensed and registered nursing home administrator;

(b) There is no other licensed and registered person in the facility available, capable and willing to accept the position;

(c) The supervising administrator will provide a minimum of four hours of on-site supervision weekly during normal business hours unless the Department determines that more hours are necessary based on:
(1) the quality of care in the facility;
(2) the qualifications of the unlicensed acting administrator; and
(3) the on-site presence of qualified administrative staff.

(ii) the unlicensed acting administrator shall serve for a maximum of three months except that the nursing home may request and receive from the Department one additional three month extension upon a finding that the unlicensed acting administrator has performed his or her duties effectively and that the quality of resident care and services has not deteriorated.

(4) In addition to the other responsibilities delineated herein, the administrator shall:

(i) report to the governing body at regular intervals;

(ii) implement the policies of the nursing home by making operating decisions, including but not limited to general supervision, employing and discharging of staff, programming and, where appropriate, integrating the services of the nursing home with the community's health resources;

(iii) assure that the residents' council:

(a) meets as often as the membership deems necessary;

(b) is directed by the residents and is chaired by a resident or another person elected by the membership; and

(c) may meet with any member of the supervisory staff provided that reasonable notice of the council’s request is given to such staff;

(iv) agree to assign a staff person in consultation with the Resident Council, acceptable to such Council, to act as advisor or coordinator, to facilitate the Council in holding regular meetings and to assist members in carrying out Council activities, including obtaining necessary information to become informed of facility policies, exploring the solutions to problems and conveying to the administrator issues and suggestions which require administrative action;

(v) assure that any complaints, problems or issues reported by the council to the designated staff person or administration are addressed; and that a written report addressing the problem, issues or suggestions is sent to the council when requested; and

(vi) assure that except in extraordinary circumstances such as health emergencies, the facility has visiting hours encompassing at least 10 hours within a 24 hour period, including at least two meal periods, and that a statement as to the visiting hours is posted in a public place such as the main lobby or the residents' dining room.
(5) The facility shall provide such secretarial, accounting, receptionist and other supportive personnel, and such office equipment and supplies, as are needed for satisfactory administration of the nursing home.

(b) Governing Body. The nursing home shall have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility. The governing body shall:

(1) appoint an administrator who is eligible for such appointment and who functions in accordance with subdivision (a) of this section;

(2) determine and establish written policies consistent with the stated purposes of the facility, the program of services provided, its physical structure and equipment, the number and qualifications of staff members, and their job classifications and descriptions;

(3) be responsible for the operation of the facility;

(4) be responsible for providing or arranging services for residents as required in this Subchapter;

(5) employ or otherwise arrange for the services of such personnel as are required in this Subchapter;

(6) assure that a method is implemented to promptly deal with complaints and recommendations made by residents or designated representatives which:

(i) enables complaints and recommendations to be made orally or put in writing;

(ii) brings complaints and recommendations promptly to the attention of the administration for review and resolution;

(iii) responds to all residents or designated representatives as to action taken or the reason why no action was taken, as soon as possible and except under extraordinary circumstances such as health or administrative emergencies, within 21 days after the complaint or recommendation was made; and

(iv) provides for review and evaluation of the effectiveness of the complaint process;

(7) assure that the complaint and recommendation method is made known to:

(i) all residents upon admission and their designated representatives; and

(ii) all nursing, social service and other appropriate personnel, in order to assist residents who want to make a complaint or recommendation;

(8) assure that the facility establishes a residents' council;

(9) be responsible for compliance with all provisions of this Subchapter;
(10)(i) post in a public place a notice supplied by the New York State Department of Health containing:

(a) the time and date the facility shall assess residents to determine case mix intensity, pursuant to section 86-2.30 of this Title; and

(b) department auditors will be in the facility to review the data submitted by the facility in the patient review instrument for the current assessment period; and

(c) a statement that each resident and/or the resident’s designated representative has the right to know the specific assignment to a patient classification category; and

(d) the person within the facility to contact for this information.

(ii) notify the resident and/or the resident’s designated representative according to the following procedures, that a process exists for reimbursement purposes to assign residents to a patient classification category as contained in Appendix 13-A of this Title entitled "Patient Categories and Case Mix Indices Under Resource Utilization Group (RUG-II) Classification System":

(a) upon admission to the facility, at the initial resident assessment required pursuant to section 415.11 of this Part a designated professional staff member shall inform the resident and/or resident’s designated representative of this process and that further information on the classification system is available upon request; and

(b) the process by which residents are classified for reimbursement purposes into the RUG-II classification system shall be, at least annually, an item for discussion on the agenda at a resident council as required by paragraph (8) of this subdivision;

(11) furnish for the staff telephone services consisting of at least one operational, unlocked, noncoin telephone installation on each floor of the facility, for the use of professional staff in the performance of their duties;

(12) permit activities related only to the operation of the facility except that the operator, subject to prior written approval of the commissioner, may, where such arrangement will not result in any diminishment of resident care or services, or adversely affect the cost of delivering nursing home services;

(i) enter into a written contract for the purpose of leasing unneeded space and equipment on the premises of the facility to a health care practitioner licensed by the State Education Department, or to a provider licensed under the Public Health Law, Mental Hygiene Law, or Social Services Law to provide health care services to residents or nonresidents, where such arrangements will also promote needed health care services for residents; or

(ii) prepare food for consumption off-site as part of a nutrition program or make available service of meals, nutrition education, and nutrition counseling for nonresidents on-site;
(13) notify the department immediately of anticipated or actual termination of any service vital to the continued safe operation of the facility or to the health and safety of its residents and personnel, including but not limited to the anticipated or actual termination of telephone, electric, gas, fuel, water, heat, air conditioning, rodent or pest control, contract food, or contract laundry services, and the services of key full- or part-time personnel such as the administrator, director of nurses, consultant physician, consultant dietitian or others; and apply remedial measures promptly and notify the department immediately regarding the nature of results of such measures;

(14) transfer residents to another appropriate facility only after consultation, as appropriate, with the resident, his or her physician, and designated representative except in an emergency situation, in which case the operator shall notify the physician and designated representative immediately and record the reason for the transfer; and

(15) ensure that members of the governing body make themselves available to hold meetings with representatives of the Resident Council at least 3 times a year to discuss matters contained in a jointly developed agenda.

(c) Staff qualifications and personnel management. The nursing home shall employ on a full time, part time or consultant basis a sufficient number of professional staff members who are educated, oriented and qualified to carry out the provisions of this Part and to assure the health, safety, proper care and treatment of the residents.

(1) With regard to personnel management, the facility shall:

(i) provide personnel in accordance with paragraph (2) of this subdivision, with a planned orientation to nursing home operation and resident care and such on-the-job training as is necessary for each properly to perform his or her individual job assignments:

(ii) have on file and furnish each employee with a copy of written policies governing conditions of employment, including the job description for his or her position;

(iii) assure that each part-time, full-time or private duty employee, consultant, volunteer, or other person serving in any other capacity in the nursing home shall:

...(b) be on duty, alert and appropriately dressed during the entire tour of duty, part-time assignment, consultation visit, volunteer work, private duty or other employment in the nursing home;

(c) maintain personal cleanliness and hygiene; and

(d) conduct himself or herself in a professionally acceptable manner with all residents, employees and guests, including refraining from abusive, immoral or other unacceptable conduct, behavior or language and demonstrating respect for each resident's dignity in full recognition of his or her individuality;
(iv) assign each employee duties consistent with his or her job description and with his or her level of competence, education, preparation and experience; and

(3) For all personnel who provide services in the nursing home, for whom licensure, registration or certification is required, the facility shall obtain and retain verification of license number or certification with expiration date of same.

(4) For all services and departments, the facility shall maintain:

(i) an organization chart;

(ii) a master plan for staffing; and

(iii) policies and procedure manuals

Section 415.30 General records. The nursing home shall maintain information necessary to permit the production of the following records immediately upon request and any other records required by the provisions of this Chapter:

(a) a chronological listing of residents admitted, by name, with identifying information and the place from which the resident is admitted or transferred;

(b) a chronological listing of residents discharged, by name, including the reason for discharge, adequate identifying information and the place to which the resident is discharged or transferred;

(c) a daily census record consisting of a summary report of the daily resident census with cumulative figures for each month and each year;

(d) a resident personal nonmedical record consisting of an appropriate record for each resident, including identification of next of kin, family and sponsor, all details of the referral and admission and nonmedical correspondence and papers concerning the resident;

(e) a general fiscal record for each resident, including copies of all agreements or contracts, account records, and a current inventory of personal property held in safekeeping;

(f) an accident and incident record which shall include a clear description of every accident and any other incident involving behavior of a resident or staff member that poses a threat to a resident or staff member, the resident's version of the accident or incident unless the resident objects or is unable to give a report due to his/her medical condition, names of individuals involved and a description of medical and other services provided, by whom such are provided, and the steps taken to prevent recurrence, with a copy of the resident's version as reported given to the resident and/or the resident's designated representative;

(g) personnel records for each employee, including the administrator, containing all available pre-employment information, orientation and full in-service record;
(h) personnel policies, including statements of all policies affecting personnel and a job
description for each staff position;

(i) financial records which identify all income by source and describe all expenditures by
category;

(j) records for nursing service administration, including:

(1) a nursing service organization chart;
(2) a master plan for staffing; and
(3) a nursing service policies and procedures manual;

(k) records for the dietary service, including:

(1) a plan for organization, management and day-to-day operation;
(2) a master plan and weekly work schedules for staffing;
(3) a current diet manual;
(4) written and dated menus for normal and therapeutic diets, as served; and
(5) receipted invoices for food and supplies;

(l) records for activities program, including:

(1) name and qualifications of the activities director;
(2) a current roster of residents participating in the program as well as a record of resident
attendance and participation at each activity for the preceding twelve months; and
(3) service policies and procedures;

(m) records for each specialized rehabilitative therapy service, including:

(1) service policies and procedures;
(2) a statistical summary, including but not limited to the frequency, type and duration of
treatments given, number of residents treated and number of residents admitted and
discharged from the service; and
(3) service budgets and equipment inventory;

(n) a record of staff medical policies, including any bylaws, rules and regulations adopted
by the nursing home; and

(o) transfer or affiliation agreements consisting of all contracts, agreements, arrangements,
understandings, and records of all efforts to establish same with hospitals, nursing homes,
home health agencies, and other health institutions, agencies and services regarding the
transfer of residents between the nursing home and such institutions or agencies.

Section 415.4 - Resident behavior and facility practices
... (b) Staff treatment of residents. The nursing home shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents and misappropriation of resident property.

(1) The facility shall:

(i) not use, or permit verbal, mental, sexual or physical abuse, including corporal punishment, or involuntary seclusion of residents; and

(ii) not employ individuals who have:

(a) been found guilty of abusing, neglecting or mistreating individuals by a court of law; or

(b) had a finding entered into the New York State Nurse Aide Registry concerning abuse, neglect or mistreatment of residents or misappropriation of their property.

(iii) report any knowledge it has of actions by a court of law against an employee which would indicate unfitness for service as a nurse aide or other facility staff to the New York State Nurse Aide Registry or to appropriate licensing authorities.

(2) The facility shall ensure that alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility and, when required by law or regulation, to the Department of Health in accordance with Section 2803-d of the Public Health Law and Part 81 of this Title through established procedures.

(3) The facility shall document that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations shall be reported to the administrator or his or her designated representative or to other officials in accordance with State law and if the alleged violation is verified, effective corrective action shall be taken.