SECTION 415.1 - BASIS AND SCOPE

(a) Statement of purpose. New York's residential health care facilities are responsible for the health and wellbeing of more than 100,000 residents ranging from infants with multiple impairments to young adults suffering from the sequelae of traumatic brain injury to the frail elderly with chronic disabilities. For the vast majority of residents, the residential health care facility is their last home. A license to operate a nursing home carries with it a special obligation to the residents who depend upon the facility to meet every basic human need. Each resident comes to the nursing home with unique life experiences, values, attitudes and desires, and a singular combination of clinical and psychosocial needs. In order to assure the highest practicable quality of life, the individuality of the nursing home resident must be recognized, and the exercise of self-determination protected and promoted, by the operator and staff of the facility. The physical environment, care policies and staff behavior must at once acknowledge the dependence of the residents while fostering their highest possible level of independence. In writing a code of minimum operating standards for nursing homes, it is also critical that the regulator recognize the infinite diversity of the nursing home population. A code intended to assure the highest possible quality of care and most meaningful quality of life for all residents must not only accept, but in fact invite variety in nursing home environments, policies and practices, and encourage creativity among nursing home managers and staff. In order to meet obligations to nursing home residents, this set of requirements, to the extent possible, expresses expectations for facility operation in terms of performance and outcomes rather than by dictating structure and process. It is the intent of these requirements to grant a high degree of latitude and flexibility to administrators and staff while insisting upon conformance to fundamental principles of individual rights and to accepted professional standards. In those areas where a detailed process or procedure is mandated, it is based upon a firm belief that experience has proven the specific practice to be necessary in all cases to assure the high quality of care we expect nursing homes to provide. In addition to the emphasis on individuality and self-determination, the code reflects certain precepts: that nursing homes should be viewed as homes as much as medical institutions, with the resident's psychosocial needs deserving a prominence at least equal to medical condition; that clinical interventions for the nursing home resident must be part of a comprehensive approach planned and provided by an interdisciplinary care team, with the participation of the resident, rather than through a physician-directed acute care orientation; and that quality assurance is a work ethic rather than an oversight method or a department.

(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.
...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 415.13 - NURSING SERVICES

...(b) Registered professional nurse.
...(2) The facility shall designate a registered professional nurse to serve as the director of nursing on a full time basis.

(c) Nurse aide.
(1) For the purpose of this section and section 415.26(d) of this Part, nurse aide shall mean any person who provides direct personal resident care and services including, but not limited to, safety, comfort, personal hygiene or resident protection services, for compensation, under the supervision of a registered professional nurse or licensed practical nurse in the facility, except for those individuals who furnish services to residents only as feeding assistants as defined in Section 415.13(d) of this Part. Certification of such nurse aide shall be in accordance with the provisions of section 415.26(d) of this Part.
(2) Only individuals who meet the following qualifications may be assigned to perform nurse aide functions, as defined in paragraph (1) of this subdivision:
(i) a person who, as verified by the facility, is listed in the New York State RHCF Nurse Aide Registry developed and maintained as set forth in Section 2803-j of the Public Health Law and as described in Section 415.31 of this Part;
(ii) a graduate of a nursing program approved by the New York State Commissioner of Education or by the licensing authority in another state, territory or possession of the United States as preparation for practice as a licensed nurse who has taken and passed the New York State competency examination.
(iii) a nurse aide trainee who has successfully completed a State approved RHCF nurse aide training program as described in subdivision (d) of section 415.26 of this Part or a program designed for such purpose and approved by the State Commissioner of Education and who is waiting to take the RHCF clinical skills and written or oral nurse aide competency examinations at the next scheduled opportunity, such competency examination to be passed within three consecutive attempts within 4 months of the date of the initial RHCF nurse aide trainee employment or of the completion of the State approved RHCF nurse aide training program, whichever occurs first;
(iv) a nurse aide trainee who has taken the competency examinations and is waiting for the official results of the examination;
(v) a certified nurse aide who is currently listed in another state’s nursing home nurse aide registry, as verified by the facility, and who has applied to the Department to obtain State certification and has not been denied; and
(vi) a nurse aide trainee provided the individual is concurrently enrolled in a State approved residential health care facility nurse aide training program which meets all requirements set forth in this section and completes such training program and competency examinations within one hundred twenty (120) days of employment, in accordance with the following:
(a) the nurse aide trainee may assume specific duties involving direct resident care and services as training and successful demonstration of competencies in the specific
duties/skills are completed, but not before completing at least sixteen (16) hours of classroom instructions in the following areas:
(1) communication and interpersonal skills; (2) infection control;
(3) safety/emergency procedures, including the Heimlich maneuver;
(4) promoting residents’ independence;
(5) respecting residents’ rights; and
(6) resident abuse, mistreatment and neglect reporting requirements as set forth in Section 2803-d of the Public Health Law; and
(b) the nurse aide trainee shall be under the direct supervision of a nurse when the trainee is providing direct resident care or services and identifiable as a nurse aide trainee.
(vii) If the facility has reason to believe that the individual has worked as a nurse aide in any state(s) other than New York, the facility must request information from the nurse aide registry of such other state(s) before permitting the individual to serve as a nurse aide.

SECTION 415.15 - MEDICAL SERVICES

415.15 Medical services. The nursing home shall develop and implement medical services to meet the needs of its residents.
(a) Medical director. The facility shall designate a full-time or part-time physician to serve as medical director. The medical director shall be responsible for:
(1) implementation of resident medical care policies;
(2) the coordination of physician services and medical care in the facility;
(3) coordinating the review, prior to granting or renewing professional privileges or association, of any physician, dentist or podiatrist as required by Public Health Law Section 2805-k. Hospital-based nursing homes may utilize the hospital's medical staff membership review system to facilitate this review. Such review shall be coordinated with the activities of the Quality Assessment and Assurance Committee established in section 415.27 of this Part and shall:
(i) provide for the maintenance and continuous collection of information concerning the facility's experience with negative health care outcomes and incidents injurious to residents, resident grievances, professional liability premiums, settlements, awards, costs incurred by the facility for resident injury prevention and safety improvement activities;
(ii) periodically reconsider the credentials, physical and mental capacity and competency in delivery of health care services of all physicians, dentists or podiatrists who are employed or associated with the facility;
(iii) gather information concerning individual physicians, dentists and podiatrists within the individual physician's, dentist's or podiatrist's personnel file maintained by the facility; and
(iv) prior to renewal of privileges of physicians dentists, or podiatrists, solicit and consider information provided by the Resident Council about each such practitioner; and
(4) assuring that each resident’s responsible physician attends to the resident’s medical needs, participates in care planning, follows the schedule of visits maintained in accordance with subdivision (b) of this section, and complies with facility policies. When a physician fails to provide services which meet generally accepted standards of practice, the medical director shall take necessary corrective measures and refer the matter to the Office of Professional Medical Conduct of the Department as appropriate.
SECTION 415.18 – PHARMACY SERVICES

(a) ... The facility shall be licensed under Article 33 of the Public Health Law and Part 80 of this Title.
...(c) Drug regimen review. (1) The drug regimen of each resident shall be reviewed at least once a month by a registered pharmacist.
(2) The pharmacist shall report any irregularities to the attending physician and the director of nursing, and these reports shall be acted upon promptly. The findings and corrective actions shall be regularly reviewed by the quality assessment and assurance committee established pursuant to section 415.27 of this Part.

SECTION 415.20-LABORATORY AND BLOOD BANK.

(a) Approved laboratory or blood bank. The facility shall provide for blood and laboratory services to meet the needs of its residents, pursuant to orders by authorized licensed practitioners, and shall be responsible for the quality and timeliness of such services: (1) by promptly performing such services as the facility is licensed to provide directly under Subparts 58-1 and 58-2 of this Title, as appropriate, and, is certified to perform by the Medicare program; and
(2) by promptly arranging for an approved blood bank or laboratory service to perform such services as the facility may require, but not provide. Such services shall be obtained from entities approved under Subparts 58-1 and 58-2 of this Title, as appropriate, which are certified by the Medicare program to provide such services.
(b) Transportation. The facility shall assist the resident in making transportation arrangements to and from the source of laboratory or blood bank service, if the resident needs assistance.
(c) Records. The facility shall ensure that authenticated and dated reports of clinical laboratory and blood bank services are placed in the resident’s clinical record.

SECTION 415.21 RADIOLOGY AND OTHER DIAGNOSTIC SERVICES.

(a) The facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents pursuant to an order by an appropriate practitioner. The facility shall be responsible for the quality and timeliness of such services.
(1) The facility shall promptly perform such services as the facility is licensed to provide directly under Part 16 of this Title. The services shall be provided in accordance with generally recognized standards of care and services.
(i) The diagnostic radiology and other diagnostic services shall be free from hazards for residents and staff.
(ii) Personnel. A qualified full-time, part-time, or consulting physician, who is qualified by education and experience in radiology, shall supervise the ionizing radiology services and shall interpret those tests that are determined by the governing body, and the medical director, to require such physician’s specialized knowledge. Upon recommendation of such qualified physician, the medical director shall designate the practitioners and staff, in accordance with Part 89 of this Title, who may use the radiologic equipment, administer procedures and interpret test results.
(iii) Records. Records of diagnostic radiologic services shall be maintained.
(a) The practitioner who performs radiology services shall prepare and authenticate reports of his or her interpretations.
(b) The facility shall maintain for at least six years or three years after a resident who is a minor reaches the age of majority (18) films, scans, and other image records which have not been incorporated into the resident’s clinical record.

(2) The facility shall promptly arrange for ordered radiology and other diagnostic services which the facility is not licensed to provide. Such services shall be obtained from entities approved under Part 16 of this Title and which are certified by the Medicare program.

(b) The facility shall:

(1) promptly notify the ordering practitioner of the results of radiologic and other diagnostic services.

(2) assist the resident, if needed, with transportation arrangements to and from the source of services.

(3) file in the resident’s clinical record authenticated and dated reports of diagnostic radiology and other diagnostic services.

SECTION 415.22 - CLINICAL RECORDS.

(a) The facility shall maintain clinical records for each resident in accordance with accepted professional standards and practice. The records shall be:

(1) complete;

(2) accurately documented;

(3) readily accessible; and

(4) systematically organized.

(b) Clinical records shall be retained for six years from the date of discharge or death or for residents who are minors, for three years after the resident reaches the age of majority (18).

(c) The facility shall safeguard clinical record information against loss, destruction, or unauthorized use;

(d) The facility shall keep confidential all information contained in the resident’s records, regardless of the form or storage method of the records, except when release is required by:

(1) transfer to another health care institution;

(2) law; or

(3) the resident.

(e) The facility shall permit each resident to inspect his or her records and obtain copies of such records in accordance with the provisions of subparagraph (iv) of paragraph (1) of subdivision (c) of section 415.3 of this Part.

(f) The clinical record shall contain:

(1) sufficient information to identify the resident;

(2) a record of the resident’s comprehensive assessments;

(3) the plan of care and services provided;

(4) the results of any preadmission screening conducted by the State;

(5) progress notes by all practitioners and professional staff caring for the resident; and

(6) reports of all diagnostic tests and results of treatments and procedures ordered for the resident.

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:
(a) receive an orientation which shall include but not be limited to the following:
(1) a review and explanation of relevant personnel policies and procedures, including his or her job description;
(2) an orientation to the facility's organization, its long-term care philosophy, the roles of all personnel in the organization;
(3) an orientation to the physical plant, infection control, quality assessment and assurance
and the environmental aspects of the facility;
(4) the facility safety program, including fire safety, accident prevention, resident emergency procedures, and facility operation during disruption of services;
(5) resident’s rights; and
(6) resident abuse and neglect reporting requirements as set forth in section 2803-d of the Public Health Law.
(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...
(2) For all personnel, the facility shall provide planned orientation and staff development programs, including but not limited to:
(i) an orientation for each new employee prior to or within one week of employment;
(ii) on-the-job skill training as is necessary for each to properly perform his or her job;
(iii) continuous staff development programs to increase knowledge, skills and understanding of problems and ways of dealing with problems associated with residents needing nursing home care including knowledge of the Quality Assurance and Assessment program in the facility; and
(iv) maintenance of records of these activities, including the methods used and an evaluation on their effectiveness.
(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.
(d) Nurse aide certification and training.
(1) Definitions. The following terms used in this section shall be defined as follows:
(i) Nurse aide training program coordinator shall mean a person who is assigned the administrative responsibility and accountability for the RHCF nurse aide training program. The program coordinator (PC) shall be a registered professional nurse with at least two years experience in a nursing home and demonstrated competency to teach adult learners as evidenced and documented by at least one of the following:
(a) completion of a professionally recognized course in teaching adult learners or New York State Education Department teacher certification;
(b) two years of experience teaching nursing or nursing related programs to adults in an academic setting approved by the State Education Department or other recognized accrediting body; or
(c) two years of experience teaching nurse aides in a residential health care facility.
(ii) Instructor shall mean the person who is assigned the educational responsibility for the
nursing home nurse aide training program. This person shall have the day to day responsibility for implementing the facility's training program in accordance with the facility's policies and procedures and State and federal requirements. The instructor shall be a registered professional nurse with at least one year of experience in a nursing home who has demonstrated ability to teach adult learners as evidenced and documented by at least one of the following:
(a) completion of a professionally recognized course in teaching adult learners or New York State Education Department teacher certification;
(b) two years of experience teaching nursing or nursing related programs to adults in an academic setting approved by the State Education Department or other recognized accrediting body; or
(c) two years of experience teaching nurse aides in a residential health care facility.

(iii) Clinical skills evaluator or Nurse Aide Evaluator shall mean a person who administers part or all of the state authorized residential health care facility nurse aide competency examinations. This person shall be a registered professional nurse who has one year of nursing home experience and has successfully completed the State approved clinical evaluator or nurse aide evaluator program. Effective July 1, 1992, only individuals possessing nurse aide evaluator designation may administer the State RHCF nurse aide competency examinations.

(2) Nurse aide certification. In order to obtain nurse aide certification and be listed in the New York State RHCF Nurse Aide Registry as described in Section 415.31 of this Part, an individual must successfully complete a State approved residential health care facility nurse aide training program as described in paragraph (2) of this subdivision and pass the State authorized clinical skills competency examination and written or oral competency examination as described in paragraph (3) of this subdivision.
(i) The residential health care facility nurse aide training program shall be reviewed and approved by the Department prior to implementation as to the requirements contained in this section.
(ii) The facility shall be notified by the Department within 90 days of the submission of the program whether the program has been approved, disapproved or additional information is required.
(iii) Program approval will be granted for a term not to exceed 2 years and is subject to on-site review for the purpose of determining compliance with applicable State and federal requirements during the course of all facility surveys.
(iv) Approved programs must notify the Department, in the form and manner described by the Department, and may be subject to review, whenever substantive changes are made to the program.
(v) Approval to provide training by or in the facility will be withdrawn by the Department for up to two years each time the facility:
(a) fails to permit unannounced visits;
(b) fails to meet all of the applicable federal and State requirements for nurse aide training and competency evaluation;
(c) is subjected to an extended or partial extended survey;
(d) is assessed a civil monetary penalty of $5,000.00 or more;
(e) has a temporary manager, receiver or caretaker appointed;
(f) is subjected to a ban on admissions or a denial of payment under either the Title XVIII or Title XIX programs.
Nurse aide training program. The training program shall be supervised by a Program Coordinator who meets the definition specified in subparagraph (i) of paragraph (1) of this subdivision and conducted by the Primary Instructor who meets the definition specified in subparagraph (ii) of paragraph (1) of this subdivision. The program coordinator may be the director of nursing services provided that the director of nursing services does not perform the actual training. Additional health care personnel may supplement the instructor to provide specialized training provided that such supplemental trainers have at least one year of experience in their field of expertise.

(i) The nurse aide training program shall include classroom and clinical training which enhances both skills and knowledge and, when combined, shall be of at least 100 hours' duration. The clinical training shall as a minimum include at least 30 hours of supervised practical experience in a nursing home. The nurse aide training program shall include stated goals, objectives, and measurable performance criteria specific to the curriculum subject material, the resident population and the purpose of the facility, and shall be consistent with the curriculum outlined below. This curriculum shall be taught at a fourth (4th) to sixth (6th) grade English literacy level. Facilities with special populations shall supplement the curriculum to address the needs of such populations accordingly. The curriculum shall otherwise include but not be limited to the following:

(a) Normal aging:
   (1) anatomical changes;
   (2) physiological changes;
   (3) psychosocial aspects:
      (i) role changes;
      (ii) cultural changes;
      (iii) spiritual needs; and
      (iv) psychological and cognitive changes; and
   (4) concept of wellness and rehabilitation.
(b) Psychological needs of the resident:
   (1) adjustment to institutional living;
   (2) working with resident and family during admission/transfer/discharge;
   (3) residents' rights:
      (i) respect and dignity;
      (ii) confidentiality;
      (iii) privacy; and
      (iv) self-determination; and
   (4) sexual adjustments in relation to illness, physical handicaps and institutional living.
(c) Communication in health care facilities:
   (1) relating to residents, families, visitors, and staff;
   (2) methods of communication in overcoming the barriers of language and cultural differences; and
   (3) communicating with residents who have sensory loss, memory, cognitive or perceptual impairment.
(d) Personal care needs:
   (1) care of the skin, mouth, hair, ears and nails; and
   (2) dressing and grooming.
(e) Resident unit and equipment:
(1) bed-making; and
(2) care of personal belongings such as clothing, dentures, eyeglasses, hearing aids and prostheses.

(f) Nutritional needs:
(1) basic nutritional requirements for foods and fluids;
(2) special diets;
(3) meal services;
(4) assistance with eating:
   (i) use of adaptive equipment; and
   (ii) feeding the resident who needs assistance; and
(5) measuring and recording fluid and food intake.

(g) Elimination needs:
(1) physiology of bowel and bladder continence:
   (i) maintaining bowel regularity; and
   (ii) physical, psychosocial and environmental causes of incontinence;
(2) nursing care for the resident with urinary and/or bowel incontinence:
   (i) toileting programs;
   (ii) care of urinary drainage equipment;
   (iii) use of protective clothing; and
   (iv) enemas;
(3) measuring urinary output;
(4) bowel and bladder training programs; and
(5) care of ostomies, including but not limited to colostomy and ileostomy.

(h) Mobility needs:
(1) effects of immobility; and
(2) ambulation and transfer techniques:
   (i) use of assistive devices;
   (ii) use of wheelchairs; and
   (iii) use of mechanical lifters.

(i) Sleep and rest needs:
(1) activity, exercise and rest; and
(2) sleep patterns and disturbances.

(j) Nursing care programs for the prevention of contractures and decubitus ulcers (pressure sores):
(1) body alignment, turning and positioning;
(2) individualized exercise programs;
(3) special skin care procedures;
(4) use of special aids; and
(5) maintenance of individualized range of motion.

(k) Observing and reporting signs and symptoms of disability and illness:
(1) physical signs and symptoms:
   (i) determination of temperature, pulse, respiration;
   (ii) testing urine;
   (iii) measuring height and weight;
(2) behavioral changes; and
(3) recognizing and reporting abnormal signs and symptoms of common diseases and conditions, including but not limited to:
(i) shortness of breath;
(ii) rapid respirations;
(iii) coughs;
(iv) chills;
(v) pain and pains in chest or abdomen;
(vi) blue color to lips;
(vii) nausea;
(viii) vomiting;
(ix) drowsiness;
(x) excessive thirst;
(xi) sweating;
(xii) pus;
(xiii) blood or sediment in urine;
(xiv) difficult or painful urination;
(xv) foul-smelling or concentrated urine; and
(xvi) urinary frequency.

(l) Infection control:
(1) medical asepsis;
(2) handwashing; and
(3) care of residents in isolation.

(m) Resident safety:
(1) environmental hazards;
(2) smoking;
(3) oxygen safety; and
(4) use of restraints.

(n) Nursing care needs of resident with special needs due to medical conditions such as but not limited to:
(1) stroke;
(2) respiratory problems;
(3) seizure disorders;
(4) cardiovascular disorders;
(5) sensory loss and deficits;
(6) pain management;
(7) mentally impairing conditions:
(i) associated behavior disorders; and
(ii) characteristics of residents such as wandering, agitation, physical and verbal abuse, sleep disorders, and appetite changes.

(o) Mental health and social service needs:
(1) self care according to the resident’s capabilities;
(2) modifying behavior in response to the behavior of others;
(3) developmental tasks associated with the aging process; and
(4) utilizing the resident’s family as a source of emotional support.

(p) Resident rights;

(q) Care of the dying resident including care of the body and personal effects after death; and

(r) Care of cognitively impaired residents:
(1) techniques for addressing the unique needs and behaviors of individuals with
dementia;
(2) communicating with cognitively impaired residents;
(3) understanding the behaviors of cognitively impaired residents;
(4) appropriate responses to the behaviors of cognitively impaired residents; and
(5) methods of reducing the effects of cognitive impairments.

(ii) The training program shall maintain a performance record of the major duties and
skills taught each nurse aide trainee. At the end of the training program, a copy of the
performance record shall be given to the trainee and the trainee’s employer, if different
from the training facility. As a minimum, the performance record shall include the
following:
(a) a listing of the measurable performance criteria for each duty and skill expected to be
learned in the program;
(b) an entry showing satisfactory or unsatisfactory performance;
(c) the date of the performance; and
(d) the name of the instructor supervising the performance.

(4) Nurse aide competency evaluation. Subsequent to the completion of the nurse aide
training program including the satisfactory performance of all duties and skills listed in the
performance record, the facility shall arrange for the nurse aide trainee to take and pass
the State authorized residential health care facility nurse aide clinical skills competency
examination and the written or oral competency examination as follows:
(i) The clinical skills competency examination shall be given by a licensed registered nurse,
who meets the definition of the Clinical Skills Evaluator until June 30, 1992 and effective
July 1, 1992 the Nurse Aide Evaluator specified in subparagraph (iii) of paragraph (1) of
this subdivision and who is not otherwise associated with the facility employing and/or
training the nurse aide trainee. The trainee shall have three opportunities to pass the
clinical skills examination; and
(ii) After passing the clinical skills examination, the trainee shall have three opportunities
to pass the written or oral competency examination. The nurse aide trainee will obtain
certification and be listed in the Registry upon passing the written or oral examination.

(5) The operator shall not charge a fee to any individual for the costs of training, including
textbooks and materials, or for the costs of the competency examinations.
(i) If within 12 months of completing a State approved RHCF nurse aide training program,
an individual is employed or is given an offer of employment by a facility, the facility must
arrange, in a form and manner indicated by the Department, for the individual to receive
reimbursement from the State for the amount of the costs, up to the CAP established by the
State, incurred by the individual for the training. Such reimbursement shall be on a pro rata
basis based on the length of subsequent employment as an RHCF nurse aide in the RHCF.
(ii) If within 12 months of completing the State approved RHCF nurse aide competency
evaluation program, an individual is employed or is given an offer of employment by a
facility, the facility must arrange, in a form and manner indicated by the Department, for
the individual to receive reimbursement from the State for the acceptable amount of the
costs, up to the CAP established by the State, incurred by the individual for the
examinations. Such reimbursement shall be on a pro rata basis based on the length of
subsequent employment as an RHCF nurse aide in the RHCF.

(6) Nurse aide recertification. The certified nurse aide shall be recertified every two years
no later than the last day of the month in which certification was received. To obtain
recertification the certified nurse aide shall demonstrate in the form indicated by the
Department that he/she has worked at least 7 hours for compensation as a health care nurse aide during the previous 24 month period. The operator shall implement nurse aide recertification in accordance with the following:

(i) The required documentation shall be provided in the form indicated by the Department to each nurse aide who either currently works for or last worked for compensation as a nurse aide in the facility;
(ii) A fee shall not be charged by the operator to any nurse aide for any cost associated with recertification;
(iii) The recertification fee for each nurse aide who either currently works for or last worked for compensation as a nurse aide in the facility shall be paid by the operator except that the nurse aide staffing agency or employment organization which currently employs the nurse aide may pay this fee; and

(iv) After any period of 24 consecutive months during which the certified nurse aide did not provide nurse aide care for compensation in a residential health care facility, such nurse aide shall be required to requalify as specified in the following subparagraphs (a) or (b) to be listed in the New York State RHCF Nurse Aide Registry:

(a) Nurse aides who, on or after July 1, 1989, successfully completed a State approved nurse aide training program in accordance with applicable federal and State requirements, must pass the State authorized residential health care facility nurse aide clinical skills competency examination and the written or oral competency examination;
(b) All other nurse aides must successfully complete a State approved nurse aide training program and pass the State authorized residential health care facility nurse aide clinical skills competency examination and the written or oral competency examination.

(7) The operator shall complete a performance review of each nurse aide at least once every 12 months.

(8) The operator shall ensure that the certified nurse aide regularly attends inservice education programs provided for all personnel and that the programs shall include the following:

(i) A portion of each individual's annual inservice education as required by subparagraph (iv) of this paragraph shall be based upon the outcome of the individual's annual performance review as specified in paragraph (7) of this section, and address the areas of weakness in the individual’s performance;
(ii) Inservice education must also address the special needs of the residents in the facility, including the care of the cognitively impaired;
(iii) Written records shall be maintained which indicate the content of and attendance at each inservice training program and the outcomes of the performance review; and
(iv) Each certified nurse aide shall attend and be compensated for inservice education sufficient to ensure the continuing competence of the nurse aide of not less than six hours of inservice education in every six month period.

(e) Use of outside resources. If the nursing home does not employ a qualified professional person to furnish a specific service to be provided by the facility, the nursing home shall have that service furnished to residents by a qualified person or agency outside the facility in accordance with the following:

(1) The operator shall enter into written agreement with the outside resource which shall comply with the provisions of this section and section 400.4 of this Title and shall:
(i) specify that the operator retains professional and administrative responsibility for obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility;
(ii) require that such services are provided on a timely basis;
(iii) set forth the responsibilities, function, objectives and terms of the agreement, including financial arrangements and charges of each such outside resource; and
(iv) be signed by an authorized representative of the facility and the person or the agency providing the service; and
(2) The outside resource, when acting as a consultant, shall apprise the administrator of recommendations, plans for implementation and continuing assessment in his or her areas of responsibility through dated, signed reports which shall be retained by the administrator for follow-up action and evaluation of performance.

(f) Disaster and Emergency Preparedness.
(1) The nursing home shall have a written plan, updated at least twice a year, with procedures to be followed for the proper care of residents and personnel, and for the reception and treatment of mass casualty victims, in the event of an internal or external emergency resulting from natural or man-made causes including but not limited to earthquake, severe weather, flood, bomb threat, chemical spills, strike, interruption of utility services, nuclear accidents, fire or similar occurrences.
(2) The nursing home shall develop and implement written policies concerning missing residents.
(3) The nursing home shall:
   (i) train all employees in emergency procedures when they begin to work for the facility;
   (ii) periodically, but at least annually review the written plan with existing staff; and
   (iii) carry out staff drills in accordance with the written plan at least twice a year.

(g) Transfer Agreements. Nursing homes shall have in effect a written transfer agreement with one or more general hospitals as required to meet the medical care needs of residents. Such transfer agreements shall:
(1) comply with the provisions of section 400.9 of this Title;
(2) ensure that residents are admitted to the general hospital on a timely basis when such transfer is medically appropriate as determined by the attending physician or other approved practitioner; and
(3) provide for the transfer of medical and other information needed for care and treatment of residents, when the transferring facility deems it appropriate.

SECTION 415.27 QUALITY ASSESSMENT & ASSURANCE.

The facility shall establish and maintain a coordinated quality assessment and assurance program which integrates the review activities of all nursing home programs and services to enhance the quality of life and resident care and treatment.
(a) Facility-wide quality assurance. Quality assurance shall be the responsibility of all staff, at every level, at all times. Supervisory personnel alone cannot ensure quality of care and services. Such quality must be a part of each individual’s approach to his or her daily responsibilities.
(b) Quality assessment and assurance committee. The facility shall maintain a quality assessment and assurance committee consisting of at least the following:
(1) the administrator or his or her designee;
(2) the director of nursing services;
(3) a physician designated by the facility;
(4) at least one member of the governing body who is not otherwise affiliated with the nursing home in an employment or contractual capacity; and
(5) at least 3 other members of the facility’s staff.
(c) Committee functions. The quality assessment and assurance committee shall:
(1) meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary;
(2) have a written plan for the quality assessment and assurance program which describes the program’s objectives, organization, responsibilities of all participants, scope of the program and procedures for overseeing the effectiveness of monitoring, assessing and problem-solving activities. Such plan shall also provide for the development and implementation of quality improvement initiatives designed to advance the quality of life, care and services in the facility.
(3) define methods for identification and selection of clinical and administrative problems to be reviewed. The process shall include but not be limited to:
(i) the establishment of review criteria developed in accordance with current standards of professional practice for monitoring and assessing resident care and clinical performance;
(ii) regularly scheduled reviews of clinical records, resident complaints and suggestions, reported incidents and other documents pertinent to problem identification;
(iii) consultation on at least a quarterly basis with the Resident Council to seek recommendations on quality improvements;
(iv) documentation of all quality assessment and assurance activities, including but not limited to the findings, recommendations and actions taken to resolve identified problems; and
(v) the timely implementation of corrective actions and periodic assessments of the results of such actions.
(4) ensure that the outcomes of quality assurance reviews are shared with appropriate staff to be used for the revision or development of facility policies and practices and in granting or renewing staff privileges, as appropriate;
(5) facilitate participation in the program by administrative staff and health-care professionals representing each professional service provided;
(6) report its activities, findings and recommendations to the governing body as often as necessary, but no less often than 4 times a year; and
(7) participate with the medical director in implementing Public Health Law 2805-k.

Section 415.28-Disclosure of ownership. The nursing home shall make available pertinent information concerning the identity of the owner and/or governing body and in addition shall:
(a) comply with the provisions of subdivision (b) of section 401.3 of this Title regarding any proposed changes in the name of a business, corporation, partnership or governmental subdivision and any proposed initial use of, or change in, an assumed name of a business corporation, not-for-profit corporation, partnership, governmental subdivision or sole proprietor, operating a medical facility or fundraiser under Article 28 of the Public Health Law, or any proposed substitution of the individual or individuals constituting the governing body or owner of a proprietary medical facility or any proposed change in the
rights, privileges or obligations of any such person;
(b) comply with the provisions of section 600.11 of this Title regarding Name Changes of Operators and Medical Facilities;
(c) provide written notice to the Department, at the time of change, if a change occurs in the nursing home’s administrator or director of nursing; and
(d) ensure that the notice provided in accordance with subdivision (c) of this section includes the identity of each new individual.

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 415.31-NEW YORK STATE RHCF NURSE AIDE REGISTRY.

(a) Content. The New York State RHCF Nurse Aide Registry shall include but not be limited to the following information concerning each certified nurse aide as applicable/ appropriate:
(1) full name of nurse aide, including maiden name and/or other surnames used;
(2) address of nurse aide when certified/recertified;
(3) date of birth;
(4) social security number;
(5) name and date of state approved training and competency program(s) successfully completed;
(6) certification number of nurse aide with a descriptive modifier indicating how the nurse aide obtained certification;
(7) most recent recertification date of nurse aide;
(8) final findings of instances of resident abuse, mistreatment or neglect against a nurse aide with date of hearing or finding;
(9) the nursing home employer at the time of certification/recertification and date of employment by that employer;
(10) a record of criminal conviction for resident abuse, mistreatment, neglect or misappropriation of resident property against a nurse aide and the date of conviction; and
(11) a statement by the nurse aide disputing the findings or conviction that may not exceed 150 words, nor contain information which identifies other persons.
(b) Fees. The New York State RHCF Nurse Aide Registry shall be supported and maintained by charging fees in accordance with Public Health Law Section 2803-j.
(c) Access. The New York State RHCF Nurse Aide Registry shall be accessible by telephone, during the hours established by the Department, or in writing.
(d) Obtaining information by telephone. The New York State RHCF Nurse Aide Registry shall provide the following information upon request to residential health care facilities, nurse aide agencies/employment organizations and nurse aide registries maintained by other states in response to a telephone inquiry;
(1) Telephone verification that the individual is a certified nurse aide;
(2) an indication of findings of resident abuse, mistreatment or neglect or criminal
convictions of resident abuse, mistreatment, neglect or misappropriation of resident
property by a nurse aide; and
(3) follow-up documentation as described in subdivision (e) of this section.
(e) Obtaining written information. New York State RHCF Nurse Aide Registry shall provide
the following information upon the receipt of a written request, in accordance with the
provisions of the Freedom of Information Law:
(1) verification that the individual is a certified nurse aide, the certification number and
date of certification/recertification;
(2) copies of final findings of resident abuse, mistreatment or neglect by a nurse aide and a
statement from the nurse aide disputing the findings, if any; and
(3) a report of a criminal conviction for resident abuse, mistreatment, neglect or
misappropriation of resident property and the date of the conviction.

SECTION 415.4 - RESIDENT BEHAVIOR AND FACILITY PRACTICES

(a) Physical and Chemical Restraints. The facility and all medical, nursing, and other
professional staff shall assure that:
...(4) Policies and procedures regarding the ordering and use of physical restraints and the
recording, reporting, monitoring and review and modification thereof are:
(i) incorporated into the inservice education programs of the facility, with changes made in
such programs when policies and procedures are modified...
(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.