SECTION 415.13 NURSING SERVICES

... (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 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 415.26 ORGANIZATION AND ADMINISTRATION.

... (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
(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.

(3) 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.

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.