

## NEW YORK

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### 415.11 Resident assessment and care planning.

...(c) Comprehensive care plans.

...(i) The care plan shall reflect a consideration of the resident's ability to self-administer drugs safely.

### 415.26 Organization and administration.

(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:

... (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.

...(h) Financial Policies.

(1) The facility shall:

(i) specify its refund policies in writing to each resident, next of kin and/or sponsor prior to admission; and

(ii) refund promptly any amount or proportion of prepayment in excess of the amount or proportion thereof obligated for services already furnished in the event the resident leaves the nursing home prior to the end of the prepayment period for reasons beyond the control of the resident, next of kin and/or sponsor. In the event that the resident leaves for reasons within his or her control, or that of the next of kin and/or sponsor, the facility shall not retain from the prepayment or charge in the absence of a prepayment, an amount in excess of one day's basic rate in addition to any amount obligated for services already furnished.

(2) The facility shall not enter into any contract or agreement with the resident, next of kin and/or sponsor for life care of the resident.

(3) No facility or agent, consultant, employee or representative thereof shall:

...(ii) request and/or accept any remuneration, tip or gratuity in any form from a resident, next of kin and/or sponsor for any services provided or arranged or for denial of services by the nursing home other than specified fees ordinarily paid for care, excluding donations, gifts and legacies given in behalf of the facility; or

... (5) If a resident authorizes the facility in writing to manage his or her personal finances in accordance with 415.3(g)(1) of this Part, the facility shall hold, safeguard, manage and account for personal funds of the resident deposited with the facility in accordance with the following:

(i) Deposit of funds.

(a) Funds in excess of \$50. The facility shall deposit any resident's personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's funds to his or her account. In pooled accounts, there shall be a separate accounting for each resident's share.

(b) Funds less than \$50. The facility shall maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account or petty cash fund.

(ii) Accounting and records. The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf. The system shall contain, as a minimum, the resident's name, Medicaid case number where applicable, date of admission, date and amount of each withdrawal or deposit, and balance at each transaction.

(a) The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record shall be available within one business day of a request, to the resident or his or her designated representative.

(c) The individual financial record shall document each deposit or withdrawal of funds including the signature of the resident or the resident's designated representative for each transaction.

(iii) Notice of certain balances. The facility shall notify the resident when the amount in the account of a resident who receives Medicaid benefits reaches \$200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Social Security Act, and that, if the amount in the account, in addition to the value of the resident's other nonexempt resources, should reach the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI;

(iv) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(v) Assurance of financial security. The facility shall purchase a surety bond, or provide self-insurance, to assure the security of all personal funds of residents deposited with the facility.

(vi) Limitation on charges to personal funds. The facility shall not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services.

(a) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, the facilities shall not charge a resident for the following items and services:

- (1) nursing services and specialized rehabilitative services;
- (2) dietary services;
- (3) an activities program;
- (4) room/bed maintenance services; and
- (5) routine personal hygiene items and services.

(b) Optional covered items and services. A facility may choose to provide residents with supplies, equipment and transportation essential to the activities program required by 415.5(g) of this Title. If it chooses to provide these items and services, they shall be included as covered Medicare or Medicaid services and reimbursed under those program benefits. No charges shall be made to residents for those services.

(c) Items and services that may be charged to residents' funds. Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident and payment is not made by Medicare or Medicaid:

- (1) Telephone.

(2) Television/radio for personal use.

(3) Personal comfort items, including smoking materials, notions and novelties, and confections.

(4) Cosmetic and grooming items and services, in excess of those for which payment is made under Medicaid or Medicare.

(5) Personal clothing.

(6) Personal reading matter.

(7) Gifts purchased on behalf of a resident.

(8) Flowers and plants.

(9) Social events and entertainment offered off the premises and outside the scope of the activities program, provided under subdivision (g) of section 415.5.

(10) Noncovered special care services such as private duty nurses consistent with Medicare and Medicaid rules and regulations for residents who are beneficiaries of these programs.

(11) Specially prepared or alternative food requested instead of the food generally prepared by the facility, if it is documented that the requested food costs more than food provided to other residents, except that food provided under paragraph (6) of subdivision (f) of section 415.3 of this Title shall not be charged to residents' funds.

(d) Requests for items and services.

(1) The facility shall not charge a resident or his or her designated representative for any item or service not requested by the resident or the designated representative.

(2) The facility shall not require a resident or his or her designated representative to request any item or service as a condition of admission or continued stay.

(3) The facility shall inform the resident or his or her designated representative requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(6) The facility shall:

(i) upon receiving prepayment or advance money for the purpose of being applied to payments in satisfaction of or as security for the performance of facility responsibilities, deposit such money, which shall continue to be the money of the person making the prepayment, in an interest-bearing account in a bank or with a financial agent;

(ii) not be required to deposit prepayment in an interest-bearing account where such money is to be applied to payments when due, until 61 days after such prepayment or advanced money is made;

(iii) notify in writing each of the persons making such prepayment of the name and address of the bank or financial agent with which the deposit is made and the amount of such deposit.

(iv) be entitled to receive an administrative expense equivalent to one percent per annum upon the prepayment money deposited, which shall be in lieu of all other administrative expenses;

(v) inform any person making prepayment as security for the performance of facility responsibilities that waivers of the provisions of this paragraph are void.

(i) Admission Policies and Practices.

(1) The nursing home shall:

... (iv) maintain a written record of all financial arrangements with the resident, his or her next of kin and/or sponsor, with copies executed by and furnished to each party;

(v) make no arrangement for prepayment for basic services exceeding three months;

(vi) assess no additional charges, expenses or other financial liabilities in excess of the daily, weekly or monthly basic rate except;

(a) upon express written approval and authority of the resident, next of kin or sponsor;

(b) upon express written orders of the resident's personal, alternate or staff physician stipulating specific services and supplies not included as basic services;

(c) upon 30 days' prior written notice to the resident or designated representative, of additional charges, expenses or other financial liabilities due to the increased cost of maintenance and/or operation of the nursing home; and, upon request of the resident, designated representative or of the department, financial and statistical supportive evidence sufficient to reflect such change in economic status shall be provided; or

(d) in the event of a health emergency involving the resident and requiring immediate special services or supplies to be furnished during the period of the emergency;

... (3) The nursing home shall advise each potential resident or designated representative that he or she may seek a second opinion if he or she disagrees with the diagnosis or treatment being provided, and may call in a specialist selected by the resident or designated representative for medical consultation. The facility shall not be required to bear the expense of such visit.

(j) Misappropriation of resident property. The nursing home shall establish and implement policies and procedures for the receipt, review and investigation of allegations of misappropriation of resident property by individuals in the employ of and/or whose services are utilized by the facility. Such policies and procedures shall be coordinated with the process governing the handling of complaints as set forth in section 415.3 of this Part.

(1) For purposes of this subdivision, misappropriation of resident property shall mean the theft, unauthorized use or removal, embezzlement or intentional destruction of the

resident's personal property including but not limited to money, clothing, furniture, appliances, jewelry, works of art, and such other possessions and articles belonging to the resident regardless of monetary value.

(2) In accordance with policies and procedures governing misappropriation of resident property, the nursing home shall:

(i) ensure that upon receipt of an allegation of misappropriation as submitted by the resident, designated representative, other individual or source, an investigation of the matter shall be undertaken not later than 48 hours after receipt;

(ii) maintain a log containing information regarding the receipt, review, investigation, and disposition of every allegation of misappropriation of resident's property including the name of the complainant and the resident, a description of the personal property involved, and staff designated to conduct the review and investigation;

(iii) notify the resident and complainant in writing as to the findings upon disposition of the allegation;

(iv) notify the appropriate police agency when the results of the investigation indicate there is reasonable cause to believe that a resident's personal property valued at more than two hundred fifty (250) dollars has been misappropriated or may elect to make such notification when the resident's personal property is valued at less than that amount;

(v) monitor the status of all referrals to a police agency on a regular basis but not less often than quarterly; and

(vi) notify the Department within 72 hours of receipt of the notice that such referral resulted in conviction of an individual who was involved in misappropriation of resident property.

(3) Upon receipt of such notice of criminal conviction involving misappropriation of property by a nurse aide and after the department has provided to the individual an opportunity to be heard to dispute the allegations and conviction resulting from misappropriation of resident property, the department shall, pursuant to Public Health Law Section 2803-d, as amended by Chapter 717 of the Laws of 1989, report such finding to the New York State RHCN Nurse Aide Registry established in accordance with Public Health Law, Section 2803-j, as amended by such chapter. Any brief statement not exceeding 150 words by the nurse aide disputing the findings shall also be included in the report, provided that any such statement containing the names of any resident or complainant shall be returned to the submitting individual and shall not be reported to the registry.

Title: Section 415.3 - Residents' rights  
415.3 Residents' rights.

(a) The facility shall ensure that all residents are afforded their right to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs and communication with and access to persons

and services inside and outside the facility. The facility shall protect and promote the rights of each resident, and shall encourage and assist each resident in the fullest possible exercise of these rights as set forth in subdivisions (b) - (h) of this section. The facility shall also consult with residents in establishing and implementing facility policies regarding residents' rights and responsibilities.

(1) The facility shall advise each member of the staff of his or her responsibility to understand, protect and promote the rights of each resident as enumerated in this section.

(2) The facility shall fully inform the resident and the resident's designated representative both orally and in writing in a method of communication that the individuals understand the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be acknowledged in writing. A summary of such information shall be provided by the Department and posted in the facility in large print and in language that is easily understood.

(3) The written information provided pursuant to paragraph (2) of this subdivision shall include but not be limited to a listing of those resident rights and facility responsibilities enumerated in subdivisions (b) through (h) of this section. The facility's policies and procedures shall also be provided to the resident and the resident's designated representative upon request.

(4) The facility shall communicate to the resident an explanation of his or her responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents.

(5) Any written information required by this Part to be posted shall be posted conspicuously in a public place in the facility that is frequented by residents and visitors, posted at wheelchair height.

...(c) Protection of Legal Rights.

(1) Each resident shall have the right to:

(i) exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and New York State including the right to vote, with access arranged by the facility and to this end may voice grievances without discrimination or reprisal for voicing the grievances, and have a right of action for damages or other relief for deprivations or infringements of his or her right to adequate and proper treatment and care established by any applicable statute, rule, regulation or contract;

(ii) recommend changes in policies and services to facility staff and/or to any outside representatives, free of interference, coercion, discrimination, restraint or reprisal from the facility and to obtain prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

(iii) exercise his or her individual rights or have his or her rights exercised by a person authorized by state law;

(iv) inspect all records including clinical records pertaining to himself or herself within 24 hours after an oral or written request to the facility and, after receipt of such records for inspection, to purchase at a cost which is the lower of the cost incurred by the facility in production of the record or 75 cents per page, photocopies of the records or any portions of them upon request and two working days advance notice to the facility. The

designated representative who has authority to make health care decisions for the resident shall likewise have access to the resident's records in accordance with this subparagraph, State law and the rights of a competent resident to deny such access. A resident or such designated representative shall not be denied access to the clinical records solely because of inability to pay.

(v) examine the results of the most recent survey of the facility conducted by federal or State surveyors including any statement of deficiencies, any plan of correction in effect with respect to the facility and any enforcement actions taken by the Department of Health. The results shall also be made available by the facility for examination. They shall be made available in a place readily accessible to residents and designated representatives without staffing assistance;

(vi) receive information from agencies acting as resident advocates, and be afforded the opportunity to contact these agencies;

(vii) be free from verbal, sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints except those restraints authorized in accordance with section 415.4 of this Part;

(viii) exercise his or her civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, which shall not be infringed; and

(ix) request, or have the resident's designated representative request, and be provided information concerning his or her specific assignment 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."

(2) With respect to its responsibilities to the resident the facility shall:

(i) furnish a written description of legal rights which includes:

(a) a description of the manner of protecting personal funds, under subdivision (h) of section 415.26 of this Part; and

(b) a statement that the resident may file a complaint with the facility or the New York State Department of Health concerning resident abuse, neglect, mistreatment and misappropriation of resident property in the facility. The statement shall include the name, address and telephone number of the office established by the Department to receive complaints and of the State Office for the Aging Ombudsmen Program;

(ii) promptly notify the resident and the resident's designated representative when there is:

(a) a change in room. Except when the medical condition of the resident requires an immediate room change or an emergency situation has developed, such change in room shall require prior notice and consultation with the resident as well as reasonable accommodation of any resident needs or preferences;

(b) a change in roommate assignment which shall be acceptable, where possible, to all affected residents; or

(c) a change in resident rights under Federal or State law or regulations as specified in this section;

(iii) record and periodically update the address and phone number of the resident's designated representative;

(iv) provide immediate access to any resident by the following:

(a) any representative of the Secretary of Health and Human Services;

(b) any representative of the Department of Health;

(c) the resident's responsible physician;

(d) ombudsmen who are duly certified and designated by the State Office for the Aging;

- (e) representatives of the Commission on Quality of Care for the Mentally Disabled which is responsible for the protection and advocacy system for developmentally disabled individuals and mentally ill individuals;
- (f) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time, and
- (g) others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time;
- (v) post the names, addresses and telephone numbers of all pertinent state client advocacy groups and provide reasonable access to any resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time;
- (vi) comply with the provisions of Part 411 of this Title regarding Ombudsmen Access to Residential Health Care Facilities; and
- (vii) inform residents of the facility's visiting hour policies.

(d) Right to Privacy. Each resident shall have the right to:

(1) personal privacy and confidentiality of his or her personal and clinical records which shall reflect:

(i) accommodations, medical treatment, written and telephone communications, personal care, associations and communications with persons of his or her choice, visits, and meetings of family and resident groups. Resident and family groups shall be provided with private meeting space and residents shall be given access to a private area for visits or solitude. Such requirement shall not require the facility to provide a private room for each resident; and

(ii) the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when:

- (a) the resident is transferred to another health care institution; or
- (b) record release is required by law;

(2) privacy in written communications, including the right to:

- (i) send and receive mail promptly that is unopened; and
- (ii) have access to stationery, postage and writing implements at the resident's own expense; and

(3) regular access to the private use of a telephone that is wheelchair accessible and usable by hearing impaired and visually impaired residents.

(e) Right to Clinical Care and Treatment.

(1) Each resident shall have the right to:

(i) adequate and appropriate medical care, and to be fully informed by a physician in a language or in a form that the resident can understand, using an interpreter when necessary, of his or her total health status, including but not limited to, his or her medical condition including diagnosis, prognosis and treatment plan. Residents shall have the right to ask questions and have them answered;

(ii) refuse to participate in experimental research and to refuse medication and treatment after being fully informed and understanding the probable consequences of such actions;

(iii) choose a personal attending physician from among those who agree to abide by all

federal and state regulations and who are permitted to practice in the facility;

- (iv) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being;
- (v) participate in planning care and treatment or changes in care and treatment. Residents adjudged incompetent or otherwise found to be incapacitated under the laws of the State of New York shall have such rights exercised by a designated representative who will act in their behalf in accordance with State law; and
- (vi) self-administer drugs if the interdisciplinary team, as defined by Section 415.11, has determined for each resident that this practice is safe.

(2) With respect to its responsibilities to the resident, the facility shall:

- (i) inform each resident of the name, office address, phone number and specialty of the physician responsible for his or her own care.
- (ii) except in a medical emergency, consult with the resident immediately if the resident is competent, and notify the resident's physician and designated representative within 24 hours when there is:
  - (a) an accident involving the resident which results in injury requiring professional intervention;
  - (b) a significant improvement or decline in the resident's physical, mental, or psychosocial status in accordance with generally accepted standards of care and services;
  - (c) a need to alter treatment significantly; or
  - (d) a decision to transfer or discharge the resident from the facility as specified in subdivision (h) of this section; and
- (iii) provide all information a resident or the resident's designated representative when permitted by State law, may need to give informed consent for an order not to resuscitate and comply with the provisions of section 405.43 of this Subchapter regarding orders not to resuscitate. Upon resident request the facility shall furnish a copy of the pamphlet, "Do Not Resuscitate Orders - A Guide for Patients and Families".

(f) Residential Rights. Each resident shall have the right to:

- (1) refuse to perform services for the facility. The resident may perform such services, if he or she chooses, only when:
  - (i) there is work available in the facility that the resident is capable of safely performing;
  - (ii) the facility has documented the need or desire for work in the plan of care;
  - (iii) the plan specifies the nature of the services performed and whether the services are voluntary or paid;
  - (iv) compensation for paid services is at or above prevailing rates; and
  - (v) the resident agrees to the work arrangement described in the plan of care;
- (2) retain, store securely and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of the resident or other residents in which case the facility shall explore alternatives through discussion with the resident, the resident council or interdisciplinary care team, and provide or assist in the arrangement of storage for possessions. The resident shall have the right to locked storage space in his or her room;
- (3) share a room with his or her spouse, relative or partner when these residents live in the same facility and both consent to the arrangement. If a spouse, relative or partner resides in a location out of the facility, the resident shall be assured of privacy for visits;

- (4) participate in the established residents' council;
- (5) meet with, and participate in activities of social, religious and community groups at his or her discretion; and
- (6) receive, upon request, kosher food or food products prepared in accordance with the Hebrew orthodox religious requirements when the resident, as a matter of religious belief, desires to observe Jewish dietary laws.

(g) Financial Rights.

(1) Each resident shall have the right to manage his or her financial affairs or authorize in writing the facility to manage personal finances in accordance with paragraph (5) of subdivision (h) of section 415.26 of this Part. The facility may not require residents to deposit their personal funds with the facility;

(2) With respect to its responsibilities to the resident, the facility shall:

(i) inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing home or, when the resident becomes eligible for Medicaid of:

(a) the items and services that are included in nursing home services under the State plan and for which the resident may not be charged;

(b) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(c) the clear distinction between the two lists required by clauses (a) and (b) of this subparagraph;

(ii) inform each resident when changes are made to the items and services specified in clauses (a) and (b) of subparagraph (i) of this paragraph;

(iii) inform each resident verbally and in writing before, or at the time of admission, and periodically when changes occur during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered by sources of third party payment or by the facility's basic per diem rate; and

(iv) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits as well as a description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which will determine the extent of a couple's non-exempt resources at the time of institutionalization and attribute to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels.