

Effective Date: 12/19/2007

Title: Section 415.13 - Nursing services

415.13 Nursing services. The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. The facility shall assure that each resident receives treatments, medications, diets and other health services in accordance with individual care plans.

(a) Sufficient staff. (1) The facility shall provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) registered professional nurses or licensed practical nurses;

(ii) certified nurse aides; and

(iii) other nursing personnel.

(2) The facility shall designate a registered professional nurse or licensed practical nurse to serve as a charge nurse on each tour of duty who is responsible for the supervision of total nursing activities in the facility. Alternatively, as necessitated by resident care needs, the facility may designate one charge nurse for each tour of duty on each resident care unit or on proximate nursing care units in the facility provided that each nursing care unit in the facility is under the supervision of a charge nurse.

(b) Registered professional nurse. (1) The facility shall use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

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

(3) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(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 RHC 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.

(d) Feeding Assistant. (1) Feeding assistant shall mean an individual who meets the requirements of this section and who is paid by the facility or provided to the facility under contract with another entity to feed residents or assist residents with eating or hydration.

(2) The feeding assistant shall:

(i) be under the supervision of a nurse;

(ii) only feed or assist with feeding only those residents who do not have complicated feeding problems. Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

(iii) have successfully completed a state-approved feeding assistant training program, such program shall meet the requirements as described in subdivision (k) of section 415.26 of this Part.

(3) The charge nurse's selection of residents who can safely be fed or assisted by a feeding assistant shall be based upon a registered professional nurse's assessment and the resident's latest assessment and plan of care.

(4) The feeding assistant may only provide eating and hydration assistance to residents in congregated dining rooms, not in a resident's room.

(5) In an emergency, the feeding assistant must call a supervisory nurse for help on the resident call system, when the supervisory nurse is not on the scene.

(6) The facility must maintain records of all individuals used by the facility as feeding assistants. For each individual, such records shall include, but not be limited to:

(i) a copy of the feeding assistant training program certificate of completion,

(ii) the dates and results of evaluations of the feeding assistant, and

(iii) the dates and subject topics of any additional training related to the individual's role as a feeding assistant, and a record of the individual's demonstrated competency in the activities and/or skills toward which the training was focused.

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