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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 10. DEPARTMENT OF HEALTH
CHAPTER V. MEDICAL FACILITIES
SUBCHAPTER A. MEDICAL FACILITIES--MINIMUM STANDARDS
ARTICLE 3. RESIDENTIAL CARE FACILITIES
PART 415. NURSING HOMES--MINIMUM STANDARDS
ADMINISTRATIVE

Current through September 15, 2011

* 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 less 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 the 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 onsite 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

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; and

(v) develop and implement policies and procedures which require:

(a) the provision for a physical examination and recorded medical history for personnel including all employees and members of the medical and dental staff. The examination shall be of sufficient scope to ensure that, consistent with Federal and State statutes prohibiting discrimination on the basis of disability or handicap, no person shall assume his/her duties unless he/she is free from a health impairment that would present a risk to the resident which cannot be reasonably accommodated, or which might interfere with the performance of his/her duties, including the habituation or addiction to depressants, stimulants, narcotics, alcohol or other drugs or substances which may alter the individual's behavior. The nursing home is required to provide such examination without cost for all employees. The nursing home shall also conduct a health status assessment of all volunteers whose activities are such that a health impairment would pose a risk to residents or personnel, in order to determine that the health and well being of residents and personnel are not jeopardized by the condition of such volunteers. The nursing home shall require the following of all personnel as a condition of employment or affiliation:

(1) either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection, prior to employment or affiliation and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow-up but no repeat tuberculin skin test or blood assay. The medical staff shall develop and implement policies regarding positive outcomes; and

(2) a certificate of immunization against rubella which means:

(i) a document prepared by a physician, physician's assistant, specialist's assistant, nurse practitioner, licensed midwife or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating serologic evidence of rubella antibodies;

(ii) a document indicating one dose of live virus rubella vaccine was administered on or after the age of 12 months, showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization; or

(iii) a copy of a document described in item (i) or (ii) of this subclause, which comes from a previous employer or the school which the employee attended as a student; and

(3) a certificate of immunization against measles, for all personnel born on or after January 1, 1957, which means:

(i) a document prepared by a physician, physician's assistant, specialist's assistant, nurse practitioner

(i) a document prepared by a physician, physician's assistant, specialist's assistant, nurse practitioner, licensed midwife or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating serologic evidence of measles antibodies;

(ii) a document indicating two doses of live virus measles vaccine were administered with the first dose administered on or after the age of 12 months and the second dose administered more than 30 days after the first dose but after 15 months of age showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization;

(iii) a document, indicating a diagnosis of the employee as having had measles disease, prepared by the physician, physician's assistant/specialist's assistant, licensed midwife or nurse practitioner who diagnosed the employee's measles; or

(iv) a copy of a document described in item (i), (ii) or (iii) of this subclause which comes from a previous employer or the school which the employee attended as a student;

(4) if any licensed physician, physician's assistant/specialist's assistant, licensed midwife or nurse practitioner certifies that immunization with measles and/or rubella vaccine may be detrimental to the employee's health, the requirements of subclause (2) and/or (3) of this clause relating to measles and/or rubella immunization shall be inapplicable until such immunization is found no longer to be detrimental to such employee's health. The nature and duration of the medical exemption must be stated in the employee's employment medical record and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the American Academy of Pediatrics and the Immunization Practices Advisory Committee of the U.S. Department of Health and Human Services);

(b) the reassessment of the health status of all personnel as frequently as necessary, but no less than annually, to ensure that personnel are free from health impairments which pose a risk to residents or personnel which cannot be reasonably accommodated or which may interfere with the performance of duties;

(c) that all personnel report immediately to their supervisor or the administrator any signs or symptoms of personal illness. All personnel making such report shall be referred to an appropriate health care professional for assessment of the risk to residents and personnel. Based on this assessment, the nursing home shall authorize appropriate measures to be taken, including but not limited to removal, reassignment or return to duty.

(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:

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 two 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 or more;

(e) has a temporary manager, receiver or caretaker appointed; or

(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 (1)(i) of this subdivision and conducted by the instructor who meets the definition specified in subparagraph (1)(ii) 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 to sixth 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; and
(q) care of the dying resident including care of the body and personal effects after death.
(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 (1)(iii) 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 seven 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 clause (a) or (b) of this subparagraph 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; and

(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.

(i) Written records shall be maintained which indicate the content of and attendance at each inservice training program.

(ii) Each nurse aide trainee and certified nurse aide shall attend and be compensated for at least six hours of inservice education in every six-month period.

(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 subdivision, 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.

(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.

(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:

(i) pay any commission, bonus, rebate or gratuity to any organization, agency, physician, employee or other person for referral of any resident to the nursing home;

(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

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

(iii) accept any remuneration, rebate, gift, benefit or advantage of any form from any vendor or other supplier because of the purchase, rental or loan of equipment, supplies or services for the facility or resident, excluding normal business practices.

(4) In the event that the operator of the facility and the consulting physician or any other professional provider of services are one and the same person, he or she shall not reimburse himself or herself as consultant for such services provided to the facility or directly to any resident other than for services provided in an emergency.

(5) If a resident authorizes the facility in writing to manage his or her personal finances in accordance with section 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 section 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;

(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 section 415.5(g) of this Part;
(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; and
(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 section 415.3(f)(6) of this Part 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.

(7) Equity withdrawal. No facility or governing body may withdraw or reduce a facility's equity so as to create or increase a negative net worth by means of a withdrawal without the prior approval of the commissioner.

(i) The term withdrawal shall mean:

(a) any payment of cash or transfer of other assets by a facility directly or indirectly to or for the benefit of its operator or owner; and

(b) any liability or contingent liability incurred within any period of 12 consecutive months by a facility or its operator by reason of a mortgage, lease, borrowing or other transaction relating to such facility that exceeds, in the aggregate, $25,000.

(ii) Negative net worth shall be calculated without regard to any surplus created by reevaluation of assets.

(iii) An application for approval shall be submitted in writing at least 60 days prior to the proposed withdrawal and shall specify the purpose of the withdrawal and the details concerning such withdrawal including, where applicable, such items as the principal amount, interest rate, repayment terms, conditions of default, remedies upon default and obligee of any transaction to be consummated in a proposed withdrawal. The application shall contain a verified current balance sheet and a description of the facility's cash position, including as cash such cash equivalents as certificates of deposit and treasury bills.

(iv) In reviewing an application for withdrawal, the commissioner shall consider:

(a) the necessity for the withdrawal;

(b) whether such withdrawal would impair the facility's ability to render quality care;

(c) any expense which such withdrawal would generate; and

(d) the financial condition of the facility in general.

(8) No facility shall enter into a real property mortgage or lease transaction without 30 days' prior notice in writing to the commissioner.

(i) Admission policies and practices.

(i) Admission policies and practices.

(1) The nursing home shall:

(i) admit a resident only on physician's orders and in accordance with the resident assessment criteria and standards as promulgated and published by the department, and specified in sections 86-2.30(i) and 400.12 of this Title, which shall include, as a minimum:

(a) an assessment, performed prior to admission by or on behalf of the agency or person seeking admission for the resident of the resident's level of care needs according to the resident assessment criteria and standards promulgated and published by the department (and specified in sections 86-2.30[i] and 400.12 of this Title);

(b) for those residents failing to meet the criteria and standards for admission to the nursing home (as indicated in New York State criteria for level of care, specified in section 400.12 of this Title), a certification signed by a physician member of the transferring facility's utilization review agent or signed by the responsible social services district's local Medicaid medical director or designee, indicating the reason(s) the resident requires nursing home level of care; and

(c) for residents in general hospitals and residing in the community, the SCREEN, as specified in section 400.12 of this Title, performed prior to admission to the nursing home shall not be completed by personnel of a residential health care facility, except where a certified home health agency or other appropriate community-based assessor has been contacted by the resident or the resident's designated representative, for the purpose of completing the SCREEN, and has not completed the SCREEN within 48 hours;

(ii) accept and retain only those nursing home residents for whom it can provide adequate care;

(iii) admit each resident only after a pre-admission personal interview with the resident's physician, the resident, his or her next of kin and/or sponsor, as appropriate, except that a telephone interview may be substituted when a personal interview is not feasible, and a summary of all interviews shall be recorded on the resident's chart or other appropriate record;

(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;

(vii) provide to each resident or designated representative at the time of admission, a written copy of the following information and services which shall be considered as basic information and services to be made available to all residents:

(a) the daily, weekly or monthly rate;

(b) board, including therapeutic or modified diets, as prescribed by a physician;

(c) lodging; a clean, healthful, sheltered environment, properly outfitted;

(d) 24 hours-per-day nursing care;

(e) the use of all equipment, medical supplies and modalities, notwithstanding the quantity usually used in the everyday care of nursing home residents, including but not limited to catheters, hypodermic syringes and needles, irrigation outfits, dressings and pads, and so forth;

(f) fresh bed linen, as required, changed at least twice weekly, including sufficient quantities of necessary bed linen or appropriate substitutes changed as often as required for incontinent residents;

(g) hospital gowns or pajamas as required by the clinical condition of the resident, unless the resident, next of kin or sponsor elects to furnish them, and laundry services for these and other launderable personal clothing items;

(h) general household medicine cabinet supplies, including but not limited to non-prescription medications, materials for routine skin care, oral hygiene, care of hair, and so forth, except when specific items are medically indicated and prescribed for exceptional use for a specific resident;

(i) assistance and/or supervision, when required, with activities of daily living, including but not limited to toilet, bathing, feeding and ambulation assistance;

(j) services, in the daily performance of their assigned duties, by members of the nursing home staff concerned

with resident care;

(k) use of customarily stocked equipment, including but not limited to crutches, walkers, wheelchairs or other supportive equipment, including training in their use when necessary, unless such item is prescribed by a physician for regular and sole use-by a specific resident;

(l) activities program, including but not limited to a planned schedule of recreational, motivational, social and other activities, together with the necessary materials and supplies to make the resident's life more meaningful;

(m) social services as needed;

(n) physical therapy, on either a staff or fee-for-service basis, as prescribed by a physician, administered by or under the direct supervision of a licensed and currently registered physical therapist;

(o) occupational therapy, on either a staff or fee-for-service basis, as prescribed by a physician, administered by or under the supervision of a qualified occupational therapist;

(p) speech pathology services, on either a staff or fee-for-service basis, as prescribed by a physician, administered by a qualified speech pathologist;

(q) audiology services, on either a staff or fee-for-service basis, as prescribed by a physician, administered by a qualified audiologist; and

(r) dental services, on either a staff or fee-for-service basis, as administered by or under either the personal or general supervision of a licensed and currently registered dentist;

(viii) apply the following restrictions to the admission and retention of residents:

(a) residents under 16 years of age shall be admitted only to a nursing home area approved for such occupancy by the department and separate and apart from adult residents;

(b) prenatal, intrapartum or postpartum, and maternity patients shall not be admitted;

(c) residents identified and assessed to need nursing home care shall not be barred from admission or retention solely on the basis that they are also maintained on alcohol or substance abuse treatment programs; and

(d) a resident suffering from a communicable disease shall not be admitted or retained unless a physician certifies in writing that transmissibility is negligible, and poses no danger to other residents, or the facility is staffed and equipped to manage such cases without endangering the health of other residents;

(ix) not discriminate because of race, color, blindness, sexual preference or sponsorship in admission, retention and care of residents;

(x) establish and implement written policies and procedures governing the admission process which ensure compliance with State and Federal anti-discrimination laws which apply to the governing body. Such laws include, but need not be limited to, the applicable provisions of this Part; Public Health Law, section 280a(9); the New York State Civil Rights Law, sections 40 and 40-c; article 15 (Human Rights Law) of the State Executive Law, sections 291, 292 and 296 and title 42 of the United States Code, sections 1981, 2000a, 2000a-2, 2000d, 3602, 3604 and 3607. Copies of the cited State and federal statues are available from West Publishing Company, P.O. Box No. 64526, St. Paul, MN 55164-0526, the publisher of McKinney's Consolidated Laws of New York annotated and the United States Code annotated. Copies of such statues are also available for public inspection and copying at the Records Access Office, Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237. The policies and procedures shall include but not be limited to the following:

(a) the prominent inclusion in admission application forms and policy statements of a legend summarizing the applicable federal and State anti-discrimination laws;

(b) the prominent display in the admissions office of the New York State Division of Human Rights nondiscrimination regulatory poster. This poster is available from the State Division of Human Rights, 55 West 125 Street, New York, NY 10027. A copy of this poster is also available for public inspection and copying at the Department of Health's Records Access Office at the address set forth above;

(c) explicit advice to potential patients of their right to nondiscriminatory treatment in admissions;

(d) the training of admission personnel in the requirements of federal and State anti-discrimination laws listed above; and

(e) written admission policies which specifically state the criteria used in making admission decisions. If a waiting list is used in making admission decisions, the list shall be maintained in written form including the date of each application. The operation and utilization of the waiting list shall be described in the written admission policies;

(xi) furnish to all hospitals within the long-term care planning area and to any hospital, referral agency, or individual upon request a copy of the facility's admission policies; and

(xii) maintain a centralized log on the receipt and disposition by the facility of persons referred for admission. For the purposes of this subdivision, receipt by the facility of a completed hospital/community patient review instrument for a person needing nursing home care shall constitute a patient referral. The log shall contain for each referral a patient identifier, and indicate the race, sex, color, national origin of the referral, the date of referral, referring hospital or agency, and date and type of disposition of referral by the facility. Records of such log shall be retained

for 18 months from date of entry. In lieu of a log, a facility may meet the requirements of this subdivision by retaining the completed hospital/community patient review instrument forms received by the facility for 18 months from receipt in a central place organized by date of receipt and marked by date and type of disposition.

(2) The nursing home shall advise each potential resident or designated representative prior to or at the time of admission, that all medical and dental services which are provided by the facility will be provided by practitioners who have an affiliation with the facility. Potential residents whose personal attending physician or dentist is not approved to provide services to the resident after admission shall be duly notified prior to or at the time of admission. The facility shall promptly receive and evaluate requests by such personal attending physician or dentist, to be approved to attend to such prospective resident consistent with resident care policies and procedures of the facility.

(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 $250 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 RHCF 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.

(k) Feeding assistant training course.

(1) The feeding assistant training program shall consist of a minimum of 15 hours of education and training and must include all of the topics and lessons specified in the State-approved feeding assistant training program curriculum.

(2) The State-approved feeding assistant training program shall include, but not be limited to, training in the following content areas:

(i) resident rights;

(ii) infection control;

(iii) safety and emergency procedures, including Heimlich Maneuver;

(iv) communications and interpersonal skills;

(v) changes in resident's condition;

(vi) appropriate response to resident behavior;

(vii) assistance with eating and hydration; and

(viii) feeding techniques.

(3) The facility shall issue a certificate of completion to each individual who successfully completes the State-approved feeding assistant training program. The certificate shall include the full name of the feeding assistant and the facility-issued trainee or employee ID number, signature of feeding assistant, name and address of the facility, date the individual successfully completed the feeding assistant training program, name, title and signature of the training program instructor, and name and signature of the nursing home administrator.

(4) The facility shall retain records of each individual who completes their State-approved feeding assistant program. Such records shall include, but not be limited to:

(i) the full name of the feeding assistant, facility-issued trainee or employee ID number, name and address of the facility, dates on which each content area of the feeding assistant training program was delivered and successfully completed, the date on which the individual successfully completed the feeding assistant training program, and the name, title and signature of the training program instructor.

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