THE

LONG TERM CARE OMBUDSMAN'S

GUIDE TO

NURSING HOME REGULATIONS

IN

NEW YORK STATE

New York State Long Term Care Ombudsman Program

New York State Office for the Aging
October, 1990
SUMMARY

This Guide has been prepared for use by the Long Term Care Ombudsman who is duly certified and designated by the New York State Office for the Aging to carry out official duties as set forth in Federal and State law. The Long Term Care Ombudsman receives, investigates, and resolves the complaints and concerns of long term care facility residents and their families.

Residents of long term care facilities are people who are frail, vulnerable, of all ages, from all walks of life, and dependent on others for basic needs like dressing, eating, and toileting.

This dependency of residents on the staff of the facility makes it very difficult for residents to stand up for their rights, to assert their choices, or to question the staff. The need for education and information, the complexity of regulatory and payment requirements, the extensive care standards, etc., are further reasons why the Ombudsman is needed.

Simply put, the resident and the family need the expert assistance of an Ombudsman -- someone trained, certified, and authorized by New York State to represent the interests of residents and advocate on their behalf.

The purpose of this Guide is to provide the Long Term Care Ombudsman with both explanation and guidance about the regulations which set the standards for nursing homes in New York State. Each section or major subdivision is summarized, key points for Ombudsmen are noted, and an outline of that portion of the regulations is provided to ease reference to the full text of the regulations, which immediately follows the descriptive material. An index is provided at the end of the Guide.

These nursing home regulations are required by, and are based on, the Federal Omnibus Budget Reconciliation Acts of 1987 and 1989 and the related Federal regulations in 42 CFR Part 483 "Medicare and Medicaid Requirements for Long Term Care Facilities" published by the Health Care Financing Administration. The regulations also reflect additional minimum operating requirements for nursing homes which are required by State law or determined by the Department of Health to be essential to the provision of necessary care and services to nursing home residents.

These regulations provide the basis for the delivery of care to nursing home residents and for enforcement actions which may result from violations of these regulations.

***
ACKNOWLEDGEMENTS

This Guide was prepared by Staff of the New York State Long Term Care Ombudsman Program with assistance from:

[list of contributors]

David R. Murray, State Long Term Care Ombudsman

John Rush, State Ombudsman Program Representative
Marilyn Causey, State Ombudsman Program Representative
Mark Manfredi, State Ombudsman Program Representative

New York State Long Term Care Ombudsman Program
New York State Office for the Aging
2 Empire State Plaza
Albany, New York 12223-0001
(518) 474-7329
1-800-342-9871
TABLE OF CONTENTS

GENERAL
Basis and Scope (415.1)
Definitions (415.2)

Residential Rights and Services
Residents' Rights (415.3)
Resident Behavior and Facility Practices (415.4)
Quality of Life (415.5)

Clinical Services
Resident Assessment and Care Planning (415.11)
Quality of Care (415.12)
Nursing Services (415.13)
Dietary Services (415.14)
Medical Services (415.15)
Specialized Rehabilitative Services (415.16)
Dental Services (415.17)
Pharmacy Services (415.18)
Infection Control (415.19)
Laboratory and Blood Bank (415.20)
Radiology and Other Diagnostic Services (415.21)
Clinical Records (415.22)

Administrative
Organization and Administration (415.26)
Administration (a)
Governing Body (b)
Staff Qualifications and Personal Management (c)
TABLE OF CONTENTS
(Continued)

Nurse Aide Certification and Training (d)
Use of Outside Resources (e)
Disaster and Emergency Preparedness (f)
Transfer Agreements (g)
Financial Policies (h)
Admission Policies and Practices (i)
Misappropriation of Resident Property (j)

Quality Assessment & Assurance (415.27)
Disclosure of Ownership (415.28)
Physical Environment (415.29)
General Records (415.30)
New York State RHCF Nurse Aide Registry (415.31)

Optional Services

Long-term Inpatient Rehabilitation Program for Head-Injured Residents (415.36)

Services for Residents with Acquired Immune Deficiency Syndrome (AIDS) (415.37)

Long-term Ventilator Dependent Residents (415.38)

Secured or Locked Units (415.39)
BASIS AND SCOPE
(Section 415.1)

Summary

"Basis and Scope" states the basis for nursing home regulations in Article 28 of the Public Health Law, requires compliance with the construction standards for building nursing homes (Part 713 of the regulations; not included in this Guide), and requires compliance with all pertinent Federal, State and local laws, regulations, codes, standards, and principles.

Key Points for Ombudsmen

This section is based on State law which generally requires the oversight of the nursing home industry by the State Department of Health. It contains the basic authority for regulation upon which much of the remaining regulations rest, although the remaining regulations often reflect the requirements of specific State laws.

Bottom line: facilities must meet these requirements. If they do not they will face an enforcement action of some kind.

***
DEFINITIONS
(Section 415.2)

Summary

"Definitions" provides operational definitions for various terms and titles used in the regulations which may not be generally understood by the public, residents, their families, or others.

Key Points for Ombudsmen

Familiarity with these definitions is important to success in your job as an Ombudsman, because understanding these definitions will help you understand the regulations. You should pay particular attention to the definitions of: designated representative (f), nursing home (k), resident (m), resident care unit (n), resident council (o), and sponsor (s).

Outline of Subdivisions

(a) Ambulant Resident
(b) Certified Nurse Aide
(c) Clinical Skills Advisor
(d) Commissioner
(e) Department
(f) Designated Representative
(g) Governing Body
(h) Nurse Aide
(i) Nurse Aide Trainee
(j) Nurse Aide Training Program Coordinator
(k) Nursing Home
(l) Primary Instructor
(m) Resident
(n) Resident Care Unit
(o) Resident Council
(p) Respiratory Care and Therapy
(q) Respiratory Therapist
(r) Qualified Specialist
(s) Sponsor
(t) Equity Withdrawal

***
RESIDENTS' RIGHTS
(Section 415.3)

Summary

"Residents' Rights" establishes a wide-ranging list of residents' rights and the facility's responsibility to provide such rights. Rights are categorized as follows: admission rights, legal rights, privacy rights, clinical care and treatment rights, residential rights, financial rights, and transfer and discharge rights.

Key Points for Ombudsmen

In many ways, this is the most important section of the nursing home regulations. Protecting and defending resident rights is at the heart and soul of the Long Term Care Ombudsman Program and is your primary job responsibility as an Ombudsman. Active, experienced Ombudsmen rely on this section of the regulations as their "guiding light" for action.

"KNOW THEIR RIGHTS!"

In particular, you should be familiar with...

Outline of Subdivisions

(a) General
(b) Admission Rights
(c) Protection of Legal Rights
(d) Right to Privacy
(e) Right to Clinical Care and Treatment
(f) Residential Rights
(g) Financial Rights
(h) Transfer and Discharge Rights

***
RESIDENT BEHAVIOR AND FACILITY PRACTICES

(Section 415.4)

Summary

"Resident Behavior and Facility Practices" sets forth the strict limitations for the physical and/or chemical restraint of residents. Restraints (1) must not be used for the convenience of staff, (2) must only be used to protect the health and safety of residents, (3) must be used only with the agreement of competent residents, (4) must be determined to be the least restrictive option for meeting resident needs after trying less restrictive measures, and (5) must be ordered, used, monitored, and discontinued as required by appropriate professional staff. The specific guidelines and restrictions in these regulations must be followed. This section also addresses facility policies and procedures related to abuse, mistreatment, or neglect of residents.

Key Points for Ombudsmen

- Note facility patterns for use of restraints (i.e. numbers, time of day, types of residents)
- When present, monitor release time of restraints.
- Refer to LTCOP #25, 9/7/90, for more information about reporting abuse.

Outline of Subdivisions

(a) Physical and Chemical Restraints
   (1) Chemical Restraints
   (2) Prerequisites for Use of Physical Restraints
   (3) Conditions of Use of Physical Restraints
   (4) Policies and Procedures for Use
   (5) Effect on Resident
   (6) Emergencies
   (7) Written Policies

(b) Staff Treatment of Residents
   (Abuse, Mistreatment, Neglect)

***
QUALITY OF LIFE
(Section 415.5)

Summary

"Quality of Life" establishes requirements for meeting many of the non-medical needs of residents. Areas addressed include resident dignity; self-determination and participation; participation in resident and family groups; participation in social, religious and community activities; accommodation of needs; activities programs; social services; and the physical environment of the facility.

Key Points for Ombudsmen

In recent years, quality of life issues have become increasingly important in the debate about quality nursing home care. In addition to residents' rights, this has been an area of frequent activity by Ombudsmen. In fact, before the "OBRA Amendments," Ombudsmen were recognized as the primary supporters and facilitators of quality of life for residents. We must continue that leadership.

[NYQAS]

Outline of Subdivisions

(a) Dignity
(b) Self-Determination and Participation
(c) Participation in Resident and Family Groups
(d) Participation in Other Activities
(e) Accommodation of Needs
(f) Activities
(g) Social Services
(h) Environment

***
RESIDENT ASSESSMENT AND CARE PLANNING
(Section 415.11)

Summary

"Resident Assessment and Care Planning" provides that a facility must conduct a comprehensive, accurate, standardized, and reproducible assessment of each resident's functional capacity and needs. There are thirteen listed items of information that must be included in the assessment and the federally-developed "Minimum Data Set" must be employed. This section also requires that the comprehensive resident assessment be the basis of a comprehensive care plan for each resident that includes measurable objectives and timetables to meet each resident's medical, nursing and psychological needs.

Key Points for Ombudsmen

The resident assessment is the starting point for development of a plan of care to meet the resident's needs. Every care plan must be individually customized to meet the specific needs of the resident. The initial assessment also is one means by which the facility staff begin to know the resident as an individual.

The assessment also is important as a benchmark because the facility "must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident" [Federal law]. This is the ultimate goal of every nursing home and must be done in accordance with the written plan of care for the resident.

Outline of Subdivisions

(a) Comprehensive Assessments
   (1) Mandated
   (2) Content
   (3) Frequency
   (4) Review of Assessments
   (5) Use

(b) Accuracy of Assessments
   (1) Coordination
   (2) Certification
   (3) Penalty for Falsification
   (4) Use of Independent Assessors

(c) Comprehensive Care Plans

(d) Discharge Summary
QUALITY OF CARE
(Section 415.12)

Summary

"Quality of Care" requires that each resident receive the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being. Specific areas addressed include activities of daily living, vision and hearing, pressure sores, urinary incontinence, range of motion, psychosocial functioning, feeding tubes, accidents, nutrition, hydration, special needs, drug therapy, and medication errors.

Key Points for Ombudsmen

Each of the items included in quality of care is important to ...

Outline of Subdivisions

(a) Activities of Daily Living
(b) Vision and Hearing
(c) Pressure Sores
(d) Urinary Incontinence
(e) Range of Motion
(f) Psychosocial Functions
(g) Enteral Feeding Tubes
(h) Accidents
(i) Nutrition
(h) Hydration
(k) Special Needs
(l) Drug Therapy
(m) Medication Errors

***
Summary

"Nursing Services" requires the facility to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. The section requires the provision of services by sufficient numbers of registered professional nurses or licensed practical nurses, certified nurse aides, and other nursing personnel and establishes who may function as a nurse aide.

Key Points for Ombudsmen

[Importance of Nurse Aide]

Beware of Nurse Aide assignments and changes and other changes in staffing patterns. Question those changes. Change of a Nurses Aide for a resident can be a very distressing situation.

Outline of Subdivisions

(a) Sufficient Staff
(b) Registered Professional Nurse
(c) Nurse Aide
   (1) Definition
   (2) Qualifications

***
"Dietary Services" requires the facility to provide each resident with a nourishing, palatable well-balanced diet that meets the daily nutritional and special dietary needs of the resident.

**Key Points for Ombudsmen**

The focal point of a day for many residents is the meal. Be sensitive to not only the food but also the environment in which it is served.

**Outline of Subdivisions**

(a) Direction  
(b) Sufficient Staff  
(c) Menus and Nutritional Adequacy  
(d) Food  
(e) Therapeutic Diets  
(f) Frequency of Meals  
(g) Assistive Devices  
(h) Sanitary Conditions  
(i) Kosher Food

***
MEDICAL SERVICES
(Section 415.15)

Summary

"Medical Services" establishes the requirement for a medical director (a physician) and describes his or her functions. This section also clarifies the facility responsibility for physician services including physician supervision, physician visits, availability of physicians for emergency care, and physician delegation of tasks.

Key Points for Ombudsmen

Residents have a right to see their physician at least as often as the code indicates. Be sure the resident is offered the opportunity to interact with his or her physician.

Outline of Subdivisions

(a) Medical Director

(b) Physician Services

(1) Physician Supervision
(2) Physician Visits and Responsibilities
(3) Availability of Physicians for Emergency Care
(4) Physician Delegation of Tasks

***
REHABILITIVE SERVICES

(Section 415.16)

Summary

"Rehabilitative Services" are to be provided or obtained by facilities that admit residents in need of such services. These services must be provided to residents in accordance with their comprehensive plan of care and must focus on obtaining or maintaining the resident's highest practicable physical well-being in accordance with generally accepted standards of professional care and services. These services include: audiology, speech therapy, speech-language pathology, and occupational therapy.

Key Points for Ombudsmen

[Importance of rehab.]

There are individuals who believe "rehab" for individuals advanced in years is useless. Be sure, when appropriate, the resident is provided with the opportunity for rehabilitative services.

Outline of Subdivisions

(a) Provision of Services

(b) Qualifications

(c) Organization

***
DENTAL SERVICES
(Section 415.17)

Summary

"Dental Services" requires that the facility provide oral hygiene care and routine and emergency dental care for residents in accordance with the comprehensive resident care plan. Dental services must meet generally accepted standards of dental and dental hygiene care and services.

Key Points for Ombudsmen

The right of a resident to choose his or her own dentist is not clear. However, the quality of life section 415.5(b) provides a basis to pursue advocacy for residents wishing to choose their own dentist.

Outline of Subdivisions

(a) Organization
(b) Admission
(c) Oral Examination and Treatment
(d) Records

***
**PHARMACY SERVICES**

(Section 415.18)

**Summary**

"Pharmacy Services" requires the facility to provide pharmaceutical services and develop and implement policies and procedures that assure the accurate acquisition, receipt, dispensing, and administering of all drugs and biologicals required to meet the needs of each resident.

**Key Points for Ombudsmen**

The pharmacist is an invaluable resource for both the resident and yourself regarding specific information or questions about medications. Determine their availability and use this resource when needed.

**Outline of Subdivisions**

(a) General
(b) Service Consultation
(c) Drug Regimen Review
(d) Labeling of Drugs and Biologicals
(e) Storage of Drugs and Biologicals
(f) Return of Unused Medications
(g) Emergency Medications
(h) Medications for Leaves
(i) Verbal Orders

***
INFECTION CONTROL
(Section 415.19)

Summary

"Infection Control" requires the facility to establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection. The funeral director must be notified when a deceased resident has been diagnosed as having a specific communicable disease or an infectious disease and facilities must report an increased incidence of infections to the State Department of Health.

Key Points for Ombudsmen

It is important to become familiar with the procedures used for infection control both for your protection as well as the residents. There are alternatives to face-to-face communication which are available should you need to work with a resident who is isolated.

Outline of Subdivisions

(a) Infection Control Program
(b) Preventing Spread of Infection
(c) Linens
(d) Reporting
(e) Notice to Funeral Director

***
LABORATORY AND BLOOD BANK
(Section 415.20)

Summary

"Laboratory and Blood Bank" requires that facilities provide for blood and laboratory services to meet the needs of residents and be responsible for the quality and timeliness of such services.

Key Points for Ombudsmen

Residents have the right to know why laboratory tests are being ordered. An explanation of the results of any testing should also be reviewed with the resident.

Outline of Subdivisions

(a) Approved Laboratory or Blood Bank
(b) Transportation
(c) Records

***
"Radiology and Other Diagnostic Services" requires that facilities provide or obtain radiology and other diagnostic services to meet the needs of residents pursuant to an order by an appropriately licensed practitioner.

Key Points for Ombudsmen

As with any ordered testing, residents have a right to know why the test is being ordered and the results of the test when known.

Outline of Subdivisions

(a) Physician Order

(b) Facility Responsibilities

***
CLINICAL RECORDS
(Section 415.22)

Summary

"Clinical Records" requires facilities to maintain clinical records for each resident in accordance with accepted professional standards and practice. Issues addressed include record content, retention period, confidentiality, and resident access to the record.

Key Points for Ombudsmen

Ombudsman access to records is found elsewhere in the regulations (Part 411).

Residents have a right to review their record and can ask the Ombudsman to be part of this review.

Outline of Subdivisions

(a) Records Standards and Practice
(b) Retention
(c) Safeguarding Records
(d) Confidentiality
(e) Resident Access and Copies
(f) Content of Records

***
"Organization and Administration" requires that a nursing home 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. Specific topics addressed in detail include administration, governing body responsibilities, staff qualifications and personnel management, nurse aide certification and training, use of outside resources, disaster and emergency preparedness, transfer agreements with area health care providers, financial policies, admission policies and practice, and misappropriation of resident property.

Key Points for Ombudsmen

In this Guide, the Section on "Organization and Administration" is divided into subdivisions. See the following pages for each subdivision.

Outline of Subdivisions

(a) Administration
   (1) Administrator Qualifications and Duties
   (2) Administrator Coverage
   (3) When No Administrator
   (4) Responsibilities of Administrator
   (5) Support Personnel

(b) Governing Body
   (1) Appointment of Administrator
   (2) Written Policies
   (3) General Responsibility
   (4) Responsibility for Services
   (5) Personnel
   (6) Complaint Procedures
   (7) Complaint Procedures Awareness
   (8) Resident Council
   (9) Compliance with Regulations
   (10) Notices and Notifications
   (11) Staff Telephone
   (12) Limitations on Use of Space and Preparation of Food
   (13) Notifications to the Health Department
   (14) Resident Transfer
   (15) Meetings With Resident Council
(c) Staff Qualifications and Personnel Management
   (1) General Responsibilities
   (2) Orientation and Staff Development
   (3) Verification of Licensure
   (4) Other Requirements

(d) Nurse Aide Certification and Training
   (1) Definitions
   (2) Nurse Aide Certification
   (3) Nurse Aide Training Program
   (4) Nurse Aide Competency Evaluation
   (5) Fees and Costs
   (6) Nurse Aide Recertification
   (7) Inservice Education

(e) Use of Outside Resources

(f) Disaster and Emergency Preparedness

(g) Transfer Agreements

(h) Financial Policies
   (1) Refunds
   (2) No Life Care Contract
   (3) Financial Prohibitions
      (i) No Commissions (etc.) for Referral
      (ii) Only Specified Fees
      (iii) No "Kickbacks" from Vendors
   (4) Limits on Operator
   (5) Management of Resident Finances
      (i) Deposits of Resident Funds
      (ii) Accounting and Records
      (iii) Notice of Certain Balances
      (iv) Conveyance Upon Death
      (v) Assurance of Financial Security
      (vi) Limitation on Charges to Personal Funds
         (a) Services Included in Medicare or Medicaid Payment
         (b) Optional Covered Items and Services
         (c) Items and Services That May Be Charged to Residents' Funds
         (d) Requests for Items and Services
   (6) Receipt of Funds
   (7) Equity Withdrawal (Facility)
   (8) Mortgage or Lease (Facility)

(i) Admission Policies and Practices
   (1) Facility Responsibilities
      (i) Physician's Orders/Assessment
      (ii) Adequate Care
      (iii) Pre-Admission Personal Interview
      (iv) Written Record of Financial Arrangements
      (v) No Prepayment Exceeding Three Months
      (vi) Exceptions to No Additional Charges
(vii) Written Information to Resident and Others
(viii) Restrictions on Admission and Retention
(ix) No Discrimination
(x) Written Policies and Procedures for Admission
(xi) Policies Available to Hospitals and Others
(xii) Log of Referrals for Admission
(2) Physician and Dentist Affiliation with Facility
(3) Second Opinions

(j) Misappropriation of Resident Property
(1) Definition
(2) Facility Responsibilities
(3) Conviction of Nurse Aide

***
ADMINISTRATION
[415.25(a)]

Summary

This subdivision clearly establishes the administrator as the key individual held responsible for setting the example to all staff that the primary responsibility of the institution is to serve the interests and needs of the residents.

Key Points for Ombudsmen

The primary responsibility for ensuring the organization, implementation, and proper functioning of the resident council is that of the administrator and is clearly outlined in this section.

Outline of Paragraphs

(1) Administrator Qualification and Duties
(2) Administrator Coverage
(3) When No Administrator
(4) Additional Responsibilities of Administrator
(5) Support Personnel

***
GOVERNING BODY

[415.25 (b)]

Summary

The Governing Body is that entity which is legally responsible for ensuring that required policies and procedures are successfully implemented on a daily basis in the facility.

Key Point for Ombudsmen

These individuals are responsible for assuring that a method is in place for dealing promptly with complaints and their resolution. Know who the governing body is and how often they meet.

Outline of Paragraphs

(1) Appointment of Administrator
(2) Written Policies
(3) General Responsibility
(4) Responsibility for Services
(5) Personnel
(6) Complaint Procedures
(7) Complaint Procedures Awareness
(8) Resident Council
(9) Compliance with Regulations
(10) Notices and Notifications
(11) Staff Telephone
(12) Limitations on Use of Space and Preparation of Food
(13) Notifications to the Health Department
(14) Resident Transfer
(15) Meetings With Resident Council

***
Summary

Facilities must employ adequate staff who are properly trained to assure the health, safety, care, and treatment of the residents.

Key Points for Ombudsmen

Become familiar with the master staffing pattern for the facility and monitor day to day adherence to this schedule. Staffing shortages are at the root of many facility problems.

Outline of Paragraphs

(1) General Responsibilities
(2) Orientation and Staff Development
(3) Verification of Licensure
(4) Other Requirements

***
Summary

Requirements for nurse aide certification and the training curriculum are detailed in this subdivision.

Key Points for Ombudsmen

The nurse aide is the focal point for providing resident care. Be aware of how the facility is providing for training and certification of nurse aides.

Outline of Paragraphs

(1) Definitions
(2) Nurse Aide Certification
(3) Nurse Aide Training Program
   (i) Curriculum
   (ii) Performance Record
(4) Nurse Aide Competency Evaluation
(5) Fees and Costs
(6) Nurse Aide Recertification
(7) Inservice Education

***
USE OF OUTSIDE RESOURCES

[415.25 (e)]

Summary

The facility must supply needed services for residents even if it does not have employees on staff to do so. This subdivision addresses specifically the facility responsibilities in this area.

Key Points for Ombudsmen

Know who the outside resource are (consultant) how frequently they visit, and if appropriate, how involved are they with the resident.

Outline of Paragraphs

(1) Written Agreement

(2) Responsibilities of Outside Resource

***
Summary

Every facility must have a working plan for dealing with the safety and care of residents and personnel in the event of an emergency.

Key Points for Ombudsmen

Become familiar with the plan for the facility and the frequency of practice drills involving residents and staff.

Outline of Paragraphs

(1) Written Plan
(2) Missing Residents
(3) Responsibilities

***
TRANSFER AGREEMENTS

[415.25 (g)]

Summary

Facilities must have written agreements with area hospitals to provide care and intervention for residents as needed.

Key Points for Ombudsmen

Become familiar with the hospitals residents are transferred to and remember that you have access to long term care residents who are hospitalized.

Outline of Paragraphs

[The paragraph is brief. No outline necessary.]

***
FINANCIAL POLICIES
[415.25 (h)]

Summary

Policies regarding refunds, renumeration, gifts, resident accounts, and personal needs allowances, as well as any other service charges are detailed in this subdivision.

Key Points for Ombudsmen

Know what services are included and excluded from routine services. Be familiar with the facility method for dealing with resident funds. Monitor that resident monies are not spent without permission of resident or family.

Outline of Paragraphs

(1) Refunds
(2) No Life Care Contract
(3) Financial Prohibitions
   (i) No Commissions (etc.) for Referral
   (ii) Only Specified Fees
   (iii) No "Kickbacks" from Vendors
(4) Limits on Operator
(5) Management of Resident Finances
   (i) Deposits of Resident Funds
   (ii) Accounting and Records
   (iii) Notice of Certain Balances
   (iv) Conveyance Upon Death
   (v) Assurance of Financial Security
   (vi) Limitation on Charges to Personal Funds
      (a) Services Included in Medicare or Medicaid Payment
      (b) Optional Covered Items and Services
      (c) Items and Services That May Be Charged to Resident's Funds
      (d) Requests for Items and Services
(6) Receipt of Funds
(7) Equity Withdrawal (Facility)
(8) Mortgage or Lease (Facility)
ADMISSION POLICIES AND PRACTICES

[415.25 (i)]

Summary

This subdivision details the requirements for admission and specifies what is to be included in the basic information and services agreement (admission agreement).

Key Points for Ombudsmen

It is vital to become familiar with the basic service agreement of each facility. This is a legal contract; resident and family should each sign this document and have a copy of their files.

Outline of Paragraphs

(1) Facility Responsibilities
   (i) Physician's Orders/Assessment
   (ii) Adequate Care
   (iii) Pre-Admission Personal Interview
   (iv) Written Record of Financial Arrangements
   (v) No Prepayment Exceeding Three Months
   (vi) Exceptions to No Additional Charges
   (vii) Written Information to Resident and Others
   (viii) Restrictions on Admission and Retention
   (ix) No Discrimination
   (x) Written Policies and Procedures for Admission
   (xi) Policies Available to Hospitals and Others
   (xii) Log of Referrals for Admission

(2) Physician and Dentist Affiliation with Facility

(3) Second Opinions

***
MISAPPROPRIATION OF RESIDENT PROPERTY

[415.25 (j)]

Summary

All facilities are responsible to have policy and procedures to deal with the misappropriation of resident property. Delegation by a resident or designated representative must be investigated within 48 hours.

Key Points for Ombudsmen

The resident and complaint must be notified in writing about the disposition of the allegations. Know the facility's policy on maintaining a current resident property sheet which allows the facility to maintain a written accounting of resident property in the facility.

One of the most frequent complaints handled by Ombudsmen is "personal items lost, stolen, or used by others."

Outline of Paragraphs

(1) Definition
(2) Facility Responsibilities
(3) Conviction of Nurse Aide

***
QUALITY ASSESSMENT & ASSURANCE
(Section 415.27)

Summary

"Quality Assessment and Assurance" requires facilities to establish and maintain a coordinated quality assessment and assurance program. The purposes of the program are (1) to enhance resident quality of life, care, and treatment and (2) to identify and prevent resident maltreatment and malpractice.

Key Points for Ombudsmen

Determine the composition of the Quality Assessment and Assurance Committee and how frequently they meet. Have input into the meeting agenda; be sure the resident council also is given an opportunity for input; ensure that the outcomes of the meeting are reported to the resident council.

Outline of Subdivisions

(a) Facility-Wide Quality Assurance
(b) Quality Assessment and Assurance Committee
(c) Committee Functions

***
DISCLOSURE OF OWNERSHIP
(Section 415.28)

Summary

"Disclosure of Ownership" establishes requirements for the disclosure of facility ownership and other information pursuant to other provisions of the State Health Department regulations.

Key Points for Ombudsmen

Become familiar with the types of facilities, i.e., proprietary, county, not-for-profit, etc. and who is involved in ownership. Admission practices often are influenced by the type of ownership.

Outline of Subdivisions

[The Section is brief. No outline necessary.]

***
"Physical Environment" requires that facilities be designed, constructed, equipped, and maintained to provide a safe, healthy, functional, sanitary, and comfortable environment for residents, personnel, and the public. Specific items addressed include life safety from fire and other hazards, equipment, resident rooms, toilet and other plumbing facilities, dining and resident activities, water supplies, waste systems, ventilation, grounds and building, housekeeping, linen and laundry, and animals.

**Key Points for Ombudsmen**

Many complaints are received by Ombudsmen in this area. Be familiar with the requirements for ventilation, air conditioning, heating, etc. Be aware of facility requirements for maintaining clean linen for residents. Also, facilities may board a pet for therapy under certain conditions.

**Outline of Subdivisions**

(a) Life Safety from Fire and Other Hazards  
(b) Equipment  
(c) Resident Rooms  
(d) Toilet, Hand Washing, and Bathing Facilities  
(e) Dining and Resident Activities  
(f) Water Supplies  
(g) Waste Systems  
(h) Ventilating, Heating, and Air Conditioning Systems  
(i) Grounds and Building  
(j) Housekeeping  
(k) Linen and Laundry  
(l) Animals  

***
GENERAL RECORDS

(Section 415.30)

Summary

"General Records" identifies the types of information and records which must be maintained by facilities.

Key Points for Ombudsmen

Residents must be offered the opportunity to provide their version of the incident. Written dietary menus can be useful in addressing food problems.

Outline of Subdivisions

(a) Chronological Listing of Residents Admitted
(b) Chronological Listing of Residents Discharged
(c) Daily Census Record
(d) Resident Personal Nonmedical Record
(e) General Fiscal Record for Each Resident
(f) Accident and Incident Record
(g) Personnel Records
(h) Personnel Policies
(i) Financial Records
(j) Record for Nursing Service Administration
(k) Records for the Dietary Service
(l) Records for Activities Program
(m) Records for Each Specialized Rehabilitative Therapy Service
(n) Records of Staff Medical Policies
(o) Transfer or Affiliation Agreements

***
"New York State RHCF Nurse Aide Registry" provides regulatory basis for the establishment, implementation, and functioning of the New York State RHCF Nurse Aide Registry.

**Key Points for Ombudsmen**

The Nurse Aide Registry contains information regarding the date and method of certification, findings of instances of resident abuse, neglect or mistreatment, as well as conviction of the patient abuse law and misappropriation of resident property. Information from this registry regarding a Nurse Aide is available under the Freedom of Information Law by written request.

**Outline of Subdivisions**

(a) Content of Registry  
(b) Fees  
(c) Access  
(d) Obtaining Information by Telephone  
(e) Obtaining Written Information  

***
"Long-Term Inpatient Rehabilitation Program for Head-Injured Residents" establishes additional minimum operating standards for head injury programs in nursing homes.

Key Points for Ombudsman

The average over a length of stay of these admissions should be from 3 to 12 months.

Specialized staff are required for these units which must be at least 20 beds.

Rehabilitation should be the primary focus for this unit's activity.

Outline of Subdivisions

(a) Definition
(b) General Requirements
(c) Program Management and Staffing
(d) Interdisciplinary Care Planning
(e) Utilization Review Monitoring

***
SERVICES FOR RESIDENTS WITH
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

(Section 415.37)

Summary

"Services for Residents with Acquired Immune Deficiency Syndrome (AIDS)" establishes additional minimum operating standards for facilities approved by the Commissioner of Health as providers of specialized services for residents with AIDS.

Key Points for Ombudsmen

Education regarding AIDS is vital to work effectively with this resident. Sensitivity to the special advocacy needs of this resident will be needed through specialized training.

Outline of Subdivisions

(a) Applicability
(b) General Requirements
(c) Staffing Requirements

***
LONG-TERM VENTILATOR DEPENDENT RESIDENTS

(Section 415.38)

Summary

"Long-Term Ventilator Dependent Residents" establishes additional minimum operating standards for facilities which set up units for the admission and care of residents who require nursing home care and continuous or intermittent use of a ventilator.

Key Points for Ombudsmen

Very few nursing facilities accept residents requiring this type of care.

Become aware of those do in your community.

Attempts should be made to wean the patient from this dependence, if possible.

Outline of Subdivisions

(a) General

(b) Resident Care Services

***
SECURED OR LOCKED UNITS

(Section 415.39)

Summary

"Secured or Locked Units" establishes additional minimum program requirements for facilities which are approved by the Department of Health to establish a defined space, area of, or unit on a floor which is separated from the rest of the facility by physical barriers such as locked entrances and exits. These units are for residents with behaviors that present a substantial danger to themselves, staff, or other facility residents.

Key Points for Ombudsmen

[retaliation, punishment, Ombudsman access.]

Few facilities use this technique.

Monitor for proper use, which should be well documented.

Access to residents who are dangerous must be guarded.

Outline of Subdivisions

(a) Resident Eligibility for Unit Admission and Retention
(b) Resident Services
(c) Staffing
(d) Access to Residents
(e) Emergency Evacuation
(f) Quality Assessment and Assurance

***
CONTINUOUS VIOLATION PENALTIES
(Part 414)

Summary

This Part deals with the imposition of penalties on facilities which provide substandard care to residents.

Key Points for Ombudsmen

Ongoing monitoring of facility problems resulting in penalties is necessary for the protection of residents. Timely intervention could also prevent more drastic measures such as receivership or closure.

Outline of Sections

414.1 System of Penalties

414.2 Imposition of Penalties/Characteristics of the Violations

414.3 Additional and Cumulative Penalties