



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-745
Regulation title	Assessment in Assisted Living Facilities
Action title	Amend Assessment in Assisted Living Facilities Regulations
Date this document prepared	June 20, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Changes to 22VAC40-745, Assessment in Assisted Living Facilities (ALFs) include: (1) revising definitions and text to comport with Department of Social Services (DSS) licensing regulations; (2) clarifying regulation content that may be confusing or unclear; and (3) incorporating person-centered language throughout the regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

Final action on 22VAC 40-745, Assessment in Assisted Living Facilities, was approved on June 20, 2013 by the State Board of Social Services.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Sections § 63.2-217 and 63.2-1804 of the Code of Virginia provide the legal basis for the State Board of Social Services to promulgate this regulation. These sections provide general authority for the development of regulations for program operation and authority for the development of regulations for assessment in ALFs.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action amends 22VAC40-745, Assessment in Assisted Living Facilities. 22VAC40-745 establishes standards for assessing individuals residing in or planning to reside in ALFs. The regulation sets forth requirements regarding who is qualified to conduct assessments, criteria for residential and assisted living level of care, ratings of levels of care, and timeframes for conducting assessments. The assessment process ensures that individuals receive the necessary level of care and services and public funds are utilized appropriately to support individuals who reside in ALF settings.

The proposed regulatory action is necessary to ensure that regulation content addresses the assessment of individuals applying to or residing in ALFs. Conformity across regulations and clarity in regulation content are essential to ensuring that the individual's health and safety needs are met in an ALF setting and that the assessment process occurs in a timely and appropriate manner.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The majority of changes are technical, such as clarifying definitions and other regulation text to comport with DSS Licensing regulations and using acronyms to replace certain terms. Regulation content was amended in order to clarify the intent. The regulation also incorporates person-centered language by replacing terms such as resident and applicant.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

- (1) The amendments to the regulation ensure that an Auxiliary Grant (AG) payment to an individual in an ALF is approved only after a qualified assessor has determined the individual meets residential or assisted living level of care.
- (2) The amendments to the regulation clarify, but do not increase ALF staffs' or qualified assessors' assessment responsibilities. The regulatory action comports the regulation content with DSS Licensing regulations. Clarifying regulation content ensures that the assessment process is understood by ALF providers, assessors and individuals who reside in ALFs.
- (3) The regulatory action incorporates person-centered language such as individual, and removes terms such as applicant and recipient.

The regulatory action poses no disadvantages to the public or Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
100	Describes targeted case management	Strikes incorrect language. Changed obsolete term.	Changes language to comport with DMAS regulations. Changes reference to social work and supervisor to comport with Chapter 794 of the Acts of Assembly.
110	Describes post-assessment notification process.	Fixed grammatical error. Changed the title of the section. Clarified the individual's appeal rights.	Content was grammatically incorrect. The title of the section did not accurately reflect the content of the section. The content describing appeals was incorrect and needed to be updated.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

No public comment was received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
10		Provides definitions of the terms used in the regulation.	<p>Removes "applicant" and "resident" and replaces these definitions with the person-centered term "individual" throughout the section.</p> <p>Once "activities of daily living" is defined, replaces the term with acronym "ADLs" throughout the section and entire regulation.</p> <p>Removes the term "assisted living facility administrator" and replaces it with "administrator" to comport with DSS Licensing regulations.</p> <p>Adopts the definition of "assisted living facility" to comport with DSS Licensing regulations. Once assisted living facility is defined, replaces term "assisted living facility" with acronym ALF in this section and throughout the regulation.</p> <p>Clarifies definition of "case manager" to include responsibility to perform assessments.</p> <p>Removes the definition of "consultation" as this term is not used in the regulation.</p> <p>Changes definition of "discharge" to incorporate person-centered language.</p> <p>In the definition of "instrumental activities of daily living," clarifies that the four activities listed are the only ones referenced in this regulation.</p> <p>Clarifies the definition of "medication</p>

			<p>administration," as previous definition was unclear.</p> <p>Adds definition of "prohibited conditions" and clarifies that individuals who require maximum physical assistance and nursing home level of care may not reside in an ALF unless the individual's physician determines otherwise. Definition of "prohibited conditions" was added to comport with Licensing regulations and to explain definitions of maximum physical assistance and total dependence.</p> <p>Clarifies definition of "qualified assessor" to include responsibility for approving the placement.</p> <p>In the definition of "reassessment," removes incorrect term "periodic" and replaces it with correct term "annual."</p> <p>Clarifies definition of "residential living care" to comport with Licensing regulations.</p> <p>Clarifies description of private pay Uniform Assessment Instrument and Uniform Assessment Instrument with acronym "UAI" in this section and throughout the regulation.</p>
20		Describes who may assess private pay and public pay individuals.	<p>Removes the terms "applicant" and "resident" and replaces them with "individual."</p> <p>Changes "must" to "shall."</p> <p>Clarifies that assessors who conducted assessments prior to January 1, 2004 are not required to take the UAI training course.</p> <p>Renumbers the list of assessors to clarify who is qualified to conduct an initial assessment.</p> <p>Adds behavioral health authority to the list of qualified assessors.</p> <p>Clarifies that an independent physician must have a contract with DMAS to conduct assessments.</p> <p>Clarifies the responsibilities of ALF providers, qualified assessors and</p>

			eligibility workers in communicating information about the assessment process to public pay individuals.
30		Describes information on the assessment process.	<p>Removes the terms "applicant" and "resident" and replaces them with the person-centered term "individual."</p> <p>Removes the paragraphs listing the content of the public pay and private pay UAI.</p> <p>Clarifies the need for private location to conduct the assessment to ensure confidentiality is maintained.</p>
40		Describe information related to the discharge process.	<p>Removes the term "resident" and replaces it with "individual."</p> <p>Changes "must" to "shall."</p> <p>Corrects regulation citations.</p> <p>Clarifies timeframes for notifications.</p> <p>Corrects grammatical error.</p>
50		Describes authorization of services.	<p>Removes the term "resident" and replaces it with "individual."</p> <p>Changes "must" to "shall."</p> <p>Clarifies that the assessor is responsible for authorizing public payment.</p> <p>Clarifies that the determination of the appropriate level of care shall be based on definitions and directions referenced in this regulation.</p> <p>Corrects grammatical error.</p>
60		Describes criteria for residential living care.	Changes "must" to "shall."
70		Describes criteria for assisted living care.	Changes "must" to "shall."
80		Describes the rating of level of care on the UAI.	<p>Changes "must" to "shall."</p> <p>Clarifies that the abbreviations "D" and "TD" are only used for purposes of this regulation.</p>
90		Describes actions to be taken upon completion of the UAI.	<p>Removes the term "resident" and replaces it with "individual."</p> <p>Clarifies that an independent physician must have a contract with DMAS to conduct assessments.</p>

			<p>Adds behavioral health authority (BHA) as the assessor of individuals who are receiving BHA services and description of reassessment responsibilities of BHA and Community Services Board (CSB) staff to the paragraph describing the reassessment responsibilities of other qualified assessors.</p> <p>Strikes separate paragraph which described reassessment responsibilities of CSB assessors.</p>
100		Describes targeted case management for individuals receiving an auxiliary grant.	<p>Removes the term "resident" and replaces it with "individual."</p> <p>Changes "must" to "shall."</p> <p>Corrects inaccurate regulation citations.</p> <p>Changes language to comport with DMAS regulations.</p> <p>Changes reference to social work and supervisor to comport with Chapter 794 of the Acts of Assembly.</p>
110		Describes notifications and appeals.	<p>Removes the terms "applicant" and "resident" and replaces them with the person-centered term "individual."</p> <p>Clarifies the appeals process for public pay individuals who are denied access to AG or targeted case management.</p> <p>Corrects grammatical errors.</p> <p>Corrects terminology for residential and assisted living level of care to comport with Licensing regulations.</p> <p>Clarifies the section title.</p> <p>Clarifies the individual's appeal rights.</p>
Forms			Adds forms section. Lists the private pay and public pay UAI.
Documents incorporated by reference		Lists documents referenced in the regulation.	Corrects the year of the latest revision of the User's Manual: Uniform Assessment Instrument.