



## Emergency Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-80
<b>Regulation title</b>	General Procedures and Information for Licensure
<b>Action title</b>	Promulgate emergency regulation as result of changes to the <i>Code of Virginia</i>
<b>Document preparation date</b>	August 17, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) *Please explain why this is an “emergency situation” as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

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House Bill 2512, related to assisted living facilities, was passed by the 2005 session of the General Assembly, and requires that the State Board of Social Services “promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The key provisions of the changes to the regulation are:

- Adding additional items to the list of documents that must be posted in a facility.
- Adding additional administrative sanctions that the commissioner may impose upon licensed facilities when they fail to maintain compliance with regulations or laws.
- Adding a new section that provides procedures for summary orders of suspension.

**Legal basis**

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The Code of Virginia gives the State Board of Social Services authority to adopt regulations for its licensed programs. Section 63.2-217 gives broad authority for the Board to adopt regulations as are necessary or desirable to carry out the purpose of Title 63.2. Sections 63.2-1732, 63.2-1733 and 63.2-1734 give the Board authority to adopt and enforce regulations to carry out the provisions of Title 63.2 regarding assisted living facilities, adult day care centers, and child welfare agencies, respectively.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
120		This standard contains the list of documents that must be posted in a licensed facility.	The amendments include (1) new requirement for posting the provisional license and, beside it, a notice that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of these violations is available for inspection at the facility or on the facility's website; (2) new requirement that the notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility be posted in a prominent place at each public entrance of the facility; (3) new requirement that any final order of summary suspension of all or part of an assisted living facility's license be posted at each public entrance of the facility or a written statement of where in the facility it can be reviewed; (4) new requirement that notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 63.2-1709.2 (special orders) of the Code of Virginia be posted in a prominent place at each public entrance of the facility; (5) new requirement that a copy of any special order issued by the department be posted in a

<p>340</p>	<p>345</p>	<p>This standard contains the list of administrative sanctions that the commissioner may impose upon licensed facilities.</p>	<p>prominent place at each public entrance of the facility.</p> <p>These amendments are intended to ensure that consumers are informed of conditions in licensed facilities, especially assisted living facilities, that threaten the health, safety and welfare of persons in care.</p> <p>The amendments are to: (1) require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents. This action will be an attempt to bring the facility into compliance with all relevant requirements of law, regulation or any plan of correction approved by the commissioner; (2) Issue a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in § 63.2-1709 C of the Code of Virginia in conjunction with any proceedings for revocation, denial or other action when conditions or practices exist that post an imminent and substantial threat to the health, safety and welfare of residents; (3) Assess a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety and welfare of residents are at risk. The aggregate amount of such civil penalty shall not exceed \$10,000 in any 24-month period.</p> <p>A new section is being added to provide procedures for summary order of suspension. This is required to be promulgated as an emergency regulation.</p> <p>The amended 22 VAC 40-80-340 and the new 22 VAC 40-80-345 provide additional sanctions the department can use if facilities fail to maintain compliance with regulations or laws.</p>
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### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action.*

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There are no alternatives to the proposed regulatory action.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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The amended regulation will have a positive impact on the family. Licensing standards ensure the health, safety and welfare of adults and children who attend or reside in licensed facilities, thereby strengthening the authority and rights of parents and family members in the nurturing and supervision of their children and/or elderly relatives in care. The placement of adults and children in licensed facilities provides an opportunity for parents or family members to concentrate on resolving issues that would lead to self pride, responsibility for oneself, and economic self-sufficiency thereby increasing disposable family income. The current amendments to this regulation also ensure that parents and family members have more information about the operation of licensed facilities in order to make better decisions about their loved ones.