



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-745
Regulation title	Assessment in Assisted Living Facilities
Action title	Amend Assessment in Assisted Living Facilities Regulations
Date this document prepared	April 20, 2011

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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Proposed amendments to 22 VAC 40-745 include: (1) revised definitions and text to comport with current Department of Social Services (DSS) licensing regulations; (2) clarification of regulation content that may be confusing or unclear; and (3) incorporation of person-centered language throughout the regulation.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

AG-Auxiliary Grant
ALF-Assisted Living Facility
DMAS-Department of Medical Assistance Services
BHA-Behavioral Health Authority
CSB-Community Services Board
LDSS-Local Department of Social Services
UAI-Uniform Assessment Instrument

Legal basis

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) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 63.2-217 and 63.2-1804 of the Code of Virginia provide the legal basis for 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, 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 appropriate level of care and services and that 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 best met in an ALF setting and that the assessment process occurs in a timely and appropriate manner.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

- (1) The amendments to the regulation ensure that an 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.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements that address the assessment process for individuals who reside in ALFs.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is disproportionately impacted by the proposed regulation. The regulation provides statewide uniform standards to which ALF staff and qualified assessors must adhere, without regard to locality.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to **Paige McCleary, Adult Services Program**

Consultant, 801 East Main Street, Richmond, VA 23219; paige.mccleary@dss.virginia.gov; or 804-726-7895 (fax). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

The proposed changes were drafted with the assistance of the following assessment regulation workgroup members: Lil Hawthorne, social worker, Greenville-Emporia DSS; Pam Cole, Social Work Supervisor, Chesapeake DSS; Betsy Fritz, social worker, Smyth DSS; Angie Martin, APS social worker, Tazewell DSS; Clarice Morris, social worker, Fairfax DSS; Linda Tenney, social worker, Shenandoah Valley DSS; Sharon Allen, adult case manager, Fauquier DSS; Joan Chupik, Administrator, Sentara Village-Virginia Beach; Cheryl Peters, Administrator, Sentara Village-Norfolk; Susan Green, Administrator, Heatherwood Retirement Community; Randy Scott, Administrator, St. Mary's Woods; Jeffrey Gruber, Director, Quality Services, Emeritus Senior Living; Nancy Higgs, VP Operations, Commonwealth Assisted Living; Julius Williamson, Clinician, Rapahannock/Rapidan Community Services Board; and Greg Fulk, Manager, Psychiatric Rehabilitation Services, Chesterfield Community Services Board.

In addition to the partners identified above, management and staff from DSS Licensing Programs and Adult Services participated in the workgroup.

Individuals who did not attend the workgroup meeting but participated in drafting proposed changes to the regulation included: Department of Medical Assistance Services, Long-term Care Division staff; David Pfremer, Eligibility Supervisor, Charlottesville DSS; Joyce Martin, APS supervisor, Charlottesville DSS; and Julie Stanley, Program Specialist, Partnership for People with Disabilities.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>DSS would experience minimal impact from the changes to the regulation. DSS staff would be responsible for updating regulation citations in the Private Pay and Public Pay Assessment Manuals and other Adult Services guidance documents. Manual changes would be announced via broadcast on the DSS intranet.</p> <p>DSS staff will assist DSS trainers in incorporating proposed changes into the assessment course curriculum. The assessment training course has been taught for several years and utilizes course materials that would require minor updates.</p> <p>DSS staff would be responsible for updating information about the assessment process on the DSS intranet and public website.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no fiscal impact to the local departments as a result of the proposed changes.</p>

<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The regulation impacts ALF providers, individuals who need to be assessed to determine if they need residential or assisted living level of care, and qualified assessors.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 550 licensed ALFs with a licensed bed capacity of 31,275. Approximately 300 of these ALFs accept individuals who receive AG. ALF providers range from small providers with a bed capacity of five to larger providers with a bed capacity over 200.</p> <p>During state fiscal year 2010, approximately 5,000 individuals each month received AG and resided in ALFs. There are 120 LDSS with social workers who are qualified assessors for public pay individuals. LDSS social workers conduct the majority of assessments and reassessments for public pay individuals. Qualified assessors from other organizations such as area agencies on aging, community services boards, centers for independent living, and local health departments would also be affected.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected costs associated with the amended regulation. The regulatory action does not change any reporting or recordkeeping requirements. The regulatory action has no impact on the development of real estate for commercial or residential purposes.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulatory action clarifies the content in the regulation and ensures accurate guidance on the assessment process.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternative action was considered because the Code requires individuals residing in ALFs to be assessed for their level of care and for the State Board of Social Services to address this process through regulations. This regulatory action seeks to improve the guidance to ensure that individuals who wish to reside in an ALF are assessed accurately and in a timely manner and that public payment to support individuals in ALF settings is authorized appropriately.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

As the Code of Virginia requires individuals to be assessed upon admission and authorizes the Board to promulgate regulations related to the assessment of individuals, no alternatives to the regulatory action were considered.

The regulatory action does not change recordkeeping, address reporting requirements or address licensing standards for ALF providers.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Frankie Minor	<p>The amendment establishes a 90-day residency requirement.</p> <p>The Auxiliary Grant rate is very low.</p>	<p>22VAC40-745 does not address a 90-day residency requirement.</p> <p>The Auxiliary Grant rate is set by the General Assembly. 22VAC40-745 does not address the Auxiliary Grant rate.</p>
Independent Home Owners	<p>The Regulatory Action Panel (RAP) stated that no regulations would be acted upon unless reviewed by the RAP.</p> <p>SSI already assesses whether a client is eligible to reside in an ALF.</p> <p>Due to state funding changes, the assessment instrument for individuals who receive AG is</p>	<p>The RAP group referenced in the comment is reviewing the DSS Division of Licensing Programs regulation 22 VAC 40-72, Standards for Assisted Living Facilities. This regulatory action addresses 22 VAC 40-745, Assessment in Assisted Living Facilities, which is under the purview of the DSS Adult Services Program.</p> <p>The Code of Virginia requires that all individuals be assessed to determine their level of care upon admission to an ALF and at subsequent intervals determined by Board regulations. SSI is a federally-based financial benefit for low income elderly individuals or individuals with a disability. SSI does not assess individuals for ALFs.</p> <p>The assessment tool known as the UAI is not obsolete and is still required by the Code of Virginia and Virginia regulations.</p>

	<p>obsolete.</p> <p>Regulations that deal with medical assessments and other medical modes were borrowed from the nursing home industry and are too excessive and burdensome for small business.</p> <p>Request that the term adult care residence be used instead of assisted living facility.</p>	<p>22 VAC 40-745, Assessment in Assisted Living Facilities, does not address the licensing requirements for ALF providers.</p> <p>The term "adult care residence" was taken out of the Code of Virginia in 2000. The regulation refers to ALFs to comport with the Code of Virginia.</p>
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will have a positive impact on family stability by ensuring that family members who are elderly or disabled who wish to reside in an ALF have been accurately assessed and that the ALF is able to meet their needs. Incorporating person-centered language into the regulation will promote personal dignity by recognizing that everyone is unique and removing labels that categorize (and sometimes stigmatize) individuals who use state services and benefits.

The proposed regulatory action will have no impact on the institution of the family. It will have no effect on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not impact marital commitment or disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if	Current requirement	Proposed change, rationale, and consequences
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	applicable		
<p>22 VAC 40-745-10</p>		<p>Provides definitions of the terms used in the regulation.</p>	<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 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>
22 VAC 40-745-20		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>Add 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 eligibility workers in communicating information about the assessment process to public pay individuals.</p>
22 VAC 40-745-30		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>
22 VAC 40-745-40		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>
22 VAC 40-745-50		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>
22 VAC 40-745-60		Describes criteria for residential living care.	Changes "must" to "shall."
22 VAC 40-745-70		Describes criteria for assisted living care.	Changes "must" to "shall."
22 VAC 40-745-80		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>
22 VAC 40-745-90		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 BHA as assessor of individuals who are receiving BHA service and description of reassessment responsibilities of BHA and CSB staff to paragraph describing the reassessment responsibilities of other qualified assessors.</p> <p>Strikes separate paragraph which described reassessment responsibilities of CSB assessors.</p>
22 VAC 40-745-100		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>
22 VAC 40-745-110		Describes appeals.	Removes the terms "applicant" and "resident" and replaces them with the

			<p>person-centered term "individual."</p> <p>Clarifies that appeals process is for public pay individuals who are denied access to AG or assisted living level of care.</p> <p>Corrects grammatical errors.</p> <p>Corrects terminology for residential and assisted living level of care to comport with Licensing regulations.</p>
FORMS			<p>Adds forms section. Lists the private pay and public pay UAI.</p>
DIBR		<p>Lists documents referenced in the regulation.</p>	<p>Corrects the year of the latest revision of the User's Manual: Uniform Assessment Instrument.</p>