



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

TO: Margaret Schultze, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS *EJR*
Assistant Attorney General

DATE: June 16, 2016

SUBJECT: Regulation Review - 22 VAC40-72-340 (ALF Hospice Care Restrictions)

I have reviewed the above-referenced regulation to determine if the Department of Social Services (the "Department") has the statutory authority to promulgate the specified amendment and whether the amendment comports with applicable state law.

This regulation governs the admission and retention of residents in an Assisted Living Facility ("ALF"). The amendment adds language to the subsection that addresses hospice care provided in an ALF to enable the regulation to be consistent with SB732 enacted after the 2016 General Assembly.

It is my opinion that the Department has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the APA and has not exceeded that authority.

It is my view that this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at (804) 786-3450.

cc: Kim F. Piner, Esquire
Attachment



Logged in as

Eric J. Reynolds

Final Text

Action: ALF Hospice Care Restrictions

Stage: Final

6/14/16 10:55 AM [latest] ▼

Part V

Admission, Retention and Discharge of Residents

22VAC40-72-340. Admission and retention of residents.

A. No resident shall be admitted or retained:

1. For whom the facility cannot provide or secure appropriate care;
2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or
3. If the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon the following information at a minimum:

1. The completed UAI.
2. The physical examination report.
3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the resident and his legal representative, if any. In some cases, medical conditions may create special circumstances that make it necessary to hold the interview on the date of admission.
4. A screening of psychological, behavioral, and emotional functioning, conducted by a qualified mental health professional, if recommended by the UAI assessor, a health care professional, or the administrator or designee responsible for the admission and retention decision. This includes meeting the requirements of 22VAC40-72-360.

C. An assisted living facility shall only admit or retain residents as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report; and
2. Information contained in the most recent UAI.

D. Upon receiving the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall

be kept in the resident's record.

E. All residents shall be 18 years of age or older.

F. No person shall be admitted without his consent and agreement, or that of his legal representative with demonstrated legal authority to give such consent on his behalf.

G. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;

2. Dermal ulcers III and IV except those stage III ulcers that are determined by an independent physician to be healing, as permitted in subsection H of this section;

3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia as permitted in subsection I of this section or except as permitted in subsection J of this section;

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;

5. Psychotropic medications without appropriate diagnosis and treatment plans;

6. Nasogastric tubes;

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection J of this section;

8. Individuals presenting an imminent physical threat or danger to self or others;

9. Individuals requiring continuous licensed nursing care;

10. Individuals whose physician certifies that placement is no longer appropriate;

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance (12VAC30-10); or

12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.

H. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's or other prescriber's treatment plan.

I. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's or other prescriber's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

J. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions

or care needs specified in subdivisions G 3 and 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's or other prescriber's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs specified in subdivision G 7 of this section may also be provided to the resident by unlicensed direct care facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18VAC90-20-420 through 18VAC90-20-460 and 22VAC40-72-460 D.

This standard does not apply to recipients of auxiliary grants.

K. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

L. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident. However, to the extent allowed by federal law, no assisted living facility shall be required to provide or allow hospice care if such hospice care restrictions are included in a disclosure statement that is signed by the resident prior to admission.