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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22 VAC 30-110
Regulation title(s)	Assessment in Assisted Living Facilities
Action title	Revise Assessment Regulations to clarify assessment and reassessment procedures
Date this document prepared	Sept 19, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The intent of the proposed action is to review and make needed amendments to 22 VAC 30-110, Assessment in Assisted Living Facilities. This regulation establishes standards regarding initial assessments and annual reassessments of both public pay and private pay individuals who reside in or wish to reside in assisted living facilities (ALF) in Virginia. The regulation also addresses post-assessment actions, which are required of the ALF staff when they discharge an individual, and relocation procedures, which are required when an ALF closes.

This regulatory action will evaluate all current regulation content and clarify content that may be unclear or inconsistent. The goal is to streamline the public pay assessment process as much as possible while still ensuring that individuals undergo an appropriate review of their level of care. DARS intends to include language permitting the use of video conferencing for assessments in specific circumstances, which would mirror regulatory content in the preadmission screening regulations. The screening process is similar to ALF assessment. The current language that addresses the portions of the uniform

assessment instrument (UAI) that need to be completed for public pay individuals will also be clarified with the goal of making the reassessment process less burdensome to assessors while still ensuring that vital information is captured on the UAI. Additionally, content regarding the timing of annual reassessments will also be added.

Legal basis

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

Section 63.2-1804 of the Code of Virginia gives the Department for Aging and Rehabilitative Services (DARS) the responsibility promulgating regulations related to the assessment of individuals for ALF placement. Additionally, § 51.5-131 of the Code of Virginia authorized the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action will ensure that the regulation content is precisely written. Clarity in regulation content is essential to ensuring that the adult’s health and safety needs are most appropriately met.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

DARS seeks to clarify some regulatory language in sections 20, 30 and 90, as well as amending content in other sections that may be determined upon further review to be outdated or inconsistent. All citations that reference other agencies’ regulations will also be reviewed to ensure these citations, and any associated language, are accurate.

Other revisions to the regulation content may also be proposed based on public comment or during the workgroup that will meet to discuss proposed changes.

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 of Virginia gives the DARS Commissioner oversight over regulations related to assisted living facility assessments. Amending the regulations is the least burdensome method to accomplish this purpose.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Paige McCleary, Adult Protective Services Division Director, 8004 Franklin Farms Drive, Henrico, VA 23229; paige.mccleary@dars.virginia.gov; or 804-662-7605 or 804-662-9531 (fax)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A panel will be assembled to develop these regulations to ensure that only pertinent content is included. Panel members will make certain that information that is not appropriate for inclusion in the regulation is addressed in other guidance materials. The panel membership will include individuals from a variety of backgrounds who have expertise in providing services to or advocating for older and other vulnerable adults. Members will assist DARS in the careful consideration of proposed regulation content and its impact on other entities. DARS will appoint panel members and if you are interested in serving on the panel, contact Paige McCleary, APS Division Director at paige.mccleary@dars.virginia.gov.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Periodic review/small business impact review announcement

If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This NOIRA was not the result of a periodic review.