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## Final Regulation Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22VAC30-110
<b>VAC Chapter title(s)</b>	Assessment in Assisted Living Facilities
<b>Action title</b>	Revise Assessment Regulations to clarify assessment and reassessment procedures
<b>Date this document prepared</b>	December 10, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The intent of the proposed action is to make needed amendments to 22VAC 30-110, Assessment in Assisted Living Facilities. 22VAC 30-110 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, requirements of the ALF staff when they discharge individuals and relocation procedures when an ALF closes.

Current regulatory language was reviewed and clarified if content was unclear, inconsistent, or outdated. The public pay assessment process was streamlined as much as possible while still ensuring that individuals have an appropriate review of their level of care. Language permitting the use of video conferencing for assessments in specific circumstances was added with a requirement of in-person follow-up within seven days. Minor adjustments to the language addressing the reassessment process were made with the goal of reducing burdens on assessors while still ensuring that vital information is

captured on the UAI. Additionally, content regarding the timing of annual reassessments was added as this issue has been confusing for some assessors.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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- AG-Auxiliary Grant
- ALF-Assisted Living Facility
- DARS-Department for Aging and Rehabilitative Services
- DMAS-Department of Medical Assistance Services
- DSS-Department of Social Services
- LDSS-Local department of social services
- UAI-Uniform Assessment Instrument

### Statement of Final Agency Action

*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 taking the action; and 3) the title of the regulation.*

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The Commissioner of the Department approved the amendments to the Assessment in Assisted Living Facilities (22VAC30-110) on December 1, 2020.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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The Department reviewed the current regulatory language and determined that changes were needed to clarify and update content that was unclear, inconsistent, or outdated.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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Section 63.2-1804 of the Code of Virginia gives DARS the responsibility promulgating regulations related to the assessment of individuals for ALF placement.

Additionally, under § 51.5-145 of the Code of Virginia, the Department shall have responsibility for the planning and oversight of adult services in the Commonwealth. Services shall be delivered by local

departments of social services, as set out in Article 1 (§ 63.2-1600 et seq.) of Chapter 16 of Title 63.2, and pursuant to regulations and subject to the oversight of the Commissioner of DARS.

Lastly, § 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**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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This regulatory action ensures 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**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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DARS updated and added new definitions in Section 10. More substantive changes in sections 30 and 90 clarified assessment and reassessment procedures. Language in sections 20, 40, 50, 80, 100, and 110 were mainly technical or grammatical in nature.

### **Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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- (1) The primary advantage of the proposed amendments is to clarify language that was unclear, inconsistent, or outdated.
- (2) Amendments to the regulation clarify, but do not increase, assessors' responsibilities.
- (3) The primary advantage of the regulatory action is to ensure that assessment standards are evenly applied to individuals in need of ALF admission. Consistent standards ensure that adults safety needs are addressed.

### **Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to what was previously reported.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to what was previously reported.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response

No public comments were received.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
10			<p>In the definition of "Auxiliary Grant," rephrased the reference to the rate from: "annual appropriations act" to "the Appropriation Act"</p> <p>In the definition of "Auxiliary Grant," updated the reference to the cap on individuals in</p>	<p>This language clarifies the Appropriation Act reference.</p> <p>The cap on individuals in supportive housing is now reflected in Chapter 657 (HB2017) of the 2019 Acts of Assembly.</p>

			supportive housing from “annual appropriations act” to “Virginia law”	
90			In section A (Actions to be taken upon completion of the uniform assessment instrument for public pay individuals), added “completed” into the phrase: “a completed copy of the UAI”	Added “completed” for clarity on the UAI.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
10		Defines terms used throughout the regulation	<p>Comported several definitions with definitions in 22VAC40-73-10 (DSS Licensing regulations) as doing so reduces confusion for assessors and DSS licensing inspectors. The following definitions were amended to align with DSS Licensing regulations:</p> <ul style="list-style-type: none"> <li>• Administrator</li> <li>• Assisted living care</li> <li>• Assisted living facility</li> <li>• Residential living care</li> </ul> <p>Added definitions that had never been included in the regulation. The following definitions were added:</p> <ul style="list-style-type: none"> <li>• Department designated case management system</li> <li>• Face-to-face</li> <li>• Local department</li> </ul> <p>Streamlined lengthy definitions and removed language to create standalone definitions for clarity. These changes also align with DSS Licensing regulations. The following definitions</p>

			<p>had been incorporated as part of other definitions but now are stand-alone definitions:</p> <ul style="list-style-type: none"> <li>• Minimal assistance</li> <li>• Moderate assistance</li> </ul> <p>Made other changes to definitions in response to legislative changes or for grammatical reasons. Incorporated acronyms when need. Utilized more person-centered terms when appropriate. The following definitions were amended for reasons described above:</p> <ul style="list-style-type: none"> <li>• Auxiliary Grants Program</li> <li>• Dependent</li> <li>• Emergency placement</li> <li>• Private pay</li> <li>• Public pay</li> <li>• Reassessment</li> <li>• Uniform Assessment Instrument</li> </ul> <p>The following definition was stricken as it is no longer needed in the chapter:</p> <ul style="list-style-type: none"> <li>• User's Manual</li> </ul>
20		Describes people/entities who are able to assess an individual.	<p>Added provisions related to conditions permitting video conferencing for assessments and the timeline to review assessments.</p> <p>Replaced "state approved" with "department designated," This clarifies that DARS is responsible for the approved training. DARS has been responsible for this training since 2013.</p> <p>Changed "local departments of social services" to "local departments."</p> <p>Changed "contract" to "signed provider agreement" at the request of DMAS.</p> <p>Added the terms "qualified" and "case manager," which were missing from the section.</p> <p>Changed "eligibility" to "benefits," which is the correct term.</p> <p>Struck "qualified assessor", which was not needed in the sentence.</p>
30		Addresses determination of services to be provided	<p>Removed unnecessary language describing the UAI.</p> <p>Added sentence about the need to complete the prohibited conditions section of the UAI. Prohibited conditions are defined in Section 10</p>

			<p>but had never been incorporated into the regulation. It is important that the prohibited conditions section be completed on every UAI.</p> <p>Added clarifying text for when a new UAI is needed.</p> <p>Struck references to “Virginia” and added “local department” as adult protective services workers are employees of the local department.</p> <p>Struck redundant language and added language to sentence to improve clarity.</p> <p>Separated a sentence from a previous paragraph to ensure that the requirement that the ALF provide a confidential location for assessments is clearly stated.</p> <p>Struck “of social services” from local department.</p> <p>Added “Virginia” to Department of Social Services as that term is used elsewhere in the regulation.</p> <p>Added requirement for local department workers, who conduct the majority of assessments in Virginia, to use the department designated case management system. This is currently a DARS policy requirement but needs to be added to the regulation.</p> <p>Reordered the paragraphs in the section.</p>
40		Describes discharge requirements.	<p>Added “the individual’s” in order to clarify the type of legal representative.</p> <p>Changed “eligibility” to “benefits,” which is the correct term.</p> <p>Added the term “case manager,” which was missing.</p> <p>Updated the reference to DSS licensing regulations.</p> <p>Struck “of social services” from local department.</p>
50		Describes authorization of services.	<p>Added “qualified” and “case manager” as these terms were missing.</p> <p>Struck language that was not needed and updated language related to the UAI.</p>

			<p>Added “Virginia” to Department of Social Services as that term is used elsewhere in the regulation.</p> <p>Struck “of social services” from local department.</p>
80		Describes ratings of levels of care on the UAI.	Made grammatical changes to ensure terms are consistent in section.
90		Describes actions taken upon completion of the UAI.	<p>Restructured the layout of this section to comport with the Registrar Style Manual.</p> <p>Changed “admission” to more correct term “initial assessment for admission.”</p> <p>Changed “eligibility” to “benefits,” which is the correct term.</p> <p>Struck “of social services” from local department.</p> <p>Changed “contract” to “signed provider agreement” at the request of DMAS.</p> <p>Changed “completed” to “a copy” which is more accurate.</p> <p>Added “case manager” as these terms were missing.</p> <p>Struck “of social services” from local department.</p> <p>Removed unnecessary language.</p> <p>Added language about timeframes for completing a reassessment.</p> <p>Added language about providing choice of housing option, based on availability, to comport with § 51-5-160 of the Code of Virginia.</p>
100		Describes targeted case management for AG recipients.	<p>Added “qualified” and “case manager” as these terms were missing.</p> <p>Added “provider” at the request of DMAS.</p> <p>Struck “of social services” from local department.</p>
110		Describes notification and appeals.	<p>Added “qualified” and “case manager” as these terms were missing. Also made grammatical changes to the first sentence of the section to improve clarity.</p> <p>Added “Virginia” to Department of Social Services as that term is used elsewhere in the regulation.</p>



			<p>Struck "action" as it was not needed.</p> <p>Struck "of social services" from local department.</p>
DIBR		2005 UAI User's Manual	Removed the DIBR in accordance with 1VAC7-10-140. This will now be listed as a guidance document.