



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-72
Regulation title	Standards for Licensed Assisted Living Facilities
Action title	Licensed Assisted Living Facilities Regulation Comprehensive Revision
Date this document prepared	April 18, 2012

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This planned regulatory action is a joint action to repeal the existing regulation for licensed assisted living facilities, 22VAC40-72, and adopt a new regulation, 22VAC40-73 to replace it. The new regulation is to be a comprehensive revision of the existing standards. A comprehensive revision is needed to provide greater protection for adults in care, improve the organization of the standards, increase clarity and consistency, and eliminate unnecessarily burdensome or intrusive requirements. The goals of the new regulation are to better meet the needs of an increasingly vulnerable population of residents who are aged, infirm or disabled and to do so in a cost effective manner.

Legal basis

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

The following sections of the Code of Virginia are the sources of legal authority for the regulation: § 63.2-217 states that State Board shall adopt regulations as may be necessary or desirable to carry out the

purpose of Title 63.2; § 63.2-1732 addresses the State Board’s overall authority to adopt regulations for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1802 authorizes assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments due to dementia if they comply with the board’s regulations; § 63.2-1805 relates to admission, retention, and discharge of residents; and § 63.2-1808 specifies resident rights.

The promulgating entity is the State Board of Social Services.

Need

Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulation for licensed assisted living facilities includes standards for facility management and staffing, resident care and services, and the physical plant. The regulatory action, which is a comprehensive revision, is essential to protect the health, safety, and welfare of assisted living facility residents. The revision allows for changes based on better practices, the latest research, and improved technology, as well as meeting the increased needs of a population of elderly, infirm, or disabled persons that has become more vulnerable over the years. Current technology and medical practice have allowed individuals to stay in their own homes longer and as a result, many people are more at risk when they finally do become assisted living facility residents. The last comprehensive revision of assisted living facility regulation was in 1996, although more limited changes have been made several times since then.

Assisted living facilities vary significantly in size, population in care, available resources, and other factors. As a result, there are often many different opinions regarding what the requirements in the regulation should be. The department makes every effort to take all opinions into consideration throughout the regulatory process.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Since the proposed regulatory action involves a comprehensive review of the assisted living facility regulation, revisions to all areas of the standards will be considered. The regulatory action will potentially include changes to requirements regarding administration; personnel; staffing and supervision; admission, retention and discharge of residents; resident care and services; resident accommodations; buildings and grounds; emergency preparedness; and other related matters.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board is mandated by the Code of Virginia to promulgate regulations for assisted living facilities. The proposed regulatory action involves a comprehensive revision of the existing standards. Because changes are likely to be extensive, the current regulation is being repealed and a new regulation is being adopted. Consideration will given throughout the development of the proposed regulation to necessity, enforceability, reasonableness, and cost impact.

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 on this notice.

Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) 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 Judith McGreal, Virginia Department of Social Services, Division of Licensing Programs, 801 East Main Street, Richmond, VA 23219, telephone: (804) 726-7157, fax: (804) 726-7132, email: judith.mcgregal@dss.virginia.gov. 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 public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

The department has already met with six regulatory advisory panels, each meeting an average of four times, to obtain input and guidance regarding the comprehensive revision. In addition, the department plans to meet with the ALF Advisory Committee to obtain additional input as the proposed regulation is developed.

Family impact

Assess the potential 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 regulation has a positive impact on families and family stability in that families are more confident that their loved ones who are residents of assisted living facilities are receiving the care they need and deserve. Moreover, there could be a positive economic impact on families by averting residents' preventable accidents, illnesses, and deterioration of functioning. Depending upon the funds available for payment to the facility and the specific circumstances of a family's situation, disposable family income may or may not be affected.