




COMMONWEALTH of VIRGINIA

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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIÉU** 
Assistant Attorney General

DATE: **October 6, 2017**

SUBJECT: **Exempt Final Regulation – Technical Corrections to Licensed Assisted Living Facilities, 22 VAC 40-72 and 22 VAC 40-73. (4912/8061)**

I am in receipt of the attached regulation to make technical corrections to the Licensed Assisted Living Facilities final regulations, 22 VAC 40-72 and 22 VAC 40-73. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. The proposed technical corrections are necessary to ensure regulations promulgated while the Assisted Living Facility comprehensive regulatory package, which repeals 22 VAC 40-72 and replaces it with 22 VAC 40-73, was pending remain in the new Assisted Living Facility regulations.

Based on my review, it is my view that the State Board has the authority to promulgate the final exempt regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 17 (2014), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action. Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(3). If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.
Attachment

DEPARTMENT OF SOCIAL SERVICES

Technical Corrections to Licensed Assisted Living Facilities

Part I

General Provisions

22VAC40-72-10. Definitions. (Repealed.)

~~The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Activities of daily living" [-or "ADLs"] means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.~~

~~"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.~~

~~"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.~~

~~"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia. The individual or his legal representative can rescind the document at any time.~~

~~"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.~~

~~"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.~~

~~"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of [Behavioral Health and Developmental Services], but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S.~~

~~Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.~~

~~Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."~~

~~"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, [developmental] , and substance abuse services through its own staff or through contracts with other organizations and providers.~~

~~["Board" means the State Board of Social Services.]~~

~~"Building" means a structure with exterior walls under one roof.~~

~~"Cardiopulmonary resuscitation" [or "CPR"] means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.~~

~~"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.~~

~~"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.~~

~~"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or [intellectual disability and] that prohibits an individual from reaching his highest level of functioning.~~

~~"Commissioner" means the commissioner of the department, his designee or authorized representative.~~

~~"Community services board" or "CSB" means a [public body] established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, [developmental,] and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.~~

~~"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging [and Rehabilitative Services] as a public conservator pursuant to [Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia].~~

~~"Continuous licensed nursing care" means around the clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:~~

- ~~1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or~~
- ~~2. Individuals with a health care condition with a high potential for medical instability.~~

~~"Department" means the State Department of Social Services.~~

~~"Department's representative" means an employee or designee of the State Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.~~

~~"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary [ingredient or ingredients], [() i.e., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.~~

~~"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in the performance of personal care or daily living activities. Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance and laundry personnel.~~

~~"Discharge" means the movement of a resident out of the assisted living facility.~~

~~"Emergency" means, as it applies to restraints, a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.~~

~~"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.~~

~~"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates~~

~~the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.~~

~~"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.~~

~~"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.~~

~~"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.~~

~~"Household member" means any person domiciled in an assisted living facility other than residents or staff.~~

~~"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.~~

~~"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.~~

~~"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of another person and take medication without requiring the assistance of another person.~~

~~"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.)~~

~~"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.~~

~~"Individualized service plan" [or "ISP"] means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.~~

~~"Instrumental activities of daily living" [or "IADLs"] means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.~~

~~["Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard~~

~~deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.]~~

~~"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.~~

~~"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act.~~

~~A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions.~~

~~For any given standard, the term legal representative applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.~~

~~"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker,~~

~~dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech language pathologist.~~

~~Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.~~

~~"Licensee" means any person, association, partnership, corporation, company or public agency to whom the license is issued.~~

~~"Manager" means a designated person who serves as a manager pursuant to 22VAC40-72-220 and 22VAC40-72-230.~~

~~"Mandated reporter" means the following persons acting in their professional capacity who have reason to suspect abuse, neglect or exploitation of an adult:~~

- ~~1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;~~
- ~~2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;~~
- ~~3. Any emergency medical services personnel certified by the [State] Board of Health pursuant to § 32.1-111.5 of the Code of Virginia;~~
- ~~4. Any guardian or conservator of an adult;~~
- ~~5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;~~

~~6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and~~

~~7. Any law enforcement officer.~~

~~This is pursuant to § 63.2-1606 of the Code of Virginia.~~

~~"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.~~

~~An individual who can participate in any way with performance of the activity is not considered to be totally dependent.~~

~~"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide as provided in 22VAC40-72-660.~~

~~"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.~~

~~"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.~~

~~"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.~~

~~"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.~~

~~"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.~~

~~"Nonemergency" means, as it applies to restraints, circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.~~

~~"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.~~

~~"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.~~

~~"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.~~

~~"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.~~

~~"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.~~

~~"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the [U.S.] Food and Drug Administration.~~

~~"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.~~

~~"Qualified" means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" below.~~

~~"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.~~

~~"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (v) a clinical nurse~~

~~specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (viii) any other person deemed by the Department of [Behavioral Health and Developmental] Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.~~

~~"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.~~

~~"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care.~~

~~"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.~~

~~"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.~~

~~"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.~~

~~"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.~~

~~"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).~~

~~"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.~~

~~"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.~~

~~"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope and practice of a licensed nurse.~~

~~"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.~~

~~"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function or duration of employment at the facility. Staff or staff person also includes those individuals hired through a contract to provide services for the facility.~~

~~"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.~~

~~"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.~~

~~"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.~~

~~"Uniform assessment instrument" [or "UAI"] means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.~~

[22VAC40-72-57. Minimum amount for liability insurance disclosure. (Repealed.)

~~A. The minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in the statement required by 22VAC40-72-60 and the resident agreement required by 22VAC40-72-390 is as follows:~~

- ~~1. \$500,000 per occurrence to compensate residents or other individuals for injuries and losses from the negligent acts of the facility; and~~
- ~~2. \$500,000 aggregate to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.~~

~~B. No facility shall state that liability insurance is in place unless the insurance provides the minimum amount of coverage established in subsection A of this section.]~~

22VAC40-72-60. Disclosure. (Repealed.)

~~A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:~~

- ~~1. Disclose information fully and accurately in plain language;~~

~~2. Be provided to the prospective resident and his legal representative at least five days in advance of the planned admission date, and prior to signing an admission agreement or contract;~~

~~EXCEPTION: If circumstances are such that resident admission to a facility prevents disclosure of the information at least five days in advance, then the information shall be disclosed at the earliest possible time prior to signing an admission agreement or contract. The circumstances causing the delay shall be documented.~~

~~3. Be provided to a resident or his legal representative upon request; and~~

~~4. Disclose the following information, which shall be kept current:~~

~~a. Name of the facility;~~

~~b. Name of the licensee;~~

~~c. Names of any other assisted living facilities for which the licensee has a current license issued by the Commonwealth of Virginia;~~

~~d. Ownership structure of the facility (i.e., individual, partnership, corporation, limited liability company, unincorporated association or public agency);~~

~~e. Name of management company that operates the facility, if other than the licensee;~~

~~f. Licensed capacity of the facility and description of the characteristics of the resident population;~~

~~g. Description of all accommodations, services, and care that the facility offers;~~

~~h. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and any fees for additional accommodations, services, and care;~~

- ~~i. Policy regarding increases in charges and length of time for advance notice of intent to increase charges;~~
- ~~j. Amount of an advance or deposit payment and refund policy for such payment;~~
- ~~k. Criteria for admission to the facility and any restrictions on admission;~~
- ~~l. Criteria for transfer to a different living area within the same facility, including transfer to another level, gradation, or type of care within the same facility or complex;~~
- ~~m. Criteria for discharge, including the actions, circumstances, or conditions that would result or may result in the resident's discharge from the facility;~~
- ~~n. Requirements or rules regarding resident conduct and other restrictions and special conditions;~~
- ~~o. Range, categories, frequency, and number of activities provided for residents;~~
- ~~p. General number, functions, and qualifications of staff on each shift;~~
- ~~[q. Whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-72-57 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the disclosure statement the minimum amount of coverage established by the board in 22VAC40-72-57;~~
- ~~r.] Notification that names of contractors providing essential services to residents are available upon request; and~~
- ~~[s.] Address of the website of the department, with a note that additional information about the facility may be obtained from the website, including type of~~

~~license, special services, and compliance history that includes information after July 1, 2003.~~

~~B. If a prospective resident is admitted to the facility, written [acknowledgment] of the receipt of the disclosure by the resident or his legal representative shall be retained in his record.~~

~~C. The information required in this section shall also be available to the general public.~~

Part V

Admission, Retention and Discharge of Residents

22VAC40-72-340. Admission and retention of residents. (Repealed.)

~~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.]~~

22VAC40-72-390. Resident agreement with facility. (Repealed.)

~~A. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:~~

- ~~1. Financial arrangement for accommodations, services and care that specifies:
 - ~~a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;~~
 - ~~b. Description of all accommodations, services, and care that the facility offers and any related charges;~~
 - ~~c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;~~
 - ~~d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;~~
 - ~~e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and~~~~

~~f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.~~

~~[2.] Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his legal representative.~~

~~[3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.]~~

~~[4.] Acknowledgment that the resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.~~

~~[5.] Acknowledgment that the resident has been informed [that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council as described in 22VAC40-72-810.]~~

~~[6. Acknowledgment that the resident has been notified in writing whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-72-57 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-72-57. The written notification must be on a form developed by the department.]~~

~~[7.] Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed a copy of § 63.2-1808 of the~~

~~Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.~~

~~[8.] Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.~~

~~9. [Acknowledgment that the resident has been informed of the policy required by 22VAC40-72-840 J regarding weapons.]~~

~~[10.] Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy.~~

~~[11.] Acknowledgment that the resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22VAC40-72-800.~~

~~[12.] Acknowledgment that the resident has been informed of the policy regarding the administration and storage of medications and dietary supplements.~~

~~[13.] Acknowledgment that the resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-72-340 D.~~

~~B. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and as appropriate, his legal representative and shall be retained in the resident's record.~~

~~C. The original agreement shall be updated whenever there are changes in financial arrangements, accommodations, services, care provided by the facility, requirements governing the resident's conduct, [or liability insurance disclosure notification] , and signed by the~~

~~licensee or administrator and the resident or his legal representative. If the original agreement provides for specific changes in any of these items, this standard does not apply to these changes.~~

22VAC40-73-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by

13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more

places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

["Board" means the State Board of Social Services.]

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse.

Individuals requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient [or ingredients], (e.g., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

"Discharge" means the movement of a resident out of the assisted living facility.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility, or institution licensed by this Commonwealth to provide health care or professional services, including but not limited to a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been

appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company, or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment

instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to his body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Premises" means a building or buildings, under one license, together with the land or grounds on which located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status, or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental

status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a

registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (e.g., physical therapist, occupational therapist, or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day care services are also considered residents.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the

services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of aged, infirm, or disabled adults for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving,

judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect his own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope of practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a

function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system, and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

[22VAC40-73-45. Minimum amount for liability insurance disclosure.

A. The minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in the statement required by 22VAC40-73-50 and the resident agreement required by 22VAC40-73-390 is as follows:

1. \$500,000 per occurrence to compensate residents or other individuals for injuries and losses from the negligent acts of the facility; and

2. \$500,000 aggregate to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.

B. No facility shall state that liability insurance is in place unless the insurance provides the minimum amount of coverage established in subsection A of this section.]

22VAC40-73-50. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;

2. Be provided in advance of admission and prior to signing an admission agreement or contract;

3. Be provided upon request; and

4. Disclose the following information, which shall be kept current:

a. Name of the facility;

b. Name of the licensee;

c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);

d. Description of all accommodations, services, and care that the facility offers;

e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;

f. Criteria for admission to the facility and restrictions on admission;

g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;

h. Criteria for discharge;

i. Categories, frequency, and number of activities provided for residents;

j. General number, position types, and qualifications of staff on each shift;

[k. Whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the disclosure statement the minimum amount of coverage established by the board in 22VAC40-73-45;]

[k. l.] Notation that additional information about the facility that is included in the resident agreement is available upon request; and

[l. m.] The department's website address, with a note that additional information about the facility may be obtained from the website.

B. Written acknowledgment of the receipt of the disclosure by the resident or his legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

22VAC40-73-310. 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 individual. 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 individual, and his legal representative, if any. In some cases, conditions may create special circumstances that make it necessary to hold the interview on the date of admission.
4. A mental health screening in accordance with 22VAC40-73-330 A.

C. An assisted living facility shall only admit or retain individuals as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory or nonambulatory status, as defined in 22VAC40-73-10, of an individual is based upon:

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

D. Based upon review of 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. The facility shall not require a person to relinquish the rights specified in § 63.2-1808 of the Code of Virginia as a condition of admission or retention.

H. In accordance with § 63.2-1805 D of the Code of Virginia, 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;
3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia except as permitted in subsection K 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 K 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 Program (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.
- I. 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.
- J. 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.
- K. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, care for the conditions or care needs (i) specified in

subdivisions G 3 and G 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 treatment plan, or a home care organization licensed in Virginia or (ii) specified in subdivision G 7 of this section may also be provided to the resident by 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 22VAC40-73-470 E. This standard does not apply to recipients of auxiliary grants.

L. 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. This training is required prior to direct care staff assuming such duties. Updated training shall be provided as needed. The training shall include content based on the resident's specific needs. The training shall be documented and maintained in the staff record.

M. 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.] If hospice care is provided, there shall be a written agreement between the assisted living facility and any hospice program that provides care in the facility. The agreement shall include:

1. Policies and procedures to ensure appropriate communication and coordination between the facility and the hospice program;

2. Specification of the roles and responsibilities of each entity, including listing of the services that will generally be provided by the facility and the services that will generally be provided by the hospice program;

3. Acknowledgment that the services provided to each resident shall be reflected on the individualized service plan as required in 22VAC40-73-450 D; and

4. Signatures of an authorized representative of the facility and an authorized representative of the hospice program.

22VAC40-73-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident or applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services, and care that specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care that the facility offers and any related charges;

c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;

d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

- e. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;
 - f. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and
 - g. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.
2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.
3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.
4. Specific acknowledgments that:
- a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or his legal representative;
 - b. The resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;
 - c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;
 - d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;
 - e. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed § 63.2-1808 of the Code of Virginia, Rights and

Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him;

f. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia;

g. The resident has been informed and had explained to him that he may refuse release of information regarding his personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of his transfer to another caregiving facility, notwithstanding any requirements of this chapter.

h. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

i. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy (See 22VAC40-73-420 B);

j. The resident has been informed of the policy or guidelines regarding visiting in the facility, if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

k. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22VAC40-73-820;

l. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements;

[m. The resident has been notified in writing whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-73-45. The written notification must be on a form developed by the department;] and

[m. n.] The resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed agreement/acknowledgment and any updates as noted in subsection C of this section shall be provided to the resident and, as appropriate, his legal representative and shall be retained in the resident's record.

C. The original agreement/acknowledgment shall be updated whenever there are changes to any of the policies or information referenced or identified in the agreement/acknowledgment and dated and signed by the licensee or administrator and the resident or his legal representative.