



# COMMONWEALTH of VIRGINIA

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

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

A handwritten signature in black ink, appearing to read 'Michelle A. L'Homedieu'.

**DATE:** **July 24, 2020**

**SUBJECT: Exempt Final Regulation – Revise Individual Service Plan provisions within the Assisted Living Facility regulations to reflect legislative changes, 22 VAC 40-73-450 (5536/8976)**

I am in receipt of the attached regulations to amend the assisted living facilities (“ALF”) regulation 22 VAC 40-73-450 regarding the Individual Service Plan (“ISP”) provisions. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (the “State Board”) has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board adopt and amend regulations that are necessary to carry out the provisions of the laws of the Commonwealth administered by the Virginia Department of Social Services. The current regulation governing ISPs within the ALF context is set forth at 22 VAC 40-73-450. The proposed amendments to this regulation are necessary to reflect the changes to Virginia Code by the adoption of Chapter 938 of the 2020 Acts of Assembly.

Based on my review, it is my view that the State Board has the authority to promulgate the final regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 14 (Revised)(2018), and has not exceeded that authority. To date, the State Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of State 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)(4)(a). If you

Karin Clark  
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have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.  
Attachment

**Project 6412 - Final**

**DEPARTMENT OF SOCIAL SERVICES**

**Add Provisions for Individualized Service Plans**

**22VAC40-73-450. Individualized service plans.**

A. On or within seven days prior to the day of admission, a preliminary plan of care shall be developed to address the basic needs of the resident that adequately protects his health, safety, and welfare. The preliminary plan shall be developed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident, and, as appropriate, other individuals noted in subdivision B 1 of this section. The preliminary plan shall be identified as such and be signed and dated by the licensee, administrator, or his designee (i.e., the person who has developed the plan), and by the resident or his legal representative.

Exception: A preliminary plan of care is not necessary if a comprehensive individualized service plan is developed, in conformance with this section, on the day of admission.

B. The licensee, administrator, or his designee who has successfully completed the department-approved individualized service plan (ISP) training, provided by a licensed health care professional practicing within the scope of his profession, shall develop a comprehensive ISP to meet the resident's service needs. State approved private pay UAI training must be completed as a prerequisite to ISP training. An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

1. The licensee, administrator, or designee shall develop the ISP in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers, qualified mental health professionals, or other persons.
2. The plan shall support the principles of individuality, personal dignity, freedom of choice, and home-like environment and shall include other formal and informal supports in addition to those included in subdivision C 2 of this section that may participate in the delivery of services. Whenever possible, residents shall be given a choice of options regarding the type and delivery of services.
3. The plan shall be designed to maximize the resident's level of functional ability.

C. The comprehensive individualized service plan shall be completed within 30 days after admission and shall include the following:

1. Description of identified needs and date identified based upon the (i) UAI; (ii) admission physical

examination; (iii) interview with resident; (iv) fall risk rating, if appropriate; (v) assessment of psychological, behavioral, and emotional functioning, if appropriate; and (vi) other sources;

2. A written description of what services will be provided to address identified needs, and if applicable, other services, and who will provide them;

3. When and where the services will be provided;

4. The expected outcome and time frame for expected outcome;

5. Date outcome achieved; and

6. For a facility licensed for residential living care only, if a resident lives in a building housing 19 or fewer residents, a statement that specifies whether the resident does or does not need to have a staff member awake and on duty at night.

D. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate and establish an agreed upon coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

E. The individualized service plan shall be signed and dated by the licensee, administrator, or his designee, (i.e., the person who has developed the plan), and by the resident or his legal representative. The plan shall also indicate any other individuals who contributed to the development of the plan, with a notation of the date of contribution. The title or relationship to the resident of each person who was involved in the development of the plan shall be included. These requirements shall also apply to reviews and updates of the plan.

F. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed ~~as~~ ~~the~~ ~~for~~ ~~a~~ ~~significant~~ ~~change~~ ~~of~~ ~~a~~ ~~resident's~~ ~~condition~~ ~~of~~ ~~the~~ ~~resident~~ ~~changes~~. The review and update shall be performed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers, qualified mental health professionals, or other persons.

G. The master service plan shall be filed in the resident's record. A current copy shall be provided to the resident and shall also be maintained in a location accessible at all times to direct care staff, but that protects the confidentiality of the contents of the service plan. Extracts from the plan may be filed in locations specifically identified for their retention.

H. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident, except that:

1. There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided.

2. ~~Deviation~~ Any deviation from the plan shall ~~be documented in writing, including a description of the circumstances, the date it occurred, and the signatures of the parties involved, and the documentation shall be retained in the resident's record.~~

a. Be documented in writing or electronically;

b. Include a description of the circumstances warranting deviation and the date such deviation will occur;

c. Certify that notice of such deviation was provided to the resident or his legal representative;

d. Be included in the resident's file; and

e. Be signed by an authorized representative of the assisted living facility and the resident or his legal representative if the deviation is made due to a significant change in the resident's condition.

3. The facility may not start, change, or discontinue medications, dietary supplements, diets, medical procedures, or treatments without an order from a physician or other prescriber.