



COMMONWEALTH of VIRGINIA

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TO: JAMES A. ROTHROCK
Commissioner, Department for Aging and Rehabilitative Services

FROM: JENNIFER C. WILLIAMSON
Senior Assistant Attorney General

DATE: August 19, 2013

SUBJECT: Exempt Regulations for Assessment in Assisted Living Facilities; 22VAC30-110

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 803 and 835 of the *2012 Acts of the Assembly* regarding the assessment in assisted living facilities. You have asked the Office of the Attorney General to review and determine if the Commissioner of the Department for Aging and Rehabilitative Services (DARS) has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Pursuant to Va. Code § 51.5-131, the Commissioner of DARS has the power to promulgate regulations as may be necessary or desirable to carry out the provisions of the laws of the Commonwealth administered by DARS. Consequently, it is my opinion that the Commissioner of DARS has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 14 (2010) and 58 (1999), and has not exceeded that authority.

If you have any questions, please feel free to call me at (804)225-3197.

cc: Kim F. Piner, Esquire

Attachment

Project 3807 - Final

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Transferring Assessment in ALF from DSS (-745) to DARS (-110)

CHAPTER 110

ASSESSMENT IN ASSISTED LIVING FACILITIES

Part I

Definitions

22VAC40-745-10. 22VAC30-110-10. 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 (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.

"Applicant" means an adult planning to reside in an assisted living facility.

"Assessment" means a standardized approach using common definitions to gather sufficient information about applicants to and residents of assisted living facilities to determine the need for appropriate level of care and services.

"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. Moderate assistance means dependency in two or more of the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive).

"Assisted living facility (ALF)" means any public or private assisted living facility that is required to be licensed as an assisted living facility by the Department of Social Services under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, specifically, 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~~ Department of Social Services 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.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility and meets the requirements of 22VAC40-72.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an assisted living facility with an approved rate.

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

"Case management agency" means a public human service agency which employs or contracts for case management.

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

"Consultation" means the process of seeking and receiving information and guidance from appropriate human services agencies and other professionals when assessment data indicate certain social, physical and mental health conditions.

"Department" or "DSS" "DARS" means the ~~Virginia Department of Social Services~~ Virginia Department for Aging and Rehabilitative Services.

"Dependent" means, for activities of daily living (ADLs) and instrumental activities of daily living (IADLs), the individual needs the assistance of another person or needs the assistance of another person and equipment or device to safely complete the activity. For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the person's behavior is aggressive, abusive, or disruptive.

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

"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 not permitting entry into the facility until requirements for admission have been met.

"Facility" means an assisted living facility.

"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.

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

"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.

"Medication administration" means the degree of assistance required to take medications and is a part of determining the need for appropriate level of care and services.

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

"Public human services agency" means an agency established or authorized by the General Assembly under Chapters 2 and 3 (§§ 63.2-203 et seq. and 63.2-300 et seq.) of Title 63.2, Chapter 14 (§ 51.5-116 et seq.) of Title 51.5, Chapters 1 and 5 (§§ 37.2-100 et seq. and 37.2-500 et seq.) of Title 37.2, or Article 5 (§ 32.1-30 et seq.) of Chapter 1 of Title 32.1, or hospitals operated by the state under Chapters 6.1 and 9 (§§ 23-50.4 et seq. and 23-62 et seq.) of Title 23 of the Code of Virginia and supported wholly or principally by public funds, including but not limited to funds provided expressly for the purposes of case management.

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

"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. For private pay individuals, a qualified assessor is staff of the assisted living facility trained in the completion of the uniform assessment instrument or an independent private physician.

"Reassessment" means an update of information at any time after the initial assessment. In addition to a periodic reassessment, a reassessment should be completed whenever there is a significant change in the resident's condition.

"Resident" means an individual who resides in an assisted living facility.

"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. Minimal assistance means dependency in only one activity of daily living or dependency in one or more of the selected instrumental 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 independent living facilities that voluntarily become licensed.

"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.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an auxiliary grant resident of an assisted living facility who meets the criteria set forth in 12VAC30-50-470.

"Total dependence" means the individual is entirely unable to participate in the performance of an activity of daily living.

"Uniform assessment instrument" means the department-designated assessment form. There is an alternate version of the uniform assessment instrument which may be used for private pay residents; social and financial information which is not relevant because of the resident's payment status is not included on this version.

"User's Manual: Virginia Uniform Assessment Instrument" means the department-designated handbook containing common definitions and procedures for completing the department-designated assessment form.

"Virginia Department of Medical Assistance Services (~~DMAS~~)" or "DMAS" means the single state agency designated to administer the Medical Assistance Services Program in Virginia.

Part II

Assessment Services

22VAC40-745-20. 22VAC30-110-20. Persons to be assessed.

A. All residents of and applicants to assisted living facilities must be assessed face-to-face using the uniform assessment instrument prior to admission, at least annually, and whenever there is a significant change in the resident's condition.

B. For private pay individuals, qualified staff of the assisted living facility or an independent private physician may complete the uniform assessment instrument. Qualified staff of the

assisted living facility are employees of the facility who have successfully completed state-approved training on the uniform assessment instrument for either public or private pay assessments. The assisted living facility maintains documentation of the completed training. The administrator or the administrator's designated representative must approve and sign the completed uniform assessment instrument for private pay individuals. A private pay individual may request the assessment be completed by a qualified public human services agency assessor. When a public human services agency assessor completes the uniform assessment instrument for a private pay individual, the agency may determine and charge a fee for private pay applicants and residents; the fee may not exceed the fee paid by DMAS for public pay applicants and residents.

C. For public pay individuals, a uniform assessment instrument shall be completed by a case manager or a qualified assessor to determine the need for residential care or assisted living care services. The assessor is qualified to complete the assessment if the assessor has completed a state-approved training course on the state-designated uniform assessment instrument. Public human services agency assessors who routinely complete, as part of their job descriptions, uniform assessment instruments for applicants to or residents of assisted living facilities prior to January 1, 2004, may be deemed to be qualified assessors without the completion of the training course. Qualified assessors who may authorize assisted living facility services for public pay individuals are employees of (i) local departments of social services; (ii) area agencies on aging; (iii) centers for independent living; (iv) community services boards; (v) local departments of health; (vi) state facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (vii) acute-care hospitals, and (viii) Department of Corrections Community Release Units; and independent physicians.

D. The assisted living facility must coordinate with the assessor to ensure that the uniform assessment instrument is completed as required.

22VAC40-745-30. 22VAC30-110-30. Determination of services to be provided.

A. The assessment shall be conducted with the department-designated uniform assessment instrument which sets forth a resident's care needs. The uniform assessment instrument is designed to be a comprehensive, accurate, standardized, and reproducible assessment of individuals seeking or receiving long-term care services. The uniform assessment instrument is comprised of a short assessment and a full assessment. The short assessment is designed to briefly assess the individual's need for appropriate level of care and services and to determine if a full assessment is needed. The uniform assessment instrument shall contain the following items: Full name of the individual; social security number; current address; date of birth; sex; marital status; racial/ethnic background; education; method for communication of needs; primary caregiver or emergency contact or both; usual living arrangements; problems with physical environmental; use of current formal services; annual income; sources of income; legal representatives; benefits or entitlements received; types of health insurance; performance on functional status which includes ADLs, continence, ambulation and IADLs; physician information; admissions to hospitals, nursing facilities or assisted living facilities for medical or rehabilitation reasons; advance directives; diagnoses and medication profile; sensory functioning; joint motion; presence of fractures/dislocations; missing limbs or paralysis/paresis; nutrition; smoking history; use of rehabilitation therapies; presence of pressure ulcers; need for special medical procedures; need for ongoing medical/nursing needs; orientation; memory and judgment; behavior pattern; life stressors; emotional status; social history which includes activities, religious involvement; contact with family and friends; hospitalization for emotional problems; use of alcohol or drugs; assessment of caregivers; and an assessment summary.

B. Sections of the uniform assessment instrument which must be completed are as follows:

1. The assessment for private pay individuals shall include the following portions of the uniform assessment instrument: name of the individual; social security number; current

address; birthdate; sex; marital status; performance on functional status, which includes ADLs, continence, ambulation, IADLs, medication administration, and behavior pattern. In lieu of completing selected parts of the department-designated uniform assessment instrument, the alternate uniform assessment instrument developed for private pay applicants and residents may be used.

2. For public pay individuals, the short form of the uniform assessment instrument shall be completed. The short form consists of sections related to identification and background, functional status, medication administration, and behavior pattern. If, upon assessment, it is determined that the individual is dependent in at least two activities of daily living or is dependent in behavior, then the full assessment must be completed.

C. 1. The uniform assessment instrument shall be completed within 90 days prior to the date of admission to the assisted living facility. If there has been a significant change in the individual's condition since the completion of the uniform assessment instrument which would affect the admission to an assisted living facility, a new uniform assessment instrument shall be completed as specified in ~~22VAC40-745-20~~ 22VAC30-110-20.

2. When a resident moves to an assisted living facility from another assisted living facility a new uniform assessment instrument is not required except that a new uniform assessment instrument shall be completed whenever there is a significant change in the resident's condition or the assessment was completed more than 12 months ago.

3. In emergency placements, the uniform assessment instrument must be completed within seven working days from the date of placement. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker for public pay individuals or by a Virginia adult protective services worker or independent physician for private pay individuals.

D. The uniform assessment instrument shall be completed at least annually on all residents of assisted living facilities. Uniform assessment instruments shall be completed as needed whenever there is a significant change in the resident's condition. All uniform assessment instruments shall be completed as required by ~~22VAC40-745-20~~ 22VAC30-110-20.

E. At the request of the assisted living facility, the resident, the resident's representative, the resident's physician, ~~DSS~~ the Department of Social Services, or the local department of social services, an independent assessment using the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement. An independent assessment is an assessment that is completed by an entity other than the original assessor. The assisted living facility shall assist the resident in obtaining the independent assessment as requested. If the request is for a private pay resident, and the independent assessment confirms that the resident's placement is appropriate, then the entity requesting the independent assessment shall be responsible for payment of the assessment, if applicable.

F. The assessor shall consult with other appropriate human service professionals as needed to complete the assessment.

G. DMAS shall reimburse for completion of assessments and authorization of assisted living facility placement for public pay applicants and residents pursuant to this section.

22VAC40-745-40. 22VAC30-110-40. Discharge.

A. Discharge is the process that ends the stay in an assisted living facility. Staff of the assisted living facility must plan for post-discharge services when the public pay resident is returned to a home-based placement, a nursing facility, or other placement. Assisted living facility staff shall notify in writing the local department of social services financial eligibility worker in the jurisdiction responsible for authorizing the auxiliary grant and the public human

services agency assessor of the date and place of discharge as well as when a resident dies. The assisted living facility must make these notifications 14 days prior to the resident's planned discharge or within five days after the death of the resident. In the event of an emergency discharge as defined by ~~22VAC40-71-160~~ 22VAC40-72-420, the notification shall be made as rapidly as possible, but must be made by close of business on the day following the emergency discharge.

B. Upon issuing a notice of summary order of suspension to an assisted living facility, the Commissioner of the Virginia Department of Social Services or his designee shall contact the appropriate local department of social services to develop a relocation plan. The residents of an assisted living facility whose license has been summarily suspended pursuant to § 63.2-1709 of the Code of Virginia shall be relocated as soon as possible to reduce the risk of jeopardizing the health, safety, and welfare of residents. An assessment of the relocated resident is not required, pursuant to ~~22VAC40-745-30 C 3~~ 22VAC30-110-30 C2.

22VAC40-745-50. 22VAC30-110-50. Authorization of services to be provided.

A. The assessor is responsible for authorizing the individual for the appropriate level of care for admission to and continued stay in an assisted living facility.

B. The assisted living facility must be knowledgeable of the criteria for level of care in an assisted living facility and is responsible for discharge of the resident whenever a resident does not meet the criteria for level of care in an assisted living facility upon admission or at any later time.

C. The appropriate level of care must be documented on the uniform assessment instrument, completed in a manner consistent with the definitions of activities of daily living and directions provided in the User's Manual: Virginia Uniform Assessment Instrument.

D. During an inspection or review, staff from either the ~~department~~ Department of Social Services, DMAS, or the local department of social services may initiate a change in level of care for any assisted living facility resident for whom it is determined that the resident's uniform assessment instrument is not reflective of the resident's current status.

22VAC40-745-60. 22VAC30-110-60. Criteria for residential living care.

Individuals meet the criteria for residential living as documented on the uniform assessment instrument when at least one of the following describes their functional capacity:

1. Rated dependent in only one of seven ADLs (i.e., bathing, dressing, toileting, transferring, bowel function, bladder function, and eating/feeding).
2. Rated dependent in one or more of four selected IADLs (i.e., meal preparation, housekeeping, laundry, and money management).
3. Rated dependent in medication administration.

22VAC40-745-70. 22VAC30-110-70. Criteria for assisted living care.

Individuals meet the criteria for assisted living as documented on the uniform assessment instrument when at least one of the following describes their capacity:

1. Rated dependent in two or more of seven ADLs.
2. Rated dependent in behavior pattern (i.e., abusive, aggressive, and disruptive).

22VAC40-745-80. 22VAC30-110-80. Rating of levels of care on the uniform assessment instrument.

A. The rating of functional dependencies on the uniform assessment instrument must be based on the individual's ability to function in a community environment.

B. The following abbreviations shall mean: D = dependent; and TD = totally dependent. Mechanical help means equipment or a device or both are used; human help includes supervision and physical assistance. Asterisks (*) denote dependence in a particular function.

1. Activities of daily living.

a. Bathing.

- (1) Without help
- (2) Mechanical help only
- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) Is performed by others* (TD)

b. Dressing.

- (1) Without help
- (2) Mechanical help only
- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) Is performed by others* (TD)
- (6) Is not performed* (TD)

c. Toileting.

- (1) Without help
- (2) Mechanical help only
- (3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Performed by others* (TD)

(6) Is not performed* (TD)

d. Transferring.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Is performed by others* (TD)

(6) Is not performed* (TD)

e. Bowel function.

(1) Continent

(2) Incontinent less than weekly

(3) Ostomy self-care

(4) Incontinent weekly or more* (D)

(5) Ostomy not self-care* (TD)

f. Bladder function.

(1) Continent

(2) Incontinent less than weekly

(3) External device, indwelling catheter, ostomy, self-care

(4) Incontinent weekly or more* (D)

(5) External device, not self-care* (TD)

(6) Indwelling catheter, not self-care* (TD)

(7) Ostomy, not self-care* (TD)

g. Eating/feeding.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Performed by others (includes spoon fed, syringe/tube fed, fed by IV)* (TD)

2. Behavior pattern.

a. Appropriate

b. Wandering/passive less than weekly

c. Wandering/passive weekly or more

d. Abusive/aggressive/disruptive less than weekly* (D)

e. Abusive/aggressive/disruptive weekly or more* (D)

3. Instrumental activities of daily living.

a. Meal preparation.

(1) No help needed

(2) Needs help* (D)

b. Housekeeping.

(1) No help needed

(2) Needs help* (D)

c. Laundry.

(1) No help needed

(2) Needs help* (D)

d. Money management.

(1) No help needed

(2) Needs help* (D)

4. Medication administration.

a. Without assistance

b. Administered/monitored by lay person* (D)

c. Administered/monitored by professional staff* (D)

22VAC40-745-90. 22VAC30-110-90. Actions to be taken upon completion of the uniform assessment instrument.

A. Public pay individuals.

1. Upon completion of the uniform assessment instrument for admission, a significant change in the resident's condition, or the annual reassessment, the case manager or a qualified assessor shall forward to the local department of social services financial eligibility worker in the appropriate agency of jurisdiction, in the format specified by the department, the effective date of admission or change in level of care. Qualified assessors who may perform the annual reassessment or a change in level of care for public pay individuals are employees of (i) local departments of social services; (ii) area agencies on aging; (iii) centers for independent living; (iv) community services boards;

and (v) local departments of health, or an independent physician to complete the uniform assessment instrument.

2. The completed uniform assessment instrument, the referral to the financial eligibility worker, and other relevant data shall be maintained in the assisted living facility resident's record.

3. The annual reassessment shall be completed by the qualified assessor conducting the initial assessment. If the original assessor is neither willing nor able to complete the assessment and another assessor is not available, the local department of social services where the resident resides following placement in an assisted living facility shall be the assessor.

4. Clients of a community services board shall be assessed and reassessed by qualified assessors employed by the community services board.

5. The facility shall provide to the community services board or behavioral health authority notification of uniform assessment instruments that indicate observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, pursuant to § 63.2-1805 B of the Code of Virginia.

B. For private pay residents, the assisted living facility shall ensure that assessments for all residents at admission and at subsequent intervals are completed as required in this chapter. The assisted living facility shall maintain in the resident's record the resident's uniform assessment instrument and other relevant data.

22VAC40-745-100. 22VAC30-110-100. Targeted case management for auxiliary grant recipients.

A. Targeted case management shall be limited to those residents who have multiple needs across multiple providers and this coordination is beyond the scope of the assisted living facility. It shall be the responsibility of the assessor who identifies the individual's need for residential care or assisted living care in an assisted living facility to assess the need for targeted case management services as defined in ~~Part IV (12VAC30-50-410 et seq.) of 12VAC30-50~~ 12VAC30-50-470.

B. A case management agency must have signed an agreement with DMAS to be reimbursed for the provision of targeted case management services to auxiliary grant recipients.

C. The local department of social services where the adult resides, following placement in an assisted living facility, shall be the case management agency when there is no other qualified case management provider willing or able to provide case management services.

D. A qualified case manager must possess a combination of relevant work experience in human services or health care and relevant education which indicates that the individual possesses the knowledge, skills, and abilities at entry level as defined in ~~Part IV (12VAC30-50-410 et seq.) of 12VAC30-50~~ 12VAC30-50-470. This must be documented on the case manager's job application form or supporting documentation or observable in the job or promotion interview. When the provider agency is a local department of social services, case managers shall meet the qualifications for social work/social work supervisor classification as specified in 22VAC40-670.

Part III

Resident Appeals

22VAC40-745-110. 22VAC30-110-110. Resident appeals.

Assessors shall advise orally and in writing all applicants to and residents of assisted living facilities for which assessment or targeted case management services or both are provided of the right to appeal the outcome of the assessment, the annual reassessment, or determination of level of care. Applicants for auxiliary grants who are denied an auxiliary grant because the assessor determines that they do not require the minimum level of services offered in the residential care level have the right to file an appeal with the ~~department~~ Department of Social Services of under § 63.2-517 of the Code of Virginia. A determination that the individual does not meet the criteria to receive assisted living is an action which is appealable to DMAS.

DOCUMENTS INCORPORATED BY REFERENCE (~~22VAC40-745~~) (22VAC30-110)

User's Manual: Virginia Uniform Assessment Instrument (UAI), Commonwealth of Virginia, Revised April 1998.