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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-72
Regulation title	Standards for Licensed Assisted Living Facilities
Action title	ALF Regulation Comprehensive Revision
Document preparation date	August 17, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulatory action is a joint action to repeal the existing regulation, 22 VAC 40-71, and establish a new regulation, 22 VAC 40-72. The new regulation includes additional requirements for assisted living facilities in the following areas: care and services to residents; staff qualifications, training, and responsibilities; management of the facility; physical plant features; coordination with mental health systems; disclosure of information; and emergency preparedness. The proposed standards emphasize resident-centered care and services. The standards include requirements that strive for a more homelike environment for residents. Additionally, the new regulation replaces an emergency regulation for 22 VAC 40-71.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The following sections of the Code of Virginia are the sources of the legal authority to promulgate the regulation: § 63.2-217 (mandatory) says that State Board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2; § 63.2-1721 (mandatory) requires applicants for assisted living facility licensure to undergo a background check; § 63.2-1732 (mandatory and discretionary) addresses the State Board’s overall authority to promulgate regulations for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1802 (mandatory and discretionary) authorizes assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments due to dementia if they comply with the Board’s regulations; § 63.2-1803 (mandatory and discretionary) addresses staffing of assisted living facilities; § 63.2-1805 (mandatory) relates to admission, retention, and discharge of residents; and § 63.2-1808 (mandatory and discretionary) relates to resident rights.

The promulgating entity is the State Board of Social Services.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This new regulation is needed in order to replace the emergency regulation, which was the result of legislation passed by the 2005 General Assembly. The new regulation is also a comprehensive revision to the standards in effect prior to the emergency regulation. As such, the new regulation incorporates requirements included in the emergency regulation, as well as requirements in other areas critical to the protection and well-being of residents of assisted living facilities (ALFs).

The resident population of ALFs has become increasingly vulnerable in recent years. Elderly residents have become frailer, many residents have more severe health problems, and there are residents with greater mental health needs. The regulatory action strengthens the standards to provide much needed improvements in the requirements in order to protection the health, safety and welfare of residents of ALFs.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

22 VAC 40-72-10

Adds definitions to certain words used in the regulation. These definitions were added to clarify existing concepts and define new concepts.

22 VAC 40-72-30

Adds requirements related to dedicated hospice facilities.

22 VAC 40-72-50

Adds new requirements for licensees.

22 VAC 40-72-60

Adds a provision for consistent public disclosure of information related to services, fees, and operations of the facility.

22 VAC 40-72-70

Adds a requirement for a written risk management plan.

22 VAC 40-72-80

Adds a requirement for a quality improvement program to strengthen facility management and accountability for results.

22 VAC 40-72-90

Adds a requirement for an infection control program.

22 VAC 40-72-100

Adds specific occurrences that must be reported to the department and provides instructions regarding such.

22 VAC 40-72-110

Adds a requirement that facilities provide demographic and clinical data about residents to the department upon request.

22 VAC 40-72-160

Adds requirements for job descriptions for all positions and for annual employee performance evaluations.

22 VAC 40-72-180

Adds requirements for specific topics to be included in employee orientation.

22 VAC 40-72-190

Adds requirements related to administrators and assistant administrators.

22 VAC 40-72-200

Increases educational requirements for administrators.

22 VAC 40-72-210

Adds requirements related to training for administrators.

22 VAC 40-72-220

Adds a provision for a shared administrator for smaller facilities under certain circumstances.

22 VAC 40-72-230

Increases educational and training requirements for the manager position.

22 VAC 40-72-240

Provides for a designated direct care staff person to be in charge when other administrative staff are not at the facility.

22 VAC 40-72-250

Adds new training requirements for direct care staff.

22 VAC 40-72-260

Requires that annual direct care staff training must commence within 60 days of employment. Also increases the number of hours of required training.

22 VAC 40-72-280

Adds requirements for supervision, orientation and records of volunteers.

22 VAC 40-72-290

Provides for risk assessments for tuberculosis screening for employees.

22 VAC 40-72-300

Adds requirement that all direct care staff have current first aid certification and that additional staff have CPR certification.

22 VAC 40-72-320

Adds requirements for a written direct care staffing plan based on care needs of residents.

22 VAC 40-72-340

Adds a requirement for assessment of psychological, behavioral and emotional functioning if needed to make a decision regarding the admission of a resident.

22 VAC 40-72-350

Provides for risk assessments for tuberculosis screening for residents.

22 VAC 40-72-360

Adds requirements regarding mental health evaluations for residents by a qualified person when needed to assess the need for services.

22 VAC 40-72-390

Adds new items to be included in the agreement between the resident and the facility and requires the facility to review the terms of the agreement annually.

22 VAC 40-72-400

Adds a new requirement for orientation for new residents.

22 VAC 40-72-420

Amends provisions regarding discharge of residents from the facility and notice to be given when a resident plans to leave.

22 VAC 40-72-430

Adds new requirement regarding employees who complete the Uniform Assessment Instrument.

22 VAC 40-72-440

Adds requirement for staff training on individualized service plans for residents.

22 VAC 40-72-450

Adds requirements for increased resident-centered care.

22 VAC 40-72-460

Adds more specific requirements regarding the provision of health care.

22 VAC 40-72-480

Adds requirements to increase health care oversight.

22 VAC 40-72-500

Adds requirements related to retaining mentally impaired residents.

22 VAC 40-72-510

Adds requirements related to referral of residents to mental health providers in certain situations.

22 VAC 40-72-520

Provides for greater variety in available activities.

22 VAC 40-72-540

Adds a requirement for facilities to encourage family involvement with residents.

22 VAC 40-72-550

Adds requirement for annual review of resident rights with employees.

22 VAC 40-72-580

Amends requirements regarding meals for residents.

22 VAC 40-72-610

Adds requirement regarding availability of between meal snacks.

22 VAC 40-72-620

Amends requirements regarding planning menus and special diets.

22 VAC 40-72-630

Adds requirements related to medication management.

22 VAC 40-72-640

Add requirements related to new orders when a resident returns from a hospital.

22 VAC 40-72-650

Adds requirements related to storage of controlled substances and other medications.

22 VAC 40-72-660

Adds increased qualifications for medication aides.

22 VAC 40-72-670

Adds new requirements regarding the administration of medications.

22 VAC 40-72-680

Adds new requirements for review of residents' medications.

22 VAC 40-72-700

Amends the requirements regarding the use of restraints.

22 VAC 40-72-720

Adds a requirement for a facility to have a policy regarding residents' missing personal possessions.

22 VAC 40-72-810

Adds requirements for facilities to support a resident council.

22 VAC 40-72-820

Adds requirements regarding pets living in a facility.

22 VAC 40-72-830

Adds requirements regarding pets visiting a facility.

22 VAC 40-72-840

Adds a requirement regarding firearms on the premises.

22 VAC 40-72-850

Adds a requirement regarding the scheduling of preventive maintenance and cleaning and housekeeping.

22 VAC 40-72-860

Adds requirements regarding the cooling of facilities in warm weather.

22 VAC 40-72-880

Amends the requirement to permit fewer residents in bedrooms in newly constructed facilities or when there is a change of use group.

22 VAC 40-72-890

Amends the requirement regarding the number of sinks, toilets and bathing facilities for newly constructed facilities or change in use group.

22 VAC 40-72-930

Adds requirements related to emergency preparedness.

22 VAC 40-72-940

Amends requirement for planning for emergencies other than fire.

22 VAC 40-72-950

Amends requirement regarding evacuation drills.

22 VAC 40-72-960

Amends requirements regarding contents of the first aid kit; adds requirement for certain facilities to be able to connect to a temporary electrical power source; adds other requirements related to emergency preparedness.

22 VAC 40-72-970

Adds a new requirement related to planning for resident emergencies.

22 VAC 40-72-1100

Adds new categories of required activities to be available to certain residents.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of the proposed regulatory action is the increased protection it provides to residents of assisted living facilities (ALFs). The ALF resident population has become increasingly vulnerable over the past several years; i.e., elderly residents who are frailer, residents with more severe health problems, and residents with increased mental health issues. The proposed regulatory action strengthens the standards to provide much needed improvements in the requirements for care and services; for the qualifications, training, and responsibilities of staff who provide the care and services; for facility management; for the building in which the residents reside; and for coordination with mental health treatment systems.

As always, when requirements are strengthened, there must be a balance between the benefit and the associated costs. In the proposed regulatory action, a fair and reasonable balance has been attempted

throughout the standards. Since assisted living facilities will bear the lion’s share of any increased costs, it is likely that some will disagree that this balance has been effectively achieved.

The advantage to the Commonwealth is that the proposed action reflects the importance that Virginia places on ensuring adequate care for some of its most vulnerable citizens. There are no known disadvantages to the Commonwealth.

It is possible that ALFs will pass along some of the increased costs to consumers, i.e., residents and their families. Moreover, it is recognized that the Auxiliary Grant rate is in need of an increase.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	All licensed assisted living facilities (ALFs) in Virginia are affected by the regulation. Prospective administrators and managers and some current administrators of ALFs are also affected. In addition, ALF residents who need a psychological assessment or a behavioral management tracking form are affected. All ALF residents are affected by the requirement for an annual tuberculosis risk assessment.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are about 620 ALFs that will be affected; as far as we know, all or most all of them would fall into the category of small business as it is defined here. The number of administrators and managers that might be affected is estimated at about 100. The estimated number of ALF residents that will be affected is 33,000. Of that number, about 8000 might need a psychological assessment and about 3500 might need a behavioral management tracking form.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	<p>Assisted Living Facilities</p> <ul style="list-style-type: none"> \$15 for each licensee to obtain a criminal background check \$145 for completion of the public disclosure form by the administrator (\$29 x 5 hours) \$116 for development of a risk management plan by the licensee (\$29 x 4 hours) \$145 for development of a quality improvement program by the administrator (\$29 x 5 hours) \$116 for establishment of an infection control program by the administrator (\$29 x 4 hours) \$15 for completion of an incident report by the

	\$116	administrator (\$29 x ½ hour) for initial compilation of demographic and clinical data by the administrator (\$29 x 4 hours)
	\$29	for an employee performance evaluation by the administrator (annually, each time \$29 x 1 hour)
	\$8,840	for hiring a qualified acting administrator for 90 days (\$17 x 40 = \$680 a week x 13 weeks)
	\$174	for a new administrator to attend pre-licensure training (\$29 x 6 hours)
	\$87	for an administrator to attend revised standards training (\$29 x 3 hours)
	\$1,278	for an administrator to complete the medication training program (\$29 x 32 hours = \$928 + \$350 for the course)
	-\$20,040	for a shared administrator in facilities licensed for 10 or fewer residents (annually \$45,000 of administrator salary saved – \$24,960 manager salary spent = \$20,040 saved)
	-\$13,360	for a shared administrator in facilities licensed for 11-19 residents (annually \$30,000 of administrator salary saved – \$16,640 manager salary spent = \$13,360 saved)
	\$13,312	for a designated staff person in charge for the hours when the administrator or manager is not on duty (annually 6656 hours x additional \$2 an hour)
	\$42	for additional training for direct care staff for the assisted living level of care (annually 4 hours x \$8 + \$10 cost of training)
	\$63	for a direct care staff person to receive certification in first aid (3.5 hours x \$8 + \$35 for course)
	\$55	for a direct care staff person to receive certification in CPR for a facility licensed for over 100 residents or for taking residents on trips (2.5 hours x \$8 + \$35 for course)
	\$174	for development of a direct care staffing plan by the administrator (\$29 x 6 hours)
	\$64	for elimination of the allowance that permitted staff person on duty to sleep at night in smaller facilities (daily 8 hours x \$8)
	\$200	for an RN to train and monitor an unlicensed direct care staff person who provides care for gastric tubes (10 hours x \$20)
	\$4.80	for an administrator to review with the resident the agreement between him and the facility (annually, each time \$29 x 10

		minutes)
	\$145	for an administrator to complete the ISP training program (\$29 x 5 hours)
	\$144	for a licensed health care professional to provide health care oversight for residents at the residential living level of care (twice a year, each time \$18 x 8 hours)
	\$9	for increased responsibilities of a licensed health care professional who provides health care oversight for residents at the assisted living level of care (four times a year, each time \$18 x ½ hour)
	\$14.50	for an administrator to provide consultation to a mental health treatment provider regarding a behavioral management tracking form (\$29 x ½ hour)
	\$.40	for two between meal snacks (daily \$.40 per resident)
	\$10	for a dietitian or nutritionist to provide oversight of special diets (quarterly, each time \$20 x ½ hour per resident)
	\$25	for a diet manual
	\$145	for development of a medication management plan by an administrator (5 hours x \$29)
	\$55	for medication management reference materials
	\$655	for the department approved direct care staff training for a medication aide who only cares for residents at the residential living level of care, with current medication aides grandfathered (40 hours x \$8 + \$335 for course)
	\$18	for in-service medication training for medication aides provided by a licensed health care professional (annually, each time 1 hour x 18)
	\$34	for medication refresher training for a medication aide provided by a licensed health care professional (every three years, \$10 for course + 3 hours x \$8)
	\$5	for review of medications for a resident at the residential living level of care by a licensed health care professional (annually, each time \$20 x ¼ hour)
	\$5	for additional review of medications for a resident at the assisted living level of care by a licensed health care professional (annually, each time \$20 x ¼ hour)
	\$29	for the administrator to develop a policy regarding procedures to follow when a resident's personal possession is missing (1 hour x \$29)

	\$58	for the administrator to develop schedules for preventive maintenance and for cleaning and housekeeping tasks (2 hours x \$29)
	\$650	for air conditioning equipment for a common area (window/wall unit 28.000 BTUs)
	\$5,000	for air conditioning system for a building that is new construction (central air for 4000 square feet)
	\$7000	for adding an air conditioning system to existing building (\$1500 to upgrade electrical service + \$5500 for central air conditioning system for 4000 square feet)
	\$500	for a bedroom that can accommodate two residents, rather than four, in new construction (\$200 for wall, \$100 for door, \$100 for wiring, electrical, mechanical work, \$100 miscellaneous expenses)
	\$670	for a sink, toilet, and bathtub with installation in new construction (\$160 for sink, \$210 for toilet, \$300 for bathtub)
	\$145	for an administrator to develop an emergency preparedness and response plan (\$29 x 5 hours)
	\$40	for a first aid kit on a facility vehicle
	\$3000	for an emergency generator and wiring and electrical service panel work in a small facility (\$1500 for generator + \$1500 for wiring and electrical service panel work)
	\$1	for one additional gallon of emergency drinking water for a resident
	\$29	for development of a resident emergency plan by an administrator (\$29 x 1 hour)
		Affected Individuals
	\$650	for a department approved course for a prospective administrator of an assisted living facility and for current administrators of facilities licensed for assisted living care who do not have a high school degree or GED.
	\$650	for a department approved course for a new manager when there is a shared administrator.
	\$210	for a psychological assessment of a resident by a qualified mental health professional (\$105 x 2 hours)
	\$19	for an annual tuberculosis risk assessment for a resident by a nurse in a physician's office
	\$52.50	for development of a behavioral management tracking form by a mental health treatment provider (\$105 x ½

	hour)
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

This new regulation is a comprehensive revision of the current regulation. Because of extensive changes and reorganization, the current regulation is being repealed and this new regulation is being promulgated. It is also a replacement for the emergency regulation, which was mandated by legislation passed by the 2005 General Assembly. The new regulation is the least intrusive and least burdensome alternative available to ensure protection of increasingly vulnerable adults residing in assisted living facilities. Regulations from several other states were examined and conditions in the assisted living industry in Virginia were carefully considered. The department consulted with providers, advocates for residents and other agency staff through various meetings and other contacts.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

There were no comments received during the NOIRA public comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have a positive impact on families in that they will be more confident that their loved family members who are residents of assisted living facilities are receiving the care they need and deserve. Moreover, there could be a positive economic impact on families by averting residents' preventable accidents, illnesses, and deterioration of functioning. There could be a negative impact on family finances if facilities increase their fees because of additional requirements, but this is an unknown factor since most facilities are not operating at full occupancy.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-71-10 * (advance directive, behavior management, employee, imminent physical threat or danger, legal representative, manager, outbreak, private pay, risk management, sanitizing, significant change, and skills training)	22 VAC 40-72-10	This section includes definitions of words and terms used in the regulation.	The proposed change adds definitions for the following words or terms: advance directive, behavior management, cardiopulmonary resuscitation, employee, good character and reputation, high risk behavior, imminent physical threat or danger, legal representative, manager, medication aide, mentally ill, mentally retarded, outbreak, private pay, qualified, qualified mental health professional, risk management, sanitizing, significant change, skills training, and substance abuse. These definitions were added to clarify existing concepts and define new concepts.
*	22 VAC 40-72-30		The proposed change adds requirements related to dedicated hospice facilities. The purpose of this additional section is to coordinate regulations and enforcement when a place is both an assisted living facility and a dedicated hospice facility.
22 VAC 40-71-50 * (#2, #3, #4)	22 VAC 40-72-50	This section specifies the responsibilities, qualifications, and training required for licensees.	The proposed changes to the section include: 1) adding a requirement that the licensee meet the criminal background check regulation, 2) clarifying that the licensee must exercise supervision over the facility and establish operational policies, 3) specifying that the licensee must develop and maintain an operating budget, and 4) requiring the licensee to provide advance notification of voluntary closure or impending sale, with updates upon request. The criminal background check requirement is specified in law as a result of legislation passed by the 2005 General Assembly, and it provides increased assurances regarding the background of those the Department licenses. More specification about the responsibilities of the licensee strengthens the provision and continuity of services to residents. Advance notice of closure alerts residents and their families to the necessity for relocation or to possible changes in

			services or rates, and also gives them time to make new arrangements, if necessary or desired.
	22 VAC 40-72-60		The proposed change adds a provision for consistent public disclosure that describes services, fees, criteria for admission, transfer and discharge, number and qualifications of staff, provision of activities, rules regarding resident conduct, and facility ownership structure. The requirement for public disclosure of specified information is based upon changes to the law made as a result of legislation passed by the 2005 General Assembly. Disclosure provides prospective residents and their families information that allows for comparison of facilities and enables them to make an informed choice.
*	22 VAC 40-72-70		The proposed change adds a requirement for a written risk management plan. The rationale for such a plan is to ensure that management examines and reduces risks to residents in order to better protect the population in care.
*	22 VAC 40-72-80		The proposed change adds a requirement for a quality improvement program, to include self-assessment based on examination of specified items, and development and implementation of plans to correct deficiencies and improve care. The purpose of the new requirement is to strengthen facility management and accountability for results.
*	22 VAC 40-72-90		The proposed change adds a requirement for an infection control program, with specified elements to be included. The purpose of the change is to provide a necessary safeguard, as there are more debilitated residents in care and an increasing number of residents with antibiotic resistant infections.
22 VAC 40-71-430 *	22 VAC 40-72-100	The current standard provides that facilities report to the Department major incidents that have or could threaten the health, safety or welfare of residents or staff.	The proposed change adds specific occurrences that must be reported and provides instructions regarding documentation and reporting of incidents and occurrences. The purpose of the change is to clarify and strengthen the current standard.
*	22 VAC 40-72-110		The proposed standard adds a requirement that facilities provide demographic and clinical data about residents to the Department, upon request but no more than twice yearly. The rationale for this new provision is to provide better information for planning and training purposes, and this

			information is to be shared with providers.
*	22 VAC 40-72-160		The proposed changes add requirements for job descriptions for all positions and for annual employee performance evaluations. Also included in the proposed standard is a requirement for verification of employee credentials and training. The intent of these changes is to increase resident well-being through improved employee performance resulting from better knowledge and direction regarding job expectations, and to ensure employee credentials.
22 VAC 40-71-80 *	22 VAC 40-72-180	The current standard specifies requirements for new employee orientation.	The proposed changes add to employee orientation the following training topics: 1) the facility's policies and procedures, handling of resident emergencies, infection control measures, incident reporting, and for direct care staff, information on residents' needs, preferences and routines. The purpose of these changes is to improve care and provide increased protection to residents. The intent includes an emphasis on person-centered care.
22 VAC 40-71-60 * (#2)	22 VAC 40-72-190	The current requirement relates to administrator responsibilities.	The proposed changes provide for 1) appointment of a qualified acting administrator when an administrator terminates employment, 2) strengthening and clarifying administrator responsibilities, 3) at least 24 of the 40 hours being on week days during the day shift; 4) a written schedule for the administrator. The purpose of these changes is to ensure appropriate and adequate oversight of facilities. These requirements are based on a change in the law resulting from 2005 General Assembly legislation, except for strengthening and clarifying administrator responsibilities.
22 VAC 40-71-60 and 22 VAC 40-71-630 *	22 VAC 40-72-200	The current requirement for administrator qualifications specifies the education and experience required for the position, providing for differences based on the level of care for which a facility is licensed.	The proposed changes increase educational requirements for administrators, providing for differences based on the level of care for which a facility is licensed. Provisions are made for the grandfathering of current administrators, although those who were grandfathered in the previous standards who are administrators in facilities licensed for assisted living care are required to complete a department approved course. The intent of the changes is for administrators to have increased knowledge in order to better manage an increasingly complex operation.

<p>22 VAC 40-71-60</p> <p>* (#1, #2)</p>	<p>22 VAC 40-72-210</p>	<p>The current requirement specifies training mandated for administrators.</p>	<p>The proposed changes add the following requirements: 1) new administrator training, grandfathering in current administrators, 2) refresher training for administrators when standards are revised, unless determined unnecessary by the Department, and 3) medication training for administrators under certain circumstances. The purpose of these changes is to increase protection of residents by ensuring administrators are knowledgeable in a timely fashion about standards and that resident safety is enhanced by improved management and supervision of medication aides. The requirement regarding medication training is based on changes in the law resulting from legislation passed by the 2005 General Assembly.</p>
	<p>22 VAC 40-72-220</p>		<p>The proposed change adds a provision for a shared administrator for smaller facilities under certain circumstances, allowing an administrator to be present for fewer than 40 hours at a given facility, without a designated assistant who meets the qualifications of an administrator. The intent of this standard is to reduce costs while maintaining adequate administrative function. The proposed standard is based on a change in the law resulting from legislation passed by the 2005 General Assembly.</p>
<p>22 VAC 40-71-60</p> <p>*</p>	<p>22 VAC 40-72-230</p>	<p>The current requirement specifies under what conditions a person may serve as the administrator of both an assisted living facility and a nursing home.</p>	<p>The proposed change increases the educational and training requirements for the manager position, which is a necessary position if the administrator of both an assisted living facility and a nursing home does not provide direct management of the assisted living facility. Current managers are grandfathered. The purpose of this change is to upgrade the qualifications and training of the person who is responsible for the day to day management of the facility, in order to improve services and provide greater protection for residents.</p>
	<p>22 VAC 40-72-240</p>		<p>The proposed change provides for a designated direct care staff person to be in charge when the administrator, designated assistant, or manager is not on duty at the facility. The rationale for this change is to ensure someone is responsible for overseeing the facility at all times. The proposed standard is based on a change in the law resulting from legislation passed by the 2005 General Assembly.</p>

<p>22 VAC 40-71-630</p>	<p>22 VAC 40-72-250</p>	<p>The current requirement specifies that direct care staff who care for residents at the assisted living level of care must complete specified training within four months of employment.</p>	<p>The proposed change requires that direct care staff who care for residents at the assisted living level of care must complete specified training within two months of employment. Another change adds graduation from an approved personal care aide training program to the training options available. The intent of these changes is to assure staff are trained as quickly as reasonable possible for improved staff performance and to offer more flexibility in training options. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.</p>
<p>22 VAC 40-71-80 and 22 VAC 40-71-630</p>	<p>22 VAC 40-72-260</p>	<p>There are currently annual training requirements for direct care staff. The current annual training requirement for direct care staff serving the assisted living level of care is 12 hours.</p>	<p>One of the proposed changes is to require that the annual direct care staff training must commence within 60 days of employment. Another proposed change is an increase to 16 hours in the annual training required for direct care staff serving the assisted living level of care except for licensed health care professionals and certified nurse aides who would be required to attend 12 hours of annual training. The intent of requiring training to commence within 60 days of employment is to prevent facilities from waiting until employees' 11th or 12th month for them to receive their annual training. The purpose of the increase in training hours is to increase the ability of staff to do their jobs well. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.</p>
<p>22 VAC 40-71-100 *</p>	<p>22 VAC 40-72-280</p>	<p>The standard currently specifies requirements regarding volunteers.</p>	<p>The proposed changes include additional requirements for supervision, orientation, and records of volunteers. The purpose of the changes is to ensure the safety of residents and volunteers, and to provide clearer direction to volunteers regarding their duties.</p>
<p>22 VAC 20-71-110 *</p>	<p>22 VAC 40-72-290</p>	<p>There is a current requirement for tuberculosis tests for employees.</p>	<p>The proposed change requires risk assessments for tuberculosis. The purpose of the change is to comply with the current guidelines of the Virginia Department of Health.</p>
<p>22 VAC 40-71-120</p>	<p>22 VAC 40-72-300</p>	<p>Currently, the standard requires at least one staff member at all times with current first aid certification and one with current CPR certification.</p>	<p>The proposed changes add requirements that 1) all direct care staff have current first aid certification, 2) there be additional staff with CPR certification in larger facilities, and 3) there be an employee with current first aid and CPR present at facility sponsored activities off the premises and when an employee transports residents. The purpose of these changes is to avoid delays in</p>

			securing emergency support. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-130 * (staffing plan and work schedules)	22 VAC 40-72-320	The current standard includes staffing requirements.	The proposed changes add requirements for a written direct care staffing plan based upon resident acuity levels and individualized care needs and for written work schedules, and eliminate the allowance for smaller facilities to permit the staff person on duty to sleep during the night. The purpose of these changes is to ensure adequate staffing to meet the needs of residents. The proposed change regarding the elimination of allowing a staff person to sleep at night is based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-150 * (requirements when care for gastric tubes is provided by unlicensed staff)	22 VAC 40-72-340	The standard includes requirements for admission to an assisted living facility.	One of the proposed changes adds an assessment of psychological, behavioral, and emotional functioning, if recommended for a resident, to the information needed for the facility to make a decision regarding admission. The intent of this change is to ensure that the facility has adequate information to determine whether it can meet the needs of the resident. The proposed change is based on a revision to the law resulting from legislation passed by the 2005 General Assembly. Another of the proposed changes is the addition of requirements when care for gastric tubes is provided by unlicensed direct care staff. The intent of this requirement is to provide protection to residents receiving gastric tube care from unlicensed staff, as allowed by a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-150 *	22 VAC 40-72-350	There is a current requirement for tuberculosis tests for residents.	The proposed changes require risk assessments for tuberculosis and add an annual assessment for residents. The purpose of the changes is to comply with the current guidelines of the Virginia Department of Health and provide further protection for the health of residents.
	22 VAC 40-72-360		The proposed changes add requirements for 1) an evaluation of a resident by a qualified mental health professional when there are indications of mental illness, mental retardation, substance abuse, or behavioral disorders, 2) notification of a contact person and a mental health services provider when the evaluation indicates a need for such services, and 3) the collection of collateral information for individuals with mental health disabilities. The purpose of

			the changes is to ensure that residents with mental health problems are properly assessed and receive appropriate care. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-150 *	22 VAC 40-72-390	The current requirement specifies the items to be included in the agreement between the resident and the facility.	The proposed changes add a few items to be included in the agreement between the resident and the facility and require the facility to annually review with the resident the terms of the agreement. The intent of the changes is to ensure that residents are aware of the terms of the agreement and their residency in the facility.
*	22 VAC 40-72-400		The proposed change adds a requirement for orientation for new residents and their legal representatives. The intent of this change is to assure residents and their representatives are aware of facility routines from the beginning in order to allow a smoother transition and protect the welfare of the resident.
22 VAC 40-71-160 *	22 VAC 40-72-420	The current standard includes requirements when a resident is discharged from an assisted living facility.	The proposed changes include additional provisions regarding notification of discharge and reduction in the maximum number of days notice a facility may require from a resident who wishes to move. The intent of the changes are to ensure proper notification of discharge and to bring time frames for resident initiated notice closer to those for facility initiated notice.
22 VAC 40-71-170 *	22 VAC 40-72-430	The current standard includes requirements for completion of the uniform assessment instrument.	The proposed changes add a requirement that facility employees who complete the uniform assessment instrument (UAI) for private pay residents receive department approved training and that residents are advised of the right to appeal the outcome of the assessment. The purpose of the changes is to ensure that employees are well trained in completion of the UAI and that residents are aware of their right to appeal the assessment.
22 VAC 40-71-170 *	22 VAC 40-72-440	The current standard includes requirements for completion of the individualized service plan.	The proposed changes 1) add a requirement for staff training on the completion of the individualized service plan (ISP), 2) shorten time frames for completion of the ISP, 3) make an allowance for deviation from the plan, and 4) require documentation of outcomes and progress toward reaching expected outcomes. The purpose of the changes is to improve ISPs so that the needs of residents are better addressed.
22 VAC 40-71-420	22 VAC 40-72-450	The current standard includes requirements for hygiene and	The proposed changes provide for 1) resident-centered care, 2) observation of residents for changes in functioning, 3)

*		grooming.	notification requirements when residents fall or wander, 4) communication between an employee and a resident in a language the resident understands, and 5) resident access to preferred personal care items when possible. The intent of the changes is that residents receive appropriate care and services based on their individualized needs.
22 VAC 40-71-420 *	22 VAC 40-72-460	The current standard includes requirements for health care.	The proposed changes add more specific requirements regarding the provision of health care. The intent of the changes is to ensure that needed health care is provided to residents in a timely manner.
22 VAC 40-71-630 * (#1, #2, #3, except for oversight of the medication management plan and maintenance of medication reference materials)	22 VAC 40-72-480	The current standard requires quarterly health care oversight by a licensed health care professional for residents at the assisted living care level of care.	The proposed changes add requirements for 1) the licensed health care professional to have two years of experience in adult residential or day care, 2) residents at the residential living level of care to be provided health care oversight at least every six months, and 3) additional responsibilities to be included in the health care oversight. The purpose of the changes is to increase health care oversight by broadening it to include residents at both levels of care and by adding certain responsibilities, and to improve the oversight by requiring health care professionals to have experience in adult residential or day care. The additional responsibility related to medication is based upon a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-670	22 VAC 40-72-500	The current standard includes requirements for agreements and coordination with mental health service agencies.	The proposed change requires a facility to evaluate ability to retain mentally impaired residents when recommended mental health services cannot be obtained. The purpose of the change is to protect residents and others, and to provide information on the accountability of community services. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
	22 VAC 40-72-510		The proposed changes require 1) referral to mental health providers when a resident exhibits or indicates an intent to engage in high risk behavior, 2) if needed, the development of a behavioral management tracking form, 3) training for facility staff who care for residents with high risk behavior, and 4) special conditions to be met for use of a restrictive behavioral management plan. The purpose of the changes is to reduce risks to residents with mental disorders and increase safety, and to

			improve services to residents who exhibit high risk behavior. The proposed changes relating to referral and training are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-260 and 22 VAC 40-71-650 *	22 VAC 40-72-520	The current standards specify the requirements for activities for residents.	The proposed changes provide for greater variety in available activities, for involvement of residents and employees in planning activities, and for improved implementation of the activity program. The intent of the changes is to offer an activity program that is of increased interest and benefit to residents.
22 VAC 40-71-280 *	22 VAC 40-72-540	The current standard specifies requirements related to visiting in the facility.	The proposed change adds a requirement that a facility encourage family involvement with a resident and provide opportunities for family participation in facility activities. The intent of the change is to promote continued connectedness.
22 VAC 40-71-270 *	22 VAC 40-72-550	The current standard specifies requirements regarding resident rights.	The proposed changes add an annual review of resident rights with employees and a requirement that a facility follow up when a physician did not record a resident's inability to understand rights that is later questioned. The purpose of the changes is to remind employees about resident rights and to emphasize their importance and to stop the presumption that a resident understands his rights in the face of contrary evidence.
22 VAC 40-71-330 *	22 VAC 40-72-580	The current standard provides that residents eat their meals in the dining area, with exceptions for when a resident is ill or has independent living status and a kitchen.	One of the proposed changes provides for residents to have the option of eating in their rooms if the facility offers routine or regular room service. The intent of this change is to allow greater flexibility and to support resident choice. Another proposed change adds a requirement that residents have a minimum of 30 minutes to eat. The intent of the change is to ensure that residents have adequate time to finish their meals. Another proposed change includes the monitoring of residents' food consumption and intervention when nutritional problems are suspected. The intent of this change is to protect the health of residents.
22 VAC 40-71-370 *	22 VAC 40-72-610	The current requirement is for availability of a bedtime snack.	The proposed change adds availability of snacks between meals. The intent of the change is to provide more food for residents who eat smaller meals due to disability or medications and to allow all residents to have the opportunity for a snack in between meals, which is consistent with the "homelike" atmosphere that assisted living facilities market to the public.
22 VAC 40-71-	22 VAC 40-	The current standard	The proposed changes add requirements

380 *	72-620	contains requirements for menus and special diets.	for 1) having a dietary manual, 2) quarterly oversight of special diets by a dietitian or nutritionist, and 3) availability of drinking water. The purpose of the changes is to improve nutrition and hydration and to ensure that special diets are prepared and provided appropriately.
22 VAC 40-71-400	22 VAC 40-72-630	The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes add requirements for 1) a medication management plan that addresses procedures related to administering medications to residents and is approved by the department, and 2) maintenance of medication reference materials. The intent of the changes is to improve administration of medications and reduce the possibility of medication errors. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400	22 VAC 40-72-640	The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes add requirements for new orders for medication and treatment when a resident returns from a hospital, and for the content of and the taking of physicians' orders. The intent of these changes is to ensure that residents receive medications properly. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400	22 VAC 40-72-650	The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes add requirements for the storage of controlled substances and other medications. The intent of the changes is to protect the safety of residents. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400 * (#1, #4)	22 VAC 40-72-660	The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes 1) increase the qualifications of medication aides who care for residents at the residential living level of care, grandfathering in current medication aides, 2) add annual in-service training for medication aides, 3) add a requirement for a refresher course every three years for medication aides, and 4) add a requirement regarding supervision of medication aides. The purpose of the changes is to have more qualified and better trained and supervised medication aides to reduce errors in medication administration. The proposed changes related to in-service training and the refresher course are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400	22 VAC 40-72-670	The current standard specifies requirements for the administration of	The proposed changes 1) eliminate the option of pre-pouring medications, 2) add a requirement that medications be

		medications to residents and related services.	administered in accordance with the resource guide approved by the Board of Nursing, and 3) specify when a stat-drug box may be used. The purpose of these changes is to reduce errors in the administration of drugs and regarding the stat-drug box, to comply with Board of Pharmacy regulations. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-650	22 VAC 40-72-680	The current requirement is for an annual review of medications of residents in the assisted living level of care.	The proposed changes 1) add a requirement for an annual review of medications of residents in the residential living level of care, except for those who self-administer, 2) increase the review of medications to every six months for residents in the assisted living level of care, and 3) specify that which needs to be covered in the review. The purpose of the changes is to add protections for residents and to ensure the review is done properly. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-470 *	22 VAC 40-72-700	The current standard contains requirements for the use of restraints.	The proposed changes eliminate the requirement for a written plan to reduce the use of restraints in a facility and add notification requirements when restraints are used. The intent of eliminating the written plan is to delete a requirement that has proved to be unnecessary, since restraint reduction is focused on the individual resident. The purpose of adding notification requirements is to increase protection to residents.
22 VAC 40-71-200 *	22 VAC 40-72-720	The current standard contains requirements related to a resident's personal possessions.	The proposed change adds a requirement that a facility implement a policy regarding procedures to follow when a resident's personal possession is missing. The intent of the change is to provide assistance to a resident in recovering a missing item and to reduce future losses.
22 VAC 40-71-310 and 22 VAC 40-71-320 *	22 VAC 40-72-810	The current requirements provide for a resident council, except when the majority of residents do not want one, and provide for the residents determining the duties of the	The proposed changes increase a facility's responsibilities for supporting a resident council, eliminate the exception regarding the council when the majority of residents do not want one, and address the purposes of the council. The intent of these changes is to strengthen the chances of having a successful resident council, which would give residents a more active role in working

		council.	with management.
*	22 VAC 40-72-820		The proposed change adds requirements regarding pets living in the facility, if the facility allows pets to live on the premises. The purpose of the change is to ensure that pets are healthy and well-treated, do not compromise the rights, preferences, or medical needs of any resident, and do not pose a significant health or safety risk.
*	22 VAC 40-72-830		The proposed change adds requirements for pets that visit the facility, if the facility allows pets to visit. The intent of the change is to ensure that pets are in good health and well-treated, that resident's rights, preferences and medical needs are not compromised, and that pets do not pose a significant health or safety risk.
22 VAC 40-71-490 *	22 VAC 40-72-840	The current requirement is for facilities to develop and implement a policy regarding weapons that ensures the safety of residents and staff.	The proposed change adds a requirement that facilities that allow firearms on the premises must ensure that ammunitions and firearms are stored separately and in locked locations. The purpose of the change is to protect residents and staff.
22 VAC 40-71-500 *	22 VAC 40-72-850	The current standard contains requirements for the maintenance of buildings and grounds.	The proposed change adds a requirement for a schedule for preventive maintenance and a schedule for cleaning and housekeeping. The intent of the change is to ensure that buildings and grounds are well-maintained for the safety and well-being of residents.
22 VAC 40-71-510 *	22 VAC 40-72-860	The current standard contains requirements for heating, ventilation, and cooling.	The proposed changes 1) lower the inside temperature from 85 to 82 degrees for the use of cooling devices, 2) add a requirement that the largest common area used by residents be air conditioned six months after the effective date of the regulations, 3) add a requirement for air conditioning for new construction or change in use group, 4) add a requirement that as of six years after the effective date of the standards, the facility be air conditioned. The purpose of the changes is to protect the health and well-being of residents, many of whom are elderly or on medications. A fan is insufficient in this climate.
22 VAC 40-71-530 *	22 VAC 40-72-880	The current requirement allows an occupancy of up to four residents in a bedroom.	The proposed change decreases the allowed occupancy in a bedroom to no more than two residents for new construction or change in use group. The intent of the change is to provide greater privacy and dignity for residents.
22 VAC 40-71-540	22 VAC 40-72-890	The current requirement is for one toilet for seven	The proposed changes require for new construction or change in use group one toilet for four residents, one sink for four

<p>*</p>		<p>residents, one sink for seven residents, and one tub or shower for 10 residents on floors with residents' bedrooms, with related provisions.</p>	<p>residents, and one tub or shower for seven residents on floors with residents' bedrooms, with related provisions. The proposed changes also provide for an additional toilet or sink for common use on floors with resident rooms and the main living or dining area when there is new construction or change in use group. The purpose of the changes is to improve access to bathrooms for populations with uncertain continence and to provide greater dignity to residents.</p>
<p>22 VAC 40-71-590 *</p>	<p>22 VAC 40-72-930</p>	<p>The current standard contains requirements for emergency procedures.</p>	<p>The proposed changes add requirements for an emergency preparedness and response plan that is developed in accordance with a department approved manual and that addresses specified topic areas, and for quarterly reviews on emergency preparedness. The intent of the changes is to ensure that facilities are better prepared for both natural and man-made disasters.</p>
<p>22 VAC 40-71-570 *</p>	<p>22 VAC 40-72-940</p>	<p>The current standard contains requirements for fire plans.</p>	<p>The proposed change broadens plans to include other emergencies as well as fire. The intent of the change is for the facility to be better prepared to meet all types of emergencies.</p>
<p>22 VAC 40-71-580 *</p>	<p>22 VAC 40-72-950</p>	<p>The current standard contains requirements for fire drills in the facility.</p>	<p>The proposed change requires evacuation drills, rather than fire drills. The intent of the change is to broaden the type of emergencies for which a facility will be prepared.</p>
<p>22 VAC 40-71-120 and 22 VAC 40-71-390 *</p>	<p>22 VAC 40-72-960</p>	<p>The current requirements specify the content of the first aid kit and mandate a 72 hour emergency food and drinking water supply.</p>	<p>The proposed changes 1) add a few required items to the first aid kit, 2) add a requirement that there be a first aid kit on facility motor vehicles that transport residents, 3) add a requirement that first aid kits be checked quarterly to ensure items are present and not expired, 4) add a requirement that by 07/01/07, facilities with six or more residents are able to connect to a temporary electrical power source and have either an emergency generator or access to one through contract, 5) add a requirement that there be an alternative form of communication in addition to the telephone, and 6) increase the supply of emergency food and drinking water to a 96 hour supply and add generator fuel and oxygen for residents using oxygen to supply requirements. The intent of the changes is to protect resident safety and to ensure a facility's ability to respond to an emergency situation. The proposed change regarding the emergency generator is based on revisions to the law resulting from legislation</p>

			passed by the 2004 General Assembly.
22 VAC 40-71-590 *	22 VAC 40-72-970	The current standard contains requirements for emergency procedures.	The proposed change adds a requirement that a facility have a plan for resident emergencies and that employees practice procedures for resident emergencies. The purpose of the change is to increase protection of the safety and welfare of residents.
22 VAC 40-71-700 *	22 VAC 40-72-1100	The current requirement contains categories of activities to be available to residents in special care units.	The proposed change adds two categories of required activities to be available to residents in special care units. The intent of the change is to add other areas of interest and to provide increased variety of activities for the benefit of residents.

The asterisk indicates the changes made in the proposed regulation that are not included in the emergency regulation. When a part(s) of the proposed change is included in the emergency regulation, the part(s) not included are marked with an asterisk, and those parts are specified in parenthesis. Numbers appearing in parenthesis correspond to the fourth column of this chart, "Proposed change and rationale."