STANDARDS AND REGULATIONS FOR LICENSED ASSISTED LIVING FACILITIES

Part I.

General Provisions.

22 VAC40-71-10. 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.

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

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

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

STANDARDS AND REGULATIONS FOR LICENSED ASSISTED LIVING FACILITIES

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

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

Sections 8, 202, 221(d)(3), 221(d)(4), 231, 236 or 811 housing, 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.

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

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

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

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

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms, including when the drug is used in one or more of the following ways:

1. In excessive dose (including duplicate drug therapy);

2. For excessive duration;

3. Without adequate monitoring;

4. Without adequate indications for its use;

5. In the presence of adverse consequences which indicate the dose should be reduced or discontinued; and

6. In a manner that results in a decline in the resident's functional status.

"Community services board" means a citizens' board established pursuant to §37.1-195 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.

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

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or

2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee of the Virginia Department of Social Services, acting as the authorized agent in carrying out the duties specified in the Code of Virginia.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities. Examples are likely to include nursing staff, geriatric assistants and mental health workers but are not likely to include waiters, chauffeurs, and cooks.

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

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

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by not permitting entry into the facility until the requirements for admission have been met.

"Extended license" means a license that is granted for more than one year's duration because the facility demonstrated a pattern of strong compliance with licensing standards.

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

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

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

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

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

High risk behavior" means any behavior, including an expressed intent, that exposes, or has the potential to expose, the person exhibiting the behavior, or those being exposed to the behavior, to harm. Examples of high risk behaviors include, but are not limited to, the following: physically assaulting others or gesturing, making suicidal attempts,

verbalizing a threat to harm self or others, verbalizing an unrealistic fear of being harmed by others, destroying property that exposes self or others to harm, wandering in or outside of the facility, being intrusive in the personal space of others, putting objects or liquids in the mouth that are mistaken as food or consumable fluids, increased physical activity such as floor pacing that might indicate anxiety or stress, increased or confusing speech pattern or communications that might indicate a disorder of thought process, decreased physical activity such as staying in bed, not eating, or not communicating that might indicate depression.

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

"Human subject research" means any medical or psychological research which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects and which departs from the application of those established and accepted methods appropriate to meet the subject's needs but does not include (i) the conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice, (ii) epidemiological investigations, or (iii) medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated or to improve the quality of the subject's life pursuant to §37.1-234 of the Code of Virginia.

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

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of any staff member in the assisted living facility.

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

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

NOTE: "Physician" is defined later in this section.

"Individualized service plan" means the written description of actions to be taken by the licensee to meet the assessed needs of the resident.

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

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

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

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a clinical social worker, dentist, licensed practical nurse, nurse practitioner, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered nurse, and speech-language pathologist.

NOTE: Responsibilities of physicians contained within this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual. Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Mandated reporter" means any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any person employed by a public or private agency or facility and working with adults, any person providing full-time or part-time care to adults for pay on a regularly scheduled basis, any person employed as a social worker, any mental health professional and any law-enforcement officer, in his professional or official capacity, who has reason to suspect that an adult is an abused, neglected or exploited adult. This is pursuant to §63.2-1606 of the Code of Virginia.

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

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

“Medication aide” means a staff person who has successfully completed the medication training program developed by the department and approved by the Board of Nursing.

"Mental impairment" means a disability which reduces an individual's ability to reason or make decisions.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth

Edition, Text Revision, 1994, or subsequent editions, that affects the well-being or behavior of an individual.

"Mentally retarded" means substantial sub-average general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

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

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

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

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

"Personal representative" means the person representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next of kin, descendent, trustee, or other person expressly named by the resident as his agent.

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

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

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

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

"Public pay" means a resident of an adult care facility eligible for benefits under the Auxiliary Grants Program.

“Qualified” means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience.

"Qualified mental health professional" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician: a doctor of

medicine or osteopathy; (ii) a psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from an college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (vi) a registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vii) any other licensed mental health professional; or (viii) any other person deemed by the Department of Mental Health, Mental Retardation and Substance Abuse Services as having qualifications equivalent to those described in this definition.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home- and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of

assisted living facilities, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility preadmission screenings.

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

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

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

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

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance

with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

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

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

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

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

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

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

"Transfer trauma" means feelings or symptoms of stress, emotional shock or disturbance, hopelessness, or confusion resulting from the resident being moved from one residential environment to another.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of the form which may be used for private pay residents, i.e., those not eligible for benefits under the Auxiliary Grants Program. Social and financial information which is not relevant because of the resident's payment status is not included on the private pay version of the form.

STANDARDS AND REGULATIONS FOR LICENSED ASSISTED LIVING FACILITIES

22VAC40-71-50. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with other relevant federal, state or local laws and regulations; and with the facility's own policies.

B. The licensee shall meet the following requirements:

1. The licensee shall give evidence of financial responsibility.

2. The licensee shall be of good character and reputation.

NOTE: Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 1721 of the Code of Virginia.

3. The licensee shall meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22 VAC 40-90-10 et seq.).

~~3~~ 4. The licensee shall protect the physical and mental well-being of residents.

~~4~~ 5. The licensee shall keep such records and make such reports as required by this chapter for licensed assisted living facilities. Such records and reports may be inspected at any reasonable time in order to determine compliance with this chapter.

~~5~~ 6. The licensee shall meet the qualifications of the administrator if he assumes those duties.

C. An assisted living facility sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the department.

2. The commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the board.

3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.

4. The commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

22 VAC 40-71-55. Disclosure

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

1. Disclose information fully and accurately in plain language;

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

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

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

a. Name of the facility;

b. Name of the licensee;

c. Names of any other facilities for which the licensee has been issued a license by the Commonwealth of Virginia;

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

e. Owner of the property, if it is leased.

f. Name of management company that operates the facility, if other than the licensee.

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

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

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

j. Policy regarding increases in charges and length of time for advance notice of intent to increase charges;

k. Amount of an advance or deposit payment and refund policy for such payment;

l. Criteria for admission to the facility and any restrictions on admission;

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

n. Criteria for discharge, including the actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

o. Requirements or rules regarding resident conduct and other restrictions and special conditions;

p. Range, categories, frequency, and number of activities provided for residents;

q. General number, functions, and qualifications of staff on each shift;

r. Indication of whether contractors are used to provide any essential services to residents and, if used, provide names of contractors upon request; and

s. Address of the web site of the Virginia Department of Social Services, with a note that additional information about the facility may be obtained from the web site, including type of license, special services, and compliance history that includes information after July 1, 2003.

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

EXCEPTION: If circumstances are such that resident admission to a facility prevents disclosure of the information at least five days in advance, then the information shall be

disclosed at the earliest possible time prior to signing an admission agreement or contract. The circumstances causing the delay shall be documented.

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

22VAC40-71-60. Administrator.

A. Each facility shall have an administrator of record. This does not prohibit the administrator from serving more than one facility.

B. The administrator shall meet the following minimum qualifications and requirements:

1. The administrator shall be at least 21 years of age.

2. The administrator shall be able to read and write, and understand this chapter.

3. The administrator shall be able to perform the duties and to carry out the responsibilities required by this chapter.

4. The administrator shall be a high school graduate or shall have a General Education Development Certificate (GED), and have completed at least one year of successful post secondary education from an accredited college or institution or at least one year of administrative or supervisory experience in caring for adults in a group care facility. The following exception applies: Administrators employed prior to February 1, 1996, shall be a high school graduate or shall have a GED, or shall have completed one year of successful experience in caring for adults in a group care facility.

5. The administrator shall meet the requirements stipulated for all staff in subsection A of 22VAC40-71-70.

6. The administrator shall not be a resident of the facility.

C. Any person meeting the qualifications for a licensed nursing home administrator pursuant to §54.1-3103 of the Code of Virginia may (i) serve as an administrator of an assisted living facility and (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

D. The administrator shall demonstrate basic respect for the dignity of residents by ensuring compliance with residents' rights.

E. The facility licensee/operator, facility administrator, relatives of the licensee/operator or administrator, or facility employees shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Chapter 4 (§37.1-134.6 et seq.) of Title 37.1 of the Code of Virginia.

F. Facility owners shall notify the licensing agency of a change in a facility's administrator. The notifications shall be sent to the licensing agency in writing within 10 working days of the change.

G. It shall be the duty of the administrator to oversee the day-to-day operation of the facility. This shall include, but shall not be limited to, responsibility for:

1. Services to residents;

2. Maintenance of buildings and grounds;

3. Supervision of assisted living facility staff.

H. Either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week.

1. No fewer than 24 of those hours shall be during the day shift on week days.

2. There shall be a written schedule of the on-site presence of the administrator and if applicable, the designated assistant or the manager. The schedule shall be retained for two years.

EXCEPTIONS:

Subsection L of this section allows a shared administrator for smaller facilities.

I. When an administrator terminates employment, a new administrator shall be hired within 90 days from the date of termination. Unless a new administrator is employed immediately, a qualified acting administrator shall be appointed when the administrator terminates employment.

J. The administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or client specific training needs within each 12-month period. When adults with mental impairments reside in the facility, at least five of the required 20 hours of training shall focus on the resident who is mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, location, date and number of hours.

K. If medication is administered to residents by medication aides as allowed in 22 VAC 40-71-400 H, the administrator shall successfully complete a medication training program approved by the Board of Nursing. The training shall be completed within four

months of employment as an administrator and may be counted toward the annual training requirement for the first year. Administrators employed prior to the effective date of these standards have six months from the effective date of these standards to successfully complete the medication training program. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications, or

2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

L. Shared administrator for smaller facilities.

The administrator may be awake and on duty on the premises for fewer than the minimum 40 hours per week, without a designated assistant, under the following conditions:

1. In facilities licensed for 10 or fewer residents:

a. The administrator shall be awake and on duty on the premises of each facility for at least 10 hours a week; and

b. The administrator shall serve no more than four facilities;

2. In facilities licensed for 11-19 residents:

a. The administrator shall be awake and on duty on the premises of each facility for at least 20 hours a week; and

b. The administrator shall serve no more than two facilities.

3. In facilities licensed for 10 or fewer residents as specified in subdivision 1 of this subsection and in facilities licensed for 11-19 residents as specified in subdivision 2 of this subsection:

a. The administrator shall serve as a full time administrator, i.e., shall be awake and on duty on the premises of more than one assisted living facility for at least 40 hours a week;

b. Each of the facilities served shall be within a 30 minute average travel time of the other facilities;

c. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices;

d. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation and for a period of time that shall not exceed four weeks. The designated assistant shall meet the qualifications of the administrator.

e. There shall be a designated person who shall serve as manager and who shall be awake and on duty on the premises of each facility for the remaining part of the 40 required hours when the administrator is not present at the facility and who shall be supervised by the administrator. The manager shall meet the following minimum qualifications and requirements:

(1) The manager shall be at least 21 years of age.

(2) The manager shall be able to read and write, and understand this chapter.

(3) The manager shall be able to perform the duties and to carry out the responsibilities of his position.

(4) The manager shall:

(a) Be a high school graduate or shall have a General Education Development Certificate (GED); and

(b) Have successfully completed at least 30 credit hours of post secondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education; or

(c) Have successfully completed a department-approved course specific to the administration of an assisted living facility; and

(d) Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

(5). The manager shall not be a resident of the facility.

f. The manager shall complete the training specified in 22 VAC 40-71-50 D within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.

g. Managers shall be required to complete refresher training when standards are revised, unless the Department determines that such training is not necessary.

h. The manager shall attend at least 16 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on residents who are mentally

impaired. Documentation of attendance shall be retained at the facility and shall include title of course, name of the institution that provided the training, date and number of hours.

i. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility.

j. Each facility shall maintain a schedule that specifies for both the administrator and the manager the days and times each shall be awake and on duty on the premises. Any changes shall be noted on the schedule, which shall be retained for two years.

k. The minimum of 40 hours required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours being during the day shift on week days.

4. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home, as provided for in subsection M of this section.

~~K~~ M. Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include, but not be limited to, the following:

1. Written policies and procedures that describe how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility;

2. If the administrator does not provide the direct management of the assisted living facility, the plan shall specify a designated individual who shall serve as manager and who shall be directly supervised by the administrator;

3. A current organizational chart that depicts the lines of responsibility; and

4. A position description for the administrator, and if applicable, for the manager.

~~L~~ N. The manager referred to in subdivision ~~K~~ M 2 of this section shall meet the following minimum qualifications and requirements:

1. The manager shall be at least 21 years of age;

2. The manager shall be able to read and write, and understand this chapter;

3. The manager shall be able to perform the duties and carry out the responsibilities of his position;

4. The manager shall be a high school graduate or shall have a General Education Development Certificate (GED), and have completed at least one year of successful post secondary education from an accredited college or institution or at least one year of administrative or supervisory experience in caring for adults in a group care facility;

5. The manager shall not be a resident of the facility; and

6. The manager shall attend at least eight hours of training related to management or operation of a residential facility for adults or client specific training needs within each 12-month period. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on residents who are mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, sponsor, date and number of hours.

STANDARDS AND REGULATIONS FOR LICENSED ASSISTED LIVING FACILITIES

22 VAC 40-71-65. Designated staff person in charge.

A. When the administrator or designated assistant who meets the qualifications of the administrator or the manager who meets the qualifications specified in 22 VAC 40-71-60 is not awake and on duty on the premises, there shall be a designated direct care staff member in charge, who has specific duties and responsibilities as determined by the administrator.

B. Prior to being placed in charge, the staff member shall be informed of and receive training on his duties and responsibilities, and be provided written documentation of such duties and responsibilities.

C. The staff member shall be awake and on duty on the premises while in charge.

D. The staff member in charge shall be capable of protecting the physical and mental well-being of the residents.

E. The administrator shall ensure that the staff member in charge is prepared to carry out his duties and responsibilities and respond appropriately in case of an emergency.

F. The staff member in charge shall not be a resident of the facility.

22VAC40-71-80. Staff training and orientation.

A. All employees shall be made aware of:

1. The purpose of the facility;

2. The services provided;

3. The daily routines; and

4. Required compliance with regulations for assisted living facilities as it relates to their duties and responsibilities.

B. All personnel shall be trained in the relevant laws, regulations, and the facility's policies and procedures sufficiently to implement the following:

1. Emergency and disaster plans for the facility;

2. Techniques of complying with emergency and disaster plans including evacuating residents when applicable;

3. Use of the first aid kit and knowledge of its location;

4. Confidential treatment of personal information;

5. Observance of the rights and responsibilities of residents;

6. Procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents and for mandated reporters, the consequences for failing to make a required report. (NOTE: Section 63.2-1606 of the Code of Virginia specifies procedures for reporting and consequences for not reporting.) (NOTE: See 22VAC40-71-10 for a definition of mandated reporter);

7. Techniques for assisting residents in overcoming transfer trauma; and

8. Specific duties and requirements of their positions.

C. The training and orientation required in subsections A and B of this section shall occur within the first seven days of employment and prior to assuming job responsibilities unless under the sight supervision of a trained staff person.

D. Within the first 30 days of employment, all direct care staff shall be trained to have general knowledge in the care of aged, infirm or disabled adults with due consideration for their individual capabilities and their needs.

E. On an annual basis, all direct care staff shall attend at least eight hours of training, which shall begin not later than 60 days after employment.

1. The training shall be relevant to the population in care and shall be provided through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on the resident who is mentally impaired.

3. Documentation of this training shall be kept by the facility in a manner that allows for identification by individual employee.

22VAC40-71-120. First aid qualifications and supplies.

A. There shall be at least one staff member on the premises at all times who ~~shall have a current first aid certificate which has been issued within the past three years by the~~ has current certification in first aid from the American Red Cross, American Heart Association, National Safety Council, or who has current first aid certification issued within the past three years by a community college, a hospital, a volunteer rescue squad, a fire department, or a ~~similarly approved~~ other designated program approved by the Department of Social Services, unless the facility has an on duty registered nurse or licensed practical nurse. The certification must either be in Adult First Aid or include Adult First Aid.

B. There shall be at least one staff member on the premises at all times who has current certification in ~~cardiovascular pulmonary~~ cardiopulmonary resuscitation (CPR) ~~issued within the current year by~~ from the American Red Cross, American Heart Association, National Safety Council, or who has current CPR certification issued within the past two years by a community college, a hospital, a volunteer rescue squad, a fire department, or ~~a similarly approved~~ other designated program approved by the Department of Social Services. ~~The CPR certificate must be approved annually.~~ The certification must either be in Adult CPR or include Adult CPR.

C. Each direct care staff member shall receive certification in first aid from an organization listed in 22 VAC 40-71-120 A and maintain current certification in first aid as specified in 22 VAC 40-71-120 A.

1. Staff employed on or after the effective date of these standards shall receive the certification within 60 days of employment.

2. Staff employed prior to the effective date of these standards shall receive the certification within 60 days of the effective date of these standards.

NOTE: This subsection does not negate the requirement of subsection A to have at least one staff member on the premises at all times who has current certification in first aid, unless the facility has an on duty registered nurse or licensed practical nurse.

D. In facilities licensed for over 100 residents, at least one additional employee who meets the requirements of 22 VAC 40-71-120 B shall be available for every 100 residents, or portion thereof. More employees who meet the requirements of 22 VAC

40-71-120 B shall be available if necessary to assure quick access to residents in the event of the need for CPR.

E. A listing of all employees who have current certification in first aid or CPR, in conformance with 22 VAC 40-72-120 A, B, C, and D shall be posted in the facility so that the information is readily available to all employees at all times. The listing must indicate by employee whether the certification is in first aid or CPR or both and must be kept up to date.

F. An employee with current certification in first aid and CPR shall be present during facility sponsored activities off the facility premises.

G. An employee with current certification in first aid and CPR shall be present when an employee transports a resident.

~~C~~ H. A complete first aid kit shall be on hand at the facility, located in a designated place that is easily accessible. The kit shall include, but not be limited to, the following items:

Activated charcoal, adhesive tape, antiseptic ointment, band-aids (assorted sizes), blankets (disposable or other), cold pack, disposable gloves, gauze pads and roller gauze (assorted sizes), hand cleaner (e.g., antiseptic towelettes), plastic bags, scissors, small flashlight and extra batteries, syrup of ipecac, triangular bandage, and tweezers.

22VAC40-71-130. Standards for staffing.

A. The assisted living facility shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental

and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to assure compliance with this chapter.

B. There shall be sufficient staff on the premises at all times to implement the approved fire plan.

C. There shall be at least one staff member awake and on duty at all times in each building when at least one resident is present.

~~EXCEPTION: In buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if none of the residents requires a staff member awake and on duty at night.~~

22VAC40-71-150. Admission and retention of residents.

A. No resident shall be admitted or retained for whom the facility cannot provide or secure appropriate care, or who requires a level of service or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff appropriate in numbers and with appropriate skill to provide such services.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon:

1. The completed UAI;

2. The physical examination report; and

3. An interview between the administrator or a designee responsible for admission and retention decisions, the resident and his personal representative, if any.

NOTE: In some cases, medical conditions may create special circumstances which make it necessary to hold the interview on the date of admission.

4. An assessment of psychological, behavioral, and emotional functioning, conducted by a qualified mental health professional, if recommended by the UAI assessor, a health care professional, or the administrator or designee responsible for the admission and retention decision. This includes meeting the requirements of subsection P of this section.

C. Upon receiving the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the personal representative, if any, and case manager, if any, and shall be kept on file at the facility.

D. All residents shall be 18 years of age or older.

E. No person shall be admitted without his consent and agreement, or that of his personal representative, if applicable.

F. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;

2. Dermal ulcers III and IV except those stage III ulcers which are determined by an independent physician to be healing, as permitted in subsection G of this section;

3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia as permitted in subsection H or subsection I of this section;

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;

5. Psychotropic medications without appropriate diagnosis and treatment plans;

6. Nasogastric tubes;

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection I of this section;

8. Individuals presenting an imminent physical threat or danger to self or others;

9. Individuals requiring continuous licensed nursing care;

10. Individuals whose physician certifies that placement is no longer appropriate;

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance (12VAC30-10);

12. Individuals whose health care needs cannot be met in the specific assisted living facility as determined by the facility.

G. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's treatment plan.

H. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

I. At the request of the resident, care for the conditions or care needs specified in subdivisions F 3 and F 7 of this section may be provided to a resident in an assisted living facility by a physician licensed in Virginia, a nurse licensed in Virginia under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident. This standard does not apply to recipients of auxiliary grants.

J. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

K. Notwithstanding §63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident.

L. A person shall have a physical examination by an independent physician, including screening for tuberculosis, within 30 days prior to the date of admission. The report of such examination shall be on file at the assisted living facility and shall contain the following:

1. The date of the physical examination;

2. Height, weight, and blood pressure;

3. Significant medical history;

4. General physical condition, including a systems review as is medically indicated;

5. Any diagnosis or significant problems;

6. Any allergies;

7. Any recommendations for care including medication, diet and therapy;

8. The type or types of tests for tuberculosis used and the results. This information shall include the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination as deemed appropriate by a physician to rule out tuberculosis in a communicable form. Documentation is required that includes the information contained on the form recommended by the Virginia Department of Health;

9. A statement that the individual does not have any of the conditions or care needs prohibited by subsection F of this section;

10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory; and

11. Each report shall be signed by the examining clinician.

NOTE: See 22VAC40-71-10, definition of "licensed health care professional" for clarification regarding "physician."

M. When a person is accepted for respite care or on an intermittent basis, the physical examination report shall be valid for six months.

N. Subsequent tuberculosis evaluations.

1. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

2. Any resident who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

3. If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

O. The department, at any time, may request a report of a current psychiatric or physical examination, giving the diagnoses or evaluation or both, for the purpose of determining whether the resident's needs may continue to be met in an assisted living facility. When requested, this report shall be in the form specified by the department.

P. Mental health assessment.

1. If there are observed behaviors or patterns of behavior indicative of mental illness, mental retardation, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified mental health professional. The evaluation shall include an assessment of the person's psychological, behavioral, and emotional functioning. Conditions for which an evaluation is required include, but are not limited to:

a. One or more acts of aggression against self, others, or property, that resulted in the resident being hospitalized, jailed, forced to leave a residence, or retained by the facility but managed using emergency measures;

b. Alcohol or drug abuse;

c. Noncompliant with psychotropic medications to the extent that intervention by a qualified mental health professional was required to prevent or reduce the risk of decompensation;

d. Disturbance in thinking, reasoning, and judgment that placed the resident or others at risk for harm;

e. Bizarre or maladaptive behavior such as reacting to irrational beliefs, visual or auditory hallucinations or engaging in behaviors such as pacing, rocking, mumbling to self, speaking incoherently, avoiding social interactions;

f. Significant dysfunction in two or more of the following areas: interpersonal communication, problem-solving, personal care, independent living, education, vocation, leisure, community awareness, self-direction, and self-preservation;

g. Any other condition for which an assessment is recommended by the administrator, a case manager or other assessor.

2. The administrator or designated staff member shall ensure that an assessment of a person's psychological, behavioral, and emotional functioning is or has been conducted by a qualified mental health professional when at least one of the behaviors or conditions noted in subdivision 1 of this section has occurred within the past six months. The sources of such information regarding behaviors or conditions may include, but are not limited to, the uniform assessment instrument, family members, the referring agency, or a facility staff person.

3. The administrator shall ensure that the evaluation or assessment required by subdivisions 1 and 2 of this subsection meets the following criteria:

a. If required for the purpose of making an admission decision, the assessment is not more than three months old;

b. The assessment covers at least the following areas of the person's current functioning and functioning for the six months prior to the date of the assessment:

(1) Cognitive functions;

(2) Thought and perception;

(3) Mood/affect;

(4) Behavior/psychomotor;

(5) Speech/language;

(6) Appearance;

(7) Alcohol and drug dependence/abuse;

(8) Medication compliance; and

(9) Psychosocial functioning.

c. The assessment is completed by a qualified mental health professional having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.

d. A copy of the assessment, if the person is admitted or is a current resident, is filed in the resident's record.

4. If the evaluation or assessment indicates a need for mental health, mental retardation, substance abuse, or behavioral disorder services, the facility shall provide:

a. A notification of the resident’s need for such services to the authorized contact person of record when available; and

b. A notification of the resident’s need for such services to the community services board or behavioral health authority that serves the city or county in which the facility is located, or other appropriate licensed provider.

5. As part of the process for determining appropriateness of admission, when a person with a mental health disability is referred by a state or private hospital, community services board, behavioral health authority, or long-term care facility, collateral information and supporting documentation, e.g. progress notes, shall be collected on the person’s psychological, behavioral, and emotional functioning. In the case where

the person is coming from a private residence, only collateral information shall be required and may be gathered from an interview with someone involved in the primary care of the person.

a. The collateral information and supporting documentation shall cover a period of not less than six months of the person's care or treatment at the referring facility, or if the person's stay at the facility is less than six months, then the collateral information and documentation shall cover the person's entire stay.

b. The administrator shall document that the collateral information and supporting document were reviewed and used to help determine the appropriateness of the person's admission.

c. The administrator shall ensure that a copy of collateral information and supporting documentation, if the person is admitted, is filed in the resident's record.

NOTE: When applicable, see 22 VAC 40-71-485 regarding high risk behavior.

~~P~~ Q. An assisted living facility shall only admit or retain residents as permitted by its use group classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report; and

2. Information contained in the most recent UAI.

~~Q~~ R. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or an independent physician or a Virginia adult protective services worker for private pay individuals.

~~R~~ S. When an emergency placement occurs, the person shall remain in the assisted living facility no longer than seven working days unless all the requirements for admission have been met and the person has been admitted.

~~S~~ T. Prior to or at the time of admission to an assisted living facility, the following personal and social data on a person shall be maintained in the individual's record:

1. Name;

2. Last home address, and address from which resident was received, if different;

3. Date of admission;

4. Social security number;

5. Birthdate (if unknown, estimated age);

6. Birthplace, if known;

7. Marital status, if known;

8. Name, address and telephone number of personal representative, or other person responsible;

9. Name, address and telephone number of next of kin, if known (two preferred);

10. Name, address and telephone number of personal physician, if known;

11. Name, address and telephone number of personal dentist, if known;

12. Name, address and telephone number of clergyman and place of worship, if applicable;

13. Name, address and telephone number of local department of social services or any other agency, if applicable, and the name of the case manager or caseworker;

14. Service in the Armed Forces, if applicable;

15. Special interests and hobbies; and

16. Information concerning advance directives, if applicable.

NOTE: For assisted living care facilities, 22VAC40-71-640 also applies.

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

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

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

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

c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;

d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

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

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

3. Acknowledgment that the resident has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.

4. Acknowledgment that the resident has been informed of the policy required by 22VAC40-71-490 J regarding weapons.

5. Those actions, circumstances, or conditions which would result or might result in the resident's discharge from the facility.

6. Acknowledgment that the resident has reviewed a copy of §63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.

7. Acknowledgment that the resident or his personal representative has reviewed and had explained to him the facility's policies and procedures for implementing §63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

8. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer, if the facility has such a policy.

~~U~~ V. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and any personal representative and shall be retained in the resident's record.

~~V~~ W. A new agreement shall be signed or the original agreement shall be updated and signed by the licensee or administrator when there are changes in financial arrangements, services, or requirements governing the resident's conduct. If the original agreement provides for specific changes in financial arrangements, services, or requirements, this standard does not apply.

~~W~~ X. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

~~X~~ Y. An assisted living facility shall establish a process to ensure that any resident temporarily detained in an inpatient facility pursuant to §37.1-67.1 of the Code of Virginia is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to §37.1-67.3 of the Code of Virginia.

~~Y~~ Z. If an assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.

22VAC40-71-400. Administration of medications and related services.

A. Medication management plan and reference materials.

1. The facility shall have, and keep current, a written plan for medication management. The facility’s medication plan shall address procedures for administering medication and shall include:

a. Methods to ensure an understanding of the responsibilities associated with medication management;

b. Standard operating procedures and any general restrictions specific to the facility;

c. Methods to prevent the use of outdated, damaged or contaminated medications;

d. Methods to maintain an adequate supply of medication;

e. Methods for verifying that medication orders have been accurately transcribed to Medication Administration Records (MARs);

f. Methods for monitoring medication administration and the effective use of the MARs for documentation;

g. Methods to ensure that employees who are responsible for administering medications meet the qualification and training requirements of this section;

h. Methods to ensure that employees who are responsible for administering medications are adequately supervised;

i. A plan for proper disposal of medication;

j. Identification of the employee responsible for routinely communicating the effectiveness of prescribed medications and any adverse reactions or suspected side effects to the prescribing physician.

2. The facility’s written medication management plan and any subsequent changes shall be approved by the department.

3. The administrator of a facility licensed for residential living only shall monitor, at least quarterly, conformance to the facility’s medication management plan and the

maintenance of required medication material, and shall document and resolve any concerns.

3. In addition to the facility's written medication management plan, the facility shall maintain, as reference materials for medication aides, a current copy of "A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act," approved by the Virginia Board of Nursing, and at least one pharmacy reference book, drug guide or medication handbook for nurses that is no more than two years old. Other information shall also be maintained to assist with safe administration of medication, such as pharmacy information sheets, product information from drug packages, or printed information from prescribing physicians.

~~A~~ B. No medication, diet, medical procedure or treatment shall be started, changed or discontinued by the facility without an order by the physician. The resident's record shall contain such written order or a dated notation of the physician's verbal order. Verbal orders shall be reviewed and signed by a physician within 10 working days.

NOTE: Medications include prescription, over-the counter and sample medications.

C. Whenever a resident is admitted to a hospital for treatment of any condition, the facility shall obtain new orders from a physician for all medications and treatments prior to or at the time of the resident's return to the facility. The facility shall ensure that the primary physician, if not the prescribing physician, is aware of all new medication orders.

D. Physician orders, both written and oral, for administration of all prescription and over-the-counter medications and dietary supplements shall include the name of the resident,

the date of the order, the name of the drug, route, dosage, strength, how often medication is to be given, and identify the diagnosis, condition, or specific indications for administering each drug.

E. Physician's oral orders shall be charted by the individual who takes the order. That individual must be a licensed health care professional acting within the scope of his profession or an individual who has successfully completed the medication training program developed by the department and approved by the Board of Nursing.

~~B~~ F. A medicine cabinet, container or compartment shall be used for storage of medications prescribed for residents when such medications are administered by the facility.

1. The storage area shall be locked.

2. Controlled substances must be kept under a double lock, e.g., a locked cabinet within a locked storage area or a locked container within a locked cabinet.

3. The individual responsible for medication administration shall keep the keys to the storage area on his person.

~~2~~ 4. When in use, adequate illumination shall be provided in order to read container labels, but the storage area shall remain darkened when closed.

~~3~~ 5. The storage area shall not be located in the kitchen or bathroom, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.

6. When required, medications shall be refrigerated.

a. It is permissible to store dietary supplements and foods and liquids used for medication administration in a refrigerator that is dedicated to medication storage, if the refrigerator is in a locked storage area.

b. When it is necessary to store medications in a refrigerator that is routinely used for food storage, the medications shall be stored together in a locked container in a clearly defined area.

~~C~~ G. A resident may be permitted to keep his own medication in a secure place in his room if the UAI has indicated that the resident is capable of self-administering medication. This does not prohibit the facility from storing or administering all medication provided the provisions of subsection ~~D~~ H of this section are met.

~~D~~ H. Administration of medication.

1. Drugs shall be administered to those residents who are dependent in medication administration as documented on the UAI~~, provided subdivisions 2 and 3 of this subsection are met~~.

2. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

3. All medications shall be removed from the pharmacy container by an authorized person and administered by the same authorized person ~~within two hours~~. Pre-pouring is not permitted.

4. All medications shall be administered in accordance with the physician's instructions

and consistent with the standards of practice outlined in the current “A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act,” approved by the Virginia Board of Nursing.

5. All medications shall remain in the pharmacy issued container, with the legible prescription label or direction label attached, until administered

6. Sample medications shall remain in the original packaging, labeled by a physician or pharmacist with the resident’s name, the name of the medication, the strength, dosage, route and frequency of administration, until administered.

7. Over-the counter medication shall remain in the original container, labeled with the resident’s name, or in a pharmacy-issued container if unit dose packaging is used, until administered.

I. All medication aides shall successfully complete annual in-service training provided by a licensed health care professional, acting within the scope of the requirements of his profession, on side effects of the medications prescribed to the residents in care and on recognizing and reporting adverse medication reactions.

J. A medication aide who completed a medication training program approved by the Board of Nursing or a department developed refresher course more than three years prior to the effective date of these standards shall successfully complete within a year from the effective date of these standards the most current refresher course developed by the department.

~~E~~ K. In the event of an adverse drug reaction or a medication error, first aid shall be administered as directed by the Virginia Poison Control Center, pharmacist, or

physician. The resident's physician shall be notified as soon as possible and the actions taken by the staff person shall be documented.

~~F~~ L. The facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications. ~~This documentation~~ The MAR shall include:

1. Name of the resident;

2. Date prescribed;

3. Drug product name;

4. Dosage;

5. Strength of the drug;

6. Route (for example, by mouth);

7. How often medication is to be taken;

8. Diagnosis, condition, or specific indications for administering the drug or supplement;

~~8~~ 9. Date and time given and initials of staff administering the medication;

~~9~~ 10. Dates the medication is discontinued or changed;

~~10~~ 11. Any medication errors or omissions;

~~11~~ 12. Significant adverse effects; ~~and~~

13. For PRN medications:

a. Symptoms for which medication was given;

b. Exact dosage given; and

c. Effectiveness; and

~~12~~ 14. The name and initials of all staff administering medications.

~~G~~ M. The facility shall have a plan for proper disposal of medications.

~~H~~ N. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;

2. Licensed health care professionals are responsible for medication management; or

3. The resident's physician has provided detailed written instructions or facility staff have telephoned the doctor prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration. The physician's instructions shall include symptoms that might indicate the use of the medication, exact dosage, the exact timeframes the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

O. Medications ordered for PRN administration shall be available, properly labeled and properly stored at the facility.

P. An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. A stat-drug box may be used in those facilities in which only those persons licensed to administer are administering drugs and shall be subject to the conditions specified in 18 VAC 110-20-550 of the Regulations of the Virginia Board of Pharmacy.

NOTE: Stat-drug boxes may not be used in facilities in which medication aides administer medications. Medication aides hold a certificate, but are not licensed.

Q. For each resident assessed for residential living care, except for those who self-administer all of their medications, a licensed health care professional, acting within the scope of the requirements of his profession, shall perform an annual review of all the medications of the resident.

1. The medication review shall include both prescription and over-the-counter medications and supplements.

2. If deemed appropriate by the licensed health care professional, the review shall include observation of or interview with the resident.

3. The review shall include, but not be limited, to the following:

a. All medications that the resident is taking and medications that he could be taking if needed (PRNs).

b. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.

c. Documentation of actual and consideration of potential interactions of drugs with one another.

d. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

e. Documentation of actual and consideration of potential negative affects of drugs resulting from a resident’s medical condition other than the one the drug is treating.

f. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

g. Consideration of whether the resident needs additional monitoring or testing.

h. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

i. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

4. Any concerns or problems or potential problems shall be reported to the resident's attending physician and to the facility administrator.

5. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. The health care professional shall also document any reports made as required in subsection 4 of this subsection. Action taken in response to the report shall also be documented. The documentation required by this subsection shall be retained in the resident's record.

~~I~~ R. When oxygen therapy is provided, the following safety precautions shall be met and maintained:

1. The facility shall post "No Smoking-Oxygen in Use" signs and enforce the smoking prohibition in any room of a building where oxygen is in use.

2. The facility shall ensure that only oxygen from a portable source shall be used by residents when they are outside their rooms. The use of long plastic tether lines to the main source of oxygen is not permitted.

3. The facility shall make available to staff the emergency numbers to contact the resident's physician and the oxygen vendor for emergency service or replacement.

~~J~~ S. The performance of all medical procedures and treatments ordered by a physician shall be documented and the documentation shall be retained in the residents' record.

22 VAC 40-72-485. Intervention for high risk behavior.

A. At any time that facility staff observe that the resident is exhibiting or verbalizing an intent to engage in high risk behavior, and it is:

1. Believed that a crisis situation has occurred as a result of the person’s behaviors or thinking that has caused harm or presents the potential to cause harm to the person or others, the administrator shall ensure that the local community services board (CSB) is immediately contacted to request an evaluation for emergency intervention services; or

2. Believed that the person’s behaviors or thinking may not rise to the level that would require professional emergency intervention, the administrator shall ensure that the responsible mental health professional is contacted regarding the concerns with the person’s behaviors or thinking within 24 hours of observation.

a. If there is no one currently responsible for the treatment of the person exhibiting the mental health disturbance, a referral shall be made within 24 hours of observing the disturbance to the local CSB, or to a qualified mental health professional of the resident’s choice, to determine whether there is a need for mental health services.

b. The facility shall document the referral made to the CSB or other mental health agency and note the availability and date that services can be rendered.

B. Following the initial notification of the CSB or other qualified mental health professional, the facility and the mental health treatment provider shall decide on the need for an intervention plan that shall be designed for and implemented by the facility. If there is a need for an intervention plan, the plan shall:

1. Include a behavioral management tracking form that:

a. Is developed, in consultation with the facility, by a qualified mental health treatment provider and when possible, in consultation with the resident or his legal representative.

b. Incorporates, at a minimum, the following information:

(1) Target or problem behaviors identified;

(2) Identified triggers, motivators, behaviors or conditions associated with target behaviors, including medication side effects;

(3) Interventions prescribed by mental health professionals or a facility supervisor to be employed by direct care staff;

(4) Dates and times behaviors were last observed;

(5) Impact of interventions on behaviors, or if prescribed interventions were not used, an explanation of the reason;

(6) General description of, and detailed when possible, any subsequent actions that must be considered by the facility following a negative outcome of the prescribed interventions;

(7) General description of, and detailed when possible, any subsequent actions that must be considered by the mental health treatment provider based on the presentation of the problems by the facility;

(8) Consideration of the need for an updated mental health evaluation.

c. Is maintained at the facility with:

(1) The original being filed in the record with the ISP for each resident.

NOTE: Should the tracking forms exceed five, the facility may choose to maintain the five most recent forms in the resident's current record and all others in an overflow record maintained for each resident.

(2) A duplicate copy being filed for each resident, in an identifiable binder to permit timely access to information by facility employees so that it might be used to help manage or prevent problem behaviors from escalating or recurring.

2. Be referenced in the ISP;

3. Be reviewed and incorporated, to include information obtained from the behavioral management tracking form, in the written progress report required by 22 VAC 40-72-500 D 4.

C. The facility shall have procedures in place to ensure that direct care staff members who have direct care responsibilities for residents with high risk behaviors are:

1. Provided training on monitoring (such as when using the behavioral management tracking form) and intervening when high risk behaviors are exhibited;

2. Kept informed of the status of high risk behaviors exhibited by residents;

D. The facility shall not implement a restrictive behavioral management plan, which limits or prevents a person from freely exercising targeted rights or privileges, unless:

1. The resident or legal representative has been informed of the need and description of the plan,

2. The plan is approved and supervised by a qualified mental health professional with no financial interest in the facility.

Part VI.

Additional Requirements for Facilities Licensed for Assisted Living Care

22VAC40-71-630. Personnel and staffing.

A. The administrator shall be a high school graduate or shall have a General Education Development Certificate (GED) and shall have successfully completed at least two years of post secondary education or one year of courses in human services or group care administration from an accredited college or institution or a department approved curriculum specific to the administration of an assisted living facility. The administrator also shall have completed at least one year of experience in caring for adults with mental or physical impairments, as appropriate to the population in care, in a group care facility. The following three exceptions apply:

1. Administrators employed prior to February 1, 1996, who do not meet the above requirement shall be a high school graduate or shall have a GED, or shall have completed at least one full year of successful experience in caring for adults in a group care facility;

2. Licensed nursing home administrators who maintain a current license from the Virginia Department of Health Professions;

3. Licensed nurses who meet the above experience requirements. The requirements in this standard are in lieu of the requirements specified in 22VAC40-71-60 B 4.

B. Any designated assistant administrator as referenced in 22VAC40-71-60 H, that is acting in place of the administrator for part or all of the 40 hours, shall meet the qualifications of the administrator, or if employed prior to the effective date of these standards, its exception, unless the designated assistant is performing as an administrator for fewer than 15 of the 40 hours referenced in 22VAC40-71-60 H or for fewer than four weeks due to the vacation or illness of the administrator, then the requirements of 22VAC40-71-60 B 4 shall be acceptable.

C. All direct care staff shall have satisfactorily completed, or within 30 days of employment shall enroll in and successfully complete within ~~four~~ two months of employment, a training program consistent with department requirements, except as noted in subsections D and E of this section. Department requirements shall be met in one of the following ~~four~~ five ways:

1. Registration in Virginia as a certified nurse aide.

2. Graduation from a Virginia Board of Nursing approved educational curriculum from a Virginia Board of Nursing accredited institution for nursing assistant, geriatric assistant or home health aide.

3. Graduation from a personal care aide training program approved by the Virginia Department of Medical Assistance Services.

~~3~~ 4. Graduation from a department approved educational curriculum for nursing assistant, geriatric assistant or home health aide. The curriculum is provided by a

hospital, nursing facility, or educational institution not approved by the Virginia Board of Nursing, e.g., out-of-state curriculum. To obtain department approval:

a. The facility shall provide to the licensing representative an outline of the course content, dates and hours of instruction received, the name of the institution which provided the training, and other pertinent information.

b. The department will make a determination based on the above information and provide written confirmation to the facility when the course meets department requirements.

~~4~~ 5. Successful completion of the department approved ~~assisted living facility offered~~ forty-hour direct care staff training provided by a licensed health care professional acting within the scope of the requirements of his profession. ~~To obtain department approval:~~

~~a. Prior to offering the course, the facility shall provide to the licensing representative an outline of the course content, the number of hours of instruction to be given, the name and professional status of the trainer, and other pertinent information.~~

~~b. The content of the training shall be consistent with the content of the personal care aide training course of the Department of Medical Assistance Services; a copy of the outline for this course is available from the licensing representative.~~

~~c. The training shall be provided by a licensed health care professional acting within the scope of the requirements of his profession.~~

~~d. The department will make a determination regarding approval of the training and provide written confirmation to the facility when the training meets department requirements.~~

D. Licensed health care professionals, acting within the scope of the requirements of their profession, are not required to complete the training in subsection C of this section.

E. Direct care staff of the facility employed prior to February 1, 1996, shall either meet the training requirements in subsection C of this section within one year of February 1, 1996, or demonstrate competency in the items listed on a skills checklist within the same time period. The following applies to the skills checklist:

1. The checklist shall include the content areas covered in the personal care aide training course. A department model checklist is available from the licensing representative.

2. A licensed health care professional, acting within the scope of the requirements of his profession, shall evaluate the competency of the staff person in each item on the checklist, document competency, and sign and date.

F. In respect to the requirements of subsection C of this section, the facility shall obtain a copy of the certificate issued to the certified nurse aide, the nursing assistant, geriatric assistant or home health aide, personal care aide, or documentation indicating ~~assisted living facility offered~~ the department-approved forty-hour direct care staff training has been successfully completed. The copy of the certificate or the appropriate documentation shall be retained in the staff member's file. ~~Written confirmation of~~

~~department course or training approval shall also be retained in the staff member's file, as appropriate.~~

G. When direct care staff are employed who have not yet successfully completed the training program as allowed for in subsection C of this section, the administrator shall develop and implement a written plan for supervision of these individuals.

H. On an annual basis, all direct care staff shall attend at least ~~12~~ 16 hours of training, which shall begin not later than 60 days after employment, and which focuses on the resident who is mentally or physically impaired, as appropriate to the population in care. This requirement is in lieu of the requirement specified in 22VAC40-71-80 ~~D~~ E.

Exception: Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.

I. Documentation of the dates of the training received annually, number of hours and type of training shall be kept by the facility in a manner that allows for identification by individual employee.

J. Each assisted living facility shall retain a licensed health care professional, either by direct employment or on a contractual basis, to provide health care oversight. The licensed health care professional, acting within the scope of the requirements of his profession, shall be on-site at least quarterly and more often if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition. The responsibilities of the professional while on site shall include at least quarterly:

1. Recommending in writing changes to a resident's service plan whenever the plan does not appropriately address the current health care needs of the resident.

2. Monitoring of direct care staff performance of health-related activities, including the identification of any significant gaps in the staff person's ability to function competently.

3. Advising the administrator of the need for staff training in health-related activities or the need for other actions when appropriate to eliminate problems in competency level.

4. Providing consultation and technical assistance to staff as needed.

5. Directly observing every resident whose care needs are equivalent to the intensive assisted living criteria and recommending in writing any needed changes in the care provided or in the resident's service plan. For auxiliary grant recipients receiving intensive assisted living services, the monitoring will be in accordance with the specifications of the Department of Medical Assistance Services.

6. Reviewing documentation regarding health care services, including medication and treatment records to assess that services are being provided in accordance with physicians' orders, and informing the administrator of any problems.

7. Monitoring of conformance to the facility’s medication management plan and the maintenance of required medication reference materials, and advising the administrator of any concerns.

~~7~~ 8. Reviewing the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination, and advising the administrator of any concerns.

K. A resident's need for skilled nursing treatments within the facility shall be met by facility employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

22VAC40-71-650. Resident care and related services.

A. There shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day. The activities shall be designed to meet the specialized needs of the residents and to promote maximum functioning in physical, mental, emotional, and social spheres. This requirement is in lieu of the requirement specified in 22VAC40-71-260 A.

B. Facilities shall assure that all restorative care and habilitative service needs of the residents are met. Staff who are responsible for planning and meeting the needs shall have been trained in restorative and habilitative care. Restorative and habilitative care includes, but is not limited to, range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

C. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations permitted by physicians' orders.

2. Encouraging residents to achieve independence in the activities of daily living.

3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in activities.

4. Assisting residents to carry out prescribed physical therapy exercises between visits from the physical therapist.

5. Maintaining a bowel and bladder training program.

D. Facilities shall assure that the results of the restorative and habilitative care are documented in the service plan.

E. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be indicated to evaluate the appropriateness and individual response to the use of assistive technology.

F. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

G. The physician's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

H. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

I. A licensed health care professional, acting within the scope of the requirements of his profession, shall perform ~~an annual~~ a review every six months of all the medications of each resident~~, including both prescription and over-the-counter medications. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. Any potential problems shall be reported to the resident's attending physician and to the facility administrator. Action taken in response to the report shall also be documented in the resident's record.~~

1. The medication review shall include both prescription and over-the-counter medications and supplements.

2. If deemed appropriate by the licensed health care professional, the review shall include observation of or interview with the resident.

3. The review shall include, but not be limited, to the following:

a. All medications that the resident is taking and medications that he could be taking if needed (PRNs).

b. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.

c. Documentation of actual and consideration of potential interactions of drugs with one another.

d. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

e. Documentation of actual and consideration of potential negative affects of drugs resulting from a resident’s medical condition other than the one the drug is treating.

f. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

g. Consideration of whether the resident needs additional monitoring or testing.

h. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

i. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

4. Any concerns or problems or potential problems shall be reported to the resident's attending physician and to the facility administrator.

5. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. The health care professional shall also document any reports made as required in subdivision 4 of this subsection. Action taken in response to the report shall also be documented. The documentation required by this subsection shall be retained in the resident's record.

~~22VAC40-71-660. Psychiatric or psychological evaluation.~~

~~A. When determining the appropriateness of admission for applicants with serious mental illness, mental retardation or a history of substance abuse, a current psychiatric or psychological evaluation may be needed. The need for this evaluation will be indicated by the UAI or based upon the recommendation of the resident's case manager or other assessor.~~

~~B. A current evaluation for an applicant with mental illness or a history of substance abuse shall be no more than 12 months old, unless the case manager or other assessor recommends a more recent evaluation.~~

~~C. A current evaluation for a person with mental retardation shall be no more than three years old, unless the case manager or other assessor recommends a more recent evaluation.~~

~~D. The evaluation shall have been completed by a person having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.~~

~~E. A copy of the evaluation shall be filed in the resident's record.~~

22VAC40-71-670. Services agreement and coordination.

A. The facility shall enter into a written agreement with the local community mental health, mental retardation and substance abuse services board, or a public or private mental health clinic, treatment facility or agent to make services available to all residents. This agreement shall be jointly reviewed annually by the assisted living facility and the service entity.

NOTE: This requirement does not preclude a resident from engaging the services of a private psychiatrist or other appropriate professional.

B. Services to be included in the agreement shall at least be the following:

1. Diagnostic, evaluation and referral services in order to identify and meet the needs of the resident;

2. Appropriate community-based mental health, mental retardation and substance abuse services;

3. Services and support to meet emergency mental health needs of a resident; and

4. Completion of written progress reports specified in 22VAC40-71-680.

C. A copy of the agreement specified in subsections A and B of this section shall remain on file in the assisted living facility.

D. For each resident the services of the local community mental health, mental retardation and substance abuse services board, or a public or private mental health clinic, rehabilitative services agency, treatment facility or agent shall be secured as appropriate based on the resident's current evaluation.

E. If the facility is unsuccessful in obtaining the recommended services, it must document:

1. Whether it can continue to meet all other needs of the resident.

2. How it plans to ensure that the failure to obtain the recommended services will not compromise the health, safety, or rights of the resident and others who come in contact with the resident.

3.The offices, agencies and individuals who were contacted and explanation of outcomes.

4. Details of additional steps the facility will take to find alternative services to meet the resident's needs.

22VAC40-71-700. Adults with serious cognitive impairments.

A. All residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare shall be subject to either subsection B or C of this section. All residents with serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to subsection B of this section.

NOTE: Serious cognitive impairment is defined in 22VAC40-71-10.

B. The following requirements apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit as provided for in subsection C of this section; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The following requirements also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by subsection C of this section, these requirements apply to the entire facility unless specified otherwise.

STANDARDS AND REGULATIONS FOR LICENSED ASSISTED LIVING FACILITIES

1. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents.

~~NOTE: The exception to 22VAC40-71-130 C does not apply.~~

2. During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

3. Commencing immediately upon employment and within six months, direct care staff shall attend four hours of training in cognitive impairment that meets the requirements of subdivision 5 of this subsection. This training is counted toward meeting the annual training requirement for the first year. Previous training that meets the requirements of subdivision 5 of this subsection and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

4. Commencing immediately upon employment and within three months, the administrator shall attend 12 hours of training in cognitive impairment. This training is counted toward the annual training requirement for the first year. Previous training that meets the requirements of subdivision 5 of this subsection and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required 12 hours but not toward the annual training requirement.

5. Curriculum for the training in cognitive impairment shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care and shall include, but need not be limited to:

a. Explanation of cognitive impairments;

b. Resident care techniques;

c. Behavior management;

d. Communication skills;

e. Activity planning; and

f. Safety considerations.

6. Within the first month of employment, employees other than the administrator and direct care staff shall complete one hour of orientation on the nature and needs of residents with cognitive impairments relevant to the population in care.

7. Doors leading to the outside shall have a system of security monitoring of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare, such as door alarms, cameras, and constant staff oversight, security bracelets that are part of an alarm system, or delayed egress mechanisms. Residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and an inability to recognize danger or protect his own safety and welfare.

8. The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare are outside.

9. There shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare and on windows in common areas accessible to these residents to prevent the windows from being opened wide enough for a resident to crawl through.

10. The facility shall provide to residents free access to an indoor walking corridor or other area that may be used for walking.

11. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare. Examples of environmental precautions include signs, carpet patterns and arrows that point the way; and reduction of background noise.

12. When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment who cannot recognize danger or protect his own safety and welfare, these materials or objects shall be inaccessible to the resident except under staff supervision.

EXCEPTION: This subsection does not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments, when the residents cannot recognize danger or protect their own safety and welfare.

Each prospective resident or his personal representative shall be so notified prior to admission.

C. In order to be admitted or retained in a safe, secure environment as defined in 22VAC40-71-10, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare. The following requirements apply when such residents reside in a safe, secure environment. These requirements apply only to the safe, secure environment.

1. Prior to his admission to a safe, secure environment, the resident shall have been assessed by an independent clinical psychologist licensed to practice in the Commonwealth or by an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare. The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments, e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry. The physician's assessment shall be in writing and shall be maintained in the resident's record. The assessment shall include, but not be limited to, the following areas:

a. Cognitive functions, e.g., orientation, comprehension, problem-solving, attention/concentration, memory, intelligence, abstract reasoning, judgment, insight;

b. Thought and perception, e.g., process, content;

c. Mood/affect;

d. Behavior/psychomotor;

e. Speech/language; and

f. Appearance.

2. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, the facility shall obtain the written approval of one of the following persons, in the following order of priority:

a. The resident, if capable of making an informed decision;

b. A guardian or legal representative for the resident if one has been appointed;

c. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order, (i) spouse; (ii) adult child; (iii) parent; (iv) adult sibling; (v) adult grandchild; (vi) adult niece or nephew; (vii) aunt or uncle;

d. If the resident is not capable of making an informed decision and a guardian, legal representative or relative is unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

The obtained written approval shall be retained in the resident's file.

NOTE: As soon as one of the persons in the order as prioritized above disapproves of placement or retention in the safe, secure environment, then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit. If the resident is not to be retained in the unit, the discharge requirements specified in 22VAC40-71-160 apply.

3. The facility shall document that the order of priority specified in subdivision 2 of this subsection was followed and the documentation shall be retained in the resident's file.

4. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee/administrator or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

5. Six months after the completion of the initial uniform assessment instrument and thereafter at the time of completion of each subsequent uniform assessment instrument as required in 22VAC40-71-170, the licensee/administrator or designee shall perform a review of the appropriateness of each resident's continued residence in the special care unit. The licensee/administrator or designee shall also perform a review of the appropriateness of continued residence in the unit whenever warranted by a change in a resident's condition. The review shall be performed in consultation with the following persons, as appropriate: (i) the resident, (ii) a responsible family member, (iii) a guardian, (iv) a personal representative, (v) direct care staff who provide care and supervision to the resident, (vi) the resident's mental health provider, (vii) the licensed health care professional required in 22VAC40-71-630 J, (viii) the resident's physician, and (ix) any other professional involved with the resident. The licensee/administrator or designee shall make a determination as to whether continued residence in the special care unit is appropriate at the time of each review required by this subdivision. The

determination and justification for the decision shall be in writing and shall be retained in the resident's file.

6. Each week a variety of scheduled activities shall be available that shall include, but not necessarily be limited to, the following categories:

a. Cognitive/mental stimulation/creative activities, e.g., discussion groups, reading, reminiscing, story telling, writing;

b. Physical activities (both gross and fine motor skills), e.g., exercise, dancing, gardening, cooking;

c. Productive/work activities, e.g., practicing life skills, setting the table, making decorations, folding clothes;

d. Social activities, e.g., games, music, arts and crafts;

e. Sensory activities, e.g., auditory, visual, scent and tactile stimulation; and

f. Outdoor activities, weather permitting; e.g., walking outdoors, field trips.

NOTE: Several of the examples listed above may fall under more than one category.

NOTE: These activities do not require additional hours beyond those specified in 22VAC40-71-650 A.

7. If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

8. Staff shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

9. In addition to the scheduled activities required by 22VAC40-71-650 A, there shall be unscheduled staff and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

10. Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

11. As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

12. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on-site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

a. Be a qualified therapeutic recreation specialist or an activities professional;

b. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;

c. Have one year full-time work experience, within the last five years, in an activities program in an adult care setting;

d. Be a qualified occupational therapist or an occupational therapy assistant; or

e. Prior to or within six months of employment, have successfully completed 40 hours of department approved training in adult group activities and in recognizing and assessing the activity needs of residents.

NOTE: The required 20 hours on-site does not have to be devoted solely to managing or coordinating activities, neither is it required that the person responsible for managing or coordinating the activities program conduct the activities.

13. The facility shall obtain documentation of the qualifications as specified in subdivision 12 of this subsection for the designated employee responsible for managing or coordinating the structured activities program. The documentation shall be retained in the staff member's file. Written confirmation of department approval of training provided for in subdivision 12 e of this subsection shall also be retained in the staff member's file, as appropriate.

14. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each special care unit who shall be responsible for the care and supervision of the residents.

EXCEPTION: Only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit, and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that supervision necessary to ensure the health, safety and welfare of residents throughout the building is not compromised.

~~NOTE: The exception to 22VAC40-71-130 C does not apply.~~

15. During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to residents.

16. Commencing immediately upon employment and within two months, the administrator and direct care staff shall attend at least four hours of training in cognitive impairments due to dementia. This training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

a. Information about the cognitive impairment, including areas such as cause, progression, behaviors, management of the condition;

b. Communicating with the resident;

c. Managing dysfunctional behavior; and

d. Identifying and alleviating safety risks to residents with cognitive impairment.

Previous training that meets the requirements of this subdivision and subdivisions 18 and 19 of this subsection that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

NOTE: In this subdivision, for direct care staff, employment means employment in the safe, secure environment.

17. Within the first year of employment, the administrator and direct care staff shall attend at least six more hours of training, in addition to that required in subdivision 16 of this subsection, in caring for residents with cognitive impairments due to dementia. The training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

a. Assessing resident needs and capabilities and understanding and implementing service plans;

b. Resident care techniques for persons with physical, cognitive, behavioral and social disabilities;

c. Creating a therapeutic environment;

d. Promoting resident dignity, independence, individuality, privacy and choice;

e. Communicating with families and other persons interested in the resident;

f. Planning and facilitating activities appropriate for each resident;

g. Common behavioral problems and behavior management techniques.

Previous training that meets the requirements of this subdivision and subdivisions 18 and 19 of this subsection that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required six hours but not toward the annual training requirement.

NOTE: In this subdivision, for direct care staff, employment means employment in the safe, secure environment.

18. The training required in subdivisions 16 and 17 of this subsection shall be developed by:

a. A licensed health care professional acting within the scope of the requirements of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or

b. A person who has been approved by the department to develop the training.

19. The training required in subdivisions 16 and 17 of this subsection shall be provided by a person qualified under subdivision 18 a of this subsection or a person who has been approved by the department to provide the training.

~~20. During the first year of employment, direct care staff shall attend at least 16 hours of training. Thereafter, the annual training requirement specified in 22VAC40-71-630 H applies.~~

~~21~~ 20. Within the first month of employment, employees, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete one hour of orientation on the nature and needs of residents with cognitive impairments due to dementia.

~~22~~ 21. Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. Residents who reside in safe, secure, environments may be prohibited from exiting the facility or the special care unit, if applicable building and fire codes are met.

~~23~~ 22. There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through.

~~24~~ 23. The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents are outside.

~~25~~ 24. The facility shall provide to residents free access to an indoor walking corridor or other area that may be used for walking.

~~26~~ 25. As of October 9, 2001, buildings approved for construction or change in use group, as referenced in the Virginia Uniform Statewide Building Code, shall have a glazed window area above ground level in at least one of the common rooms, e.g., living room, multipurpose room, dining room. The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

~~27~~ 26. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

~~28~~ 27. When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under staff supervision.

~~29~~ 28. Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity centers, rocking chairs, and visual contrast between plates/eating utensils and the table.

EXCEPTION: A resident's spouse, parent, adult sibling or adult child who otherwise would not meet the criteria to reside in a safe, secure environment may reside in the special care unit if the spouse, parent, sibling or child so requests in writing, the facility agrees in writing and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling or child is considered a resident of the facility and as such 22VAC40-71 applies. The requirements of this subsection do not apply for the spouse, parent, adult sibling or adult child since that individual does not have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare.

I certify that this regulation is full, true, and correctly dated.

_____
Julie Christopher, Chair
State Board of Social Services
August 17, 2005