



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-80
<b>Regulation title</b>	General Procedures and Information for Licensure
<b>Action title</b>	Promulgate emergency regulation as result of changes to the Code of Virginia
<b>Document preparation date</b>	August 17, 2005

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

### Brief summary

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

Two standards are being amended and one new standard added to incorporate the emergency regulations. A few other amendments are being made for clarification and to remove unnecessary detail.

### Legal basis

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

The Code of Virginia gives the State Board of Social Services authority to adopt regulations for its licensed programs. Section 63.2-217 gives broad authority for the Board to adopt regulations as are necessary or desirable to carry out the purpose of Title 63.2. Sections 63.2-1732, 63.2-1733 and 63.2-1734 give the Board authority to adopt and enforce regulations to carry out the provisions of Title 63.2 regarding assisted living facilities, adult day care centers and child welfare agencies respectively.

## Purpose

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

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The regulation is being amended to promulgate a replacement regulation that will expire one year after final adoption of an emergency regulation. Most of the amendments are based on legislation enacted by the 2005 session of the General Assembly that were written specifically to protect the health, safety and welfare of adults and children in licensed facilities. Other amendments will provide the department additional sanctions that can be used if facilities fail to maintain compliance with regulations or law. The greatest impact is on licensed assisted living facilities; however, some amendments affect all licensed programs.

## Substance

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

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22 VAC 40-80-60.

Add a standard that requires a facility to notify the department and return the license to the appropriate licensing office when plans are made to close or sell the facility.

22 VAC 40-80-120.

Add requirements for posting (1) provisional licenses, (2) notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility, (3) a copy of any final order of summary suspension of all or part of an assisted living facility's license, (4) notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 63.2-1709.2 of the Code of Virginia (special orders), and a copy of any special order issued by the department.

Revise the requirement for posting of the most recent violation notice to require posting of the findings of the most recent inspection of the facility.

22 VAC 40-80-340

Amend to add two new administrative sanctions: (1) Requiring an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents; (2) issuing a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in the Code of Virginia in conjunction with any proceedings for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of residents; and (3) assessing a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety and welfare of residents are at risk. The aggregate amount of such civil penalties shall not exceed \$10,000 in any 24-month period.

Add a new standard 22 VAC 40-80-345 to include procedures for issuing a summary order of suspension.

22 VAC 40-80-370  
 Minor changes to A and C for clarification.

22 VAC 40-80-430  
 Amendments made to delete unnecessary and potentially confusing detail.

**Issues**

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

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

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

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Most of the amendments to this regulation will make consumers more aware of violations of standards and laws that threaten the health, safety and welfare of children and adults in licensed facilities, particularly assisted living facilities. The amendments also establish additional administrative sanctions that the department can use if facilities fail to maintain compliance with standards and laws. There are no disadvantages to the public or to the Commonwealth because of this regulation.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>The provision for summary suspension hearings may generate some additional cost for the department in that, when implemented, a hearing will be involved. For each hearing a hearing officer and a court reporter will need to be hired. In 2003, the department conducted six administrative hearings at a cost of approximately \$1670 each. In 2004, the department conducted three administrative hearings at a cost of approximately \$1209 each. Money is budgeted for hearings so there should be no significant increase in costs to the department.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>none</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>All facilities licensed by the Department of Social Services will be affected by this regulation but there should be no significant economic impact.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The biggest impact of the amendments to this regulation will be on the 610 licensed assisted living facilities, but only if they fail to comply with licensing standards and laws.</p>

<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>There should be no additional cost for affected individuals, businesses or other entities.</p>
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**Alternatives**

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

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There are no alternatives to this proposal because it was mandated by the Code of Virginia.

**Public comment**

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

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No comments received

**Family impact**

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

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The amended regulation will have a positive impact on the family. Licensing standards ensure the health, safety and welfare of adults and children who attend or reside in licensed facilities, thereby strengthening the authority and rights of parents and family members in the nurturing and supervision of their children and/or elderly relatives in care. The placement of adults and children in licensed facilities provides an opportunity for parents or family members to concentrate on resolving issues that would lead to self pride, responsibility for oneself, and economic self-sufficiency thereby increasing disposable family income. The current amendments to this regulation also ensure that parents and family members have more information about the operating of licensed facilities in order to make better decisions about the care of their loved ones.

**Detail of changes**

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

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

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Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
(1) 22 VAC 40-80- 120		This standard contains the list of documents that must be posted in a licensed facility.	<p>The amendments include (1) a new requirement for posting the provisional license and, beside it, a notice that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of these violations is available for inspection at the facility or on the facility's website; (2) new requirement that the notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility be posted in a prominent place at each public entrance of the facility; (3) new requirement that any final order of summary suspension of all or part of an assisted living facility's license be posted at each public entrance of the facility or a written statement of where in the facility it can be reviewed; (4) new requirement that notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 63.2-1709.2 (special orders) of the Code of Virginia be posted in a prominent place at each public entrance of the facility; (5) new requirement that a copy of any special order issued by the department be posted in a prominent place at each public entrance of the facility; (6) revised requirement for posting of the most recent violation notice to require posting of the findings of the most recent inspection of the facility.</p> <p>These amendments are intended to ensure that consumers are informed of conditions in licensed facilities, especially assisted living facilities, that threaten the health, safety and welfare of persons in care.</p>
22 VAC 40-80- 340		This standard contains the list of administrative sanctions that the commissioner may impose upon licensed facilities.	The amendments are to: (1) require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents. This action will be an attempt to bring the facility into compliance with all relevant requirements of law, regulation or

<p>(2)</p> <p>22 VAC 40-80-60</p> <p>22 VAC 40-80-370</p>	<p>22 VAC 40-80-345</p>	<p>This standard contains general information about the licensing the licensing process.</p> <p>This standard contains the steps in the appeal process.</p>	<p>any plan of correction approved by the commissioner; (2) issue a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in § 63.2-1709 C of the Code of Virginia in conjunction with any proceedings for revocation, denial or other action when conditions or practices exist that post an imminent and substantial threat to the health, safety and welfare of residents; (3) Assess a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety and welfare of residents are at risk. The aggregate amount of such civil penalty shall not exceed \$10,000 in any 24-month period.</p> <p>A new section is being added to provide procedures for summary order of suspension.</p> <p>The amended 22 VAC 40-80-340 and the new 22 VAC 40-80-345 provide additional sanctions the department can use if facilities fail to maintain compliance with regulations or laws.</p> <p>A new standard is being added to require a licensee to notify the department and return the license to the appropriate licensing office when plans are made to close or sell a facility. This standard is being added so that the department is assured of knowing when a facility is closed and children or adults are no longer in care.</p> <p>Standard A is being amended to state that the notice of the department’s intent to impose an administrative sanction will be achieved by certified mail. The amendments also clarify that the applicant or licensee will have 15 days after <u>receipt</u> of the notice to note his appeal.</p> <p>Standard C. is amended to clarify when the final order will be entered by deleting “notice will constitute the department’s final decision” and replacing it with “final order will be entered.”</p>
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<p>22 VAC 40-80- 430</p>		<p>This standard contains the process for consent agreements.</p>	<p>The last sentence of standard A is being deleted because it is unnecessary. Standards B 4 and 5 are deleted because they are unnecessary. A new standard B 6 is added to the list of elements to be included in a consent agreement. Standard C is deleted because it is unnecessary.</p>
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