



townhall.virginia.gov

Exempt Action Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-73
Regulation title(s)	Standards for Licensed Assisted Living Facilities
Action title	Amend ALF Standards to Comply with Code Requirements
Final agency action date	August 21, 2019
Date this document prepared	August 21, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will amend the Standards for Licensed Assisted Living Facilities, 22VAC40-73, to implement the provisions of multiple bills from the 2019 General Assembly session.

Pursuant to Chapter 602 of the Virginia Acts of Assembly 2019, § 63.2-1805 of the Code of Virginia (Code), the regulation will be amended to add information to the assisted living facility (facility) disclosure statement, which is provided to prospective residents and legal representatives, regarding emergency electrical power sources for the provision of electricity during an interruption of the normal electric power supply.

Pursuant to Chapter 448 of the Virginia Acts of Assembly 2019, § 63.2-1803 of the Code, the regulation will be amended to require a facility to notify the Board of Long-Term Care Administrators and the Department of Social Services' regional licensing office when the licensed administrator dies, resigns, is discharged or becomes unable to perform his duties. The regulation will be amended to increase from one to two the number of times a facility may operate under the supervision of an acting administrator during a two-year period, unless authorized by the Department of Social Services.

Pursuant to Chapters 97 and 294 of the Virginia Acts of Assembly 2019, the regulation will be amended to require fewer staff at night in special care units. The ratios are amended to reflect that with 22 or fewer residents, at least two staff; with 23 to 32 residents, at least three staff; and with 33 to 40 residents, at least four staff.

Pursuant to Chapter 91 of the Virginia Acts of Assembly 2019, the regulation will be amended to require that assisted that facilities either have an on-site emergency generator or an agreement with a primary vendor and a secondary vendor to provide the facility with an emergency generator for the provision of electricity during an interruption of the normal electric power supply. When a facility has an on-site generator, the facility must include in its emergency preparedness and response plan a description of the generator's capacity to provide sufficient power for the operation of lighting, ventilation, temperature control, supplied oxygen, and refrigeration. The regulation will be amended to require testing of the generators and connections. Facilities will be granted until December 1, 2020 to comply with generator requirements promulgated pursuant to this act.

In addition to the above, a technical change will be made to 22VAC40-73-150 to place the content of exceptions into the standard to eliminate the exception structure.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This regulatory action will amend the Standards for Licensed Assisted Living Facilities, 22VAC40-73, to implement legislation from the 2019 General Assembly session. The standards will be amended to implement legislation regarding (i) § 63.2-1805 of the Code related to emergency electrical power source disclosure; (ii) § 63.2-1803 of the Code concerning licensed administrators and acting administrators; (iii) Chapters 97 and 294 of the Virginia Acts of Assembly related to overnight staffing in special care units; and (iv) Chapter 91 of the Virginia Acts of Assembly concerning generator requirements.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services approved the exempt action for Standards for Licensed Assisted Living Facilities, 22VAC40-73, on August 21, 2019.

Periodic Review Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This action is not the result of a periodic review/small business impact review.