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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-73
VAC Chapter title(s)	Standards for Licensed Assisted Living Facilities
Action title	Amend Standards for Licensed Assisted Living Facilities
Date this document prepared	December 14, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Standards for Licensed Assisted Living Facilities, 22VAC40-73, provide criteria for the public and the Virginia Department of Social Services to evaluate the care, general supervision and oversight of adults in licensed assisted living facilities (ALF). These regulations provide rules for current practices in assisted living facilities that ensure the well-being of aged, infirm or disabled adults residing in an ALF.

Proposed amendments in this action are to simplify and clarify language, improve definitions, and make technical edits for ease of understanding and any other changes deemed necessary after public comment and review. In addition, the agency will review the chapter to identify any discretionary requirements that should be repealed or streamlined.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

ALF Assisted Living Facilities

VDSS Virginia Department of Social Services

DSM-5 Diagnostic and Statistical Manual of Mental Disorders, 5th Edition

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

The mandate for this regulatory change is a periodic review and to fulfill the decision of the Board to amend these regulations for clarification and ease of understanding by the public, ALF facilities and licensing inspectors.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The State Board of Social Services has the legal authority to adopt regulations and requirements for licensed assisted living facilities in accordance with §§ 63.2-217, 63.2-217.1, and 63.2-1732, 63.2-1805, and 63.2-1808 of the *Code of Virginia*. The *Code of Virginia* mandates promulgation of regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed which shall be designed to ensure that such activities, services and facilities are conducive to the well-being of aged, infirm or disabled adults residing in an ALF and regulate emergency response plans for ALF. This regulatory action will provide direction regarding the provision of these services.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is essential to protect the health, safety, and well-being of aged, infirm or disabled adults residing in an ALF by aligning regulation requirements with Virginia Code, federal requirements and applicable practices.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action will incorporate technical information, language, and processes necessary to ensure consistency since the introduction of the current *Standards for Licensed Assisted Living Facilities*. Proposed changes include:

- Clarification and removal of certain definitions;
- Clarify the use of the term “dementia”, to describe it as a “major neurocognitive disorder” to be consistent with the DSM-5;
- Expand requirements for infection control procedures to allow additional equipment other than just glucose monitors, and include equipment and supplies approved for use with multiple residents;
- Incorporate freestanding exceptions throughout the regulation into the applicable sections for clarity;
- Clarify requirements for reporting abuse, neglect or exploitation;
- Clarify licensure requirements for acting administrators;
- Clarify direct care staff training requirements when residents have serious cognitive impairments;
- Clarify TB screening requirements;
- Add a requirement to date the written assurance;
- Clarify language for mental health requirements;
- Specify the source for obtaining information on whether a potential resident is a registered sex offender;
- Add “known allergic reactions” to the personal and social information required to be obtained from residents upon admission;
- Add requirement to include the licensee’s name and management company as applicable, to the resident agreement;
- Clarify requirements for private duty caregivers and add requirement to resident agreement that resident has been informed of rules about private duty personnel;
- Add or revise ISP requirements to ensure consistent language;
- Clarify requirements for meeting resident care and general supervision needs;
- Clarify that a person (or his legal representative) who is no longer a resident, shall have access to his records as long as the facility retains the records;
- Clarify that written acknowledgement by staff is not required when there is documentation that the staff person received annual resident rights review training;
- Clarify that direct care staff must be available when residents may need assistance in the dining room;
- Specify the timeframe for when a primary physician is to document contact with another practitioner regarding new orders for a resident;
- Clarify documentation requirements when restraints are used;
- Clarify that furniture requirements apply when bedrooms have individuals residing in the space;
- Clarify emergency preparedness and response plan requirements;
- Clarify staffing requirements for mixed populations;

- Add definitions, language, and technical edits necessary for clarification of existing requirements; and
- Remove unnecessary and burdensome requirements congruent with regulation reduction per Executive Order 19.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent with state and federal law and to protect the health and safety of vulnerable adults residing in ALFs.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Virginia Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. VDSS also seeks comments regarding regulatory reduction, pursuant to Executive Order 19.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Sharon Stroble, 801 East Main Street, 9th Floor, Richmond, Virginia 23219, 804-726-7037 and email sharon.stroble@dss.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A panel will be appointed and if you are interested in serving on this panel, please contact Sharon Stroble at the above contact information.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.