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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIEU** 
Assistant Attorney General

DATE: **May 28, 2024**

SUBJECT: Exempt Final Regulation – Rename Adult Day Care Centers to Align with Code of Virginia, 22 VAC 40-61, 22 VAC 40-73, 22 VAC 40-80, and 22 VAC 40-90. (6461/10324)

I am in receipt of the attached regulations to change the name of “adult day care center” to “adult day center” to align with changes made in the Virginia Code. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate these regulations and if the comport with applicable federal and state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2 within the State Board’s authority and responsibility, which includes various statutes concerning “adult day care centers.” The proposed amendments to the regulations reflect the changes in the Virginia Code made pursuant to 2024 *Acts of the Assembly*, Chs. 37 and 150 (HB 1498 and SB 173), which amended the name of “adult day care center” to “adult day center” throughout the Code of Virginia. The regulations also include changes in style or form to update the language and terms used.

Based on my review, it is my view that the State Board has the authority to promulgate the final regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 19 (2022), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action.

Karin Clark
May 28, 2024
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Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code §§ 2.2-4006(A)(3) and 2.2-4006(A)(4)(a). If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.
Attachment

Project 7849 - Exempt Final

Department of Social Services

Rename Adult Day Care Centers to Align with Code of Virginia

Chapter 61

Standards and Regulations for Licensed Adult Day Care Centers

22VAC40-61-10. 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" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, eating, and feeding. A person's degree of independence in performing these activities is a part of determining required care needs and necessary services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the participant for whom it is ordered in such a manner as is ordered or is appropriate.

"Adult" means any person 18 years of age or older.

"Adult day care center" or "center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more adults who are aged, or infirm, or disabled adults who have disabilities and who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services and (ii) the home or residence of an individual who cares for only persons related to ~~him~~ the individual by blood or marriage. Included in this definition are any two or more places, establishments, or institutions owned, operated, or controlled by a single entity and providing such supplementary care and

protection to a combined total of four or more adults who are aged, or infirm, or disabled adults who have disabilities.

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time ~~he~~ the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as described in 13VAC5-63, the Virginia 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 participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Business entity" means an individual or sole proprietor, association, partnership, limited liability company, business trust, corporation, public agency, or religious organization.

"Chapter" or "this chapter" means these regulations, that is, Standards and Regulations for Licensed Adult Day Care Centers, 22VAC40-61, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the participant's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits an individual from reaching ~~his~~ the participant's highest level of functioning.

"Communicable disease" means an illness that spreads from one person to another or from an animal to a person.

"CPR" means cardiopulmonary resuscitation.

"Department" means the Virginia Department of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient, for example, vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients. "Dietary supplements" may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a center who assist participants in the performance of personal care or ADLs.

"Director" means the qualified person who has been delegated responsibility for the programmatic and administrative functions of the adult day care center.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Good character and reputation" means findings have been established that the individual (i) maintains business or professional and community relationships that are characterized by honesty, fairness, truthfulness, and dependability and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults.

"Legal representative" means a person legally responsible for representing or standing in the place of the participant for the conduct of his the participant's affairs. "Legal representative" may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the participant as his the

participant's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a participant for the function for which ~~he~~ the legal representative has legal authority to act. A participant is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his the participant's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the participant in a properly executed and signed document. A participant may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means the business entity to whom a license is issued and who is legally responsible for compliance with the laws and regulations related to the center. A license may not be issued in the name of more than one business entity.

"Mandated reporter" means a person specified in § 63.2-1606 of the Code of Virginia who is required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

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

"Participant" means an adult who takes part in the program of care and receives services from the center.

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

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

"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.

"Significant change" means a change in a participant's condition that is expected to last longer than 30 days. "Significant change" does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Staff" or "staff person" means personnel working at a center who are compensated or have a financial interest in the center, regardless of role, service, age, function, or duration of employment at the center. "Staff" or "staff person" also includes those individuals hired through a contract with the center to provide services for the center.

"Standard precautions" means a set of basic infection prevention practices intended to prevent transmission of infectious diseases from one person to another. These practices are applied to every person at every contact to assure that transmission of disease does not occur.

"Volunteer" means a person who works at the center who is not compensated. "Volunteer" does not include a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

22VAC40-61-20. Requirements of law and applicability.

A. Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia includes requirements of law relating to licensure, including licensure of adult day care centers.

B. This chapter applies to adult day care centers as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-61-10.

C. All programs, processes, plans, policies, or procedures required by this chapter must be in writing and must be implemented.

22VAC40-61-60. Requirements for licensee.

A. The licensee shall ensure compliance with all regulations for licensed adult day care centers and terms of the license issued by the department; with relevant federal, state, or local laws; with other relevant regulations; and with the center's own policies and procedures.

B. The licensee shall:

1. Be of good character and reputation;
2. Protect the physical and mental well-being of the participants;
3. Keep such records and make such reports as required by this chapter for licensed adult day care centers. Such records and reports may be inspected by the department's representative at any reasonable time in order to determine compliance with this chapter;

4. Meet the qualifications of the director if he the licensee assumes those duties;
5. Act in accordance with General Procedures and Information for Licensure (22VAC40-80);
6. Ensure that the current license is posted in the center in a place conspicuous to the participants and the public; and
7. Be responsible for the overall planning of the program and services to be provided by the center, including the following:
 - a. Develop and keep current a statement of the purpose and scope of the services to be provided by the center, a description of adults who may be accepted into the program as well as those whom the program cannot serve, and policies and procedures under which the center will operate.
 - b. Appoint and identify in writing a qualified director to be responsible for the day-to-day operation and management of the center. When the business entity is an individual who serves as the director, this shall also be noted in writing.
 - c. Provide an adequate number of qualified staff capable of carrying out the operation of the program and to develop a staffing plan that includes a staffing schedule.
 - d. Develop policies and procedures for the selection and supervision of volunteers.
 - e. Develop a written organizational chart indicating chain of command.
 - f. Make certain that when it is time to discard records, the records are disposed of in a manner that ensures confidentiality.

22VAC40-61-100. General qualifications.

All staff members shall:

1. Be of good character and reputation;

2. Be competent, qualified, and capable of carrying out assigned responsibilities;
3. Be considerate, understanding, and respectful of the rights, dignity, and sensitivities of persons who are aged, or infirm, and disabled or who have disabilities;
4. Be clean and well groomed;
5. Be able to speak, read, understand, and write in English as necessary to carry out their job responsibilities;
6. Be able to understand and apply the standards in this chapter as they relate to their respective responsibilities; and
7. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

22VAC40-61-110. Staff orientation and initial training.

A. Prior to working directly with participants, all staff shall receive training in:

1. Participant rights and responsibilities;
2. Their individual responsibilities in the event of fire, including the location and operation of any fire extinguishers, fire alarm boxes, and approved exits;
3. Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid kit and emergency supplies;
4. Their individual responsibilities in the event of emergencies, such as a lost or missing participant, severe weather, and loss of utilities;
5. Infection control;
6. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of participants and for the mandated reporters, the consequences for failing to make a required report (§ 63.2-1606 of the Code of Virginia); and

7. Confidential treatment of personal information about participants and their families.

B. Staff who work with participants shall receive training in the following areas or topics no later than three weeks after their starting date of employment; part-time staff shall receive the training no later than six weeks after their starting date of employment. The areas or topics to be covered in the staff training shall include:

1. The purpose and goals of the adult day care center;
2. The policies and procedures of the center as they relate to the staff member's responsibilities;
3. Required compliance with regulations for adult day care centers as it relates to their duties and responsibilities;
4. The physical, emotional, and cognitive needs of the center's population;
5. The current participants' strengths and preferences, their individualized plans of care, and their service needs and supports;
6. The schedule of activities;
7. Behavioral interventions, behavior acceptance and accommodation, and behavior management techniques;
8. Interdisciplinary team approach;
9. Implementation of advance directives and Do Not Resuscitate Orders;
10. Risk management; and
11. The needs of participants' family members or caregivers.

C. A supervisor or designated trained staff shall be on the premises and closely oversee the individual's work with participants until training required in subsection B of this section is complete.

22VAC40-61-130. Director.

A. The director, or a designated assistant director who meets the qualifications of the director, shall be responsible for the center's program and day-to-day operations of the center and shall be present at least 51% of the center's weekly hours of operation. The responsibilities of the director shall include the following areas:

1. The content of the program offered to the participants in care.
2. Programmatic functions, including orientation, training, and scheduling of all staff.
3. Management of the supervision provided to all staff.
4. Assignment of a sufficient number of qualified staff to meet the participants' needs for:
 - a. Adequate nutrition;
 - b. Health supervision and maintenance;
 - c. Personal care;
 - d. Socialization, recreation, activities, and stimulation; and
 - e. Supervision, safety, and protection.
5. The duties and responsibilities required by this chapter.

B. The director shall meet the following qualifications:

1. Be at least 21 years of age.
2. Have completed, at a minimum, a bachelor's degree from an accredited college or university and two years of experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment, volunteer work, or internship. The following qualifications are also acceptable for the director:

a. Current licensure as a nursing home administrator or assisted living facility administrator from the Board of Long-Term Care Administrators; or

b. Current licensure in Virginia as a registered nurse. The requirement for two years of experience working with older adults or persons with disabilities also must be met.

c. An exception to subdivisions 2 a and 2 b of this subsection is made for any person continuously employed in an adult day care center licensed prior to July 1, 2000, as either a director or assistant director who has completed at least 48 semester hours or 72 quarter hours of postsecondary education from an accredited college or institution and has completed at least two years experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment or in volunteer work.

3. The director shall demonstrate knowledge, skills, and abilities in the administration and management of the adult day care program including (i) knowledge and understanding of the population being served by the center, (ii) supervisory and interpersonal skills, (iii) ability to plan and implement the program, and (iv) knowledge of financial management sufficient to ensure program development and continuity.

C. The director shall complete 24 hours of continuing education training annually to maintain and develop skills. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments participate at the center, at least four of the required hours shall focus on topics related to participants' mental impairments. This training shall be in addition to first aid, CPR, orientation, or initial or refresher medication aide training. Documentation of attendance shall be retained at the center and shall include type of training, name of the entity that provided the training, and date and number of hours of training.

22VAC40-61-170. Volunteers.

A. Individuals who volunteer at the center shall:

1. Have qualifications appropriate to the services they render; and
2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an adult day care center without the permission or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

C. Duties and responsibilities of all volunteers shall be clearly defined in writing.

D. At least one staff member shall be assigned responsibility for overall selection, supervision, and orientation of volunteers.

E. All volunteers shall be under the supervision of a designated staff person when participants are present.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation including information on their duties and responsibilities, participant rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements. All volunteers shall sign and date a statement that they have received and understood this information.

G. Volunteers may be counted in the staff-to-participant ratio if both of the following criteria are met:

1. These volunteers meet the qualifications and training requirements for staff; and
2. For each volunteer, there shall be at least one staff also counted in the staff-to-participant ratio.

22VAC40-61-260. Physical examinations and report.

A. Within the 30 days preceding admission, a participant shall have a physical examination by a licensed physician.

B. The report of the required physical examination shall be on file at the center and shall include:

1. The person's name, date of birth, address, and telephone number.
2. The date of the physical examination.
3. Height, weight, and blood pressure.
4. Significant medical history.
5. General physical condition, including a systems review as is medically indicated.
6. All diagnoses and significant medical problems.
7. Any known allergies and description of the person's reactions.
8. Any recommendations for care including:
 - a. A list of all medications including dosages, route, and frequency of administration;
 - b. Any special diet or any food intolerances;
 - c. Any therapy, treatments, or procedures the individual is undergoing or should receive and by whom; and
 - d. Any restrictions or limitations on physical activities or program participation.
9. The participant shall obtain an evaluation by a qualified licensed practitioner that completes an assessment for tuberculosis (TB) in a communicable form no earlier than 30 days before admission. The evaluation for tuberculosis shall be consistent with the TB risk assessment as published by the Virginia Department of Health, with additional testing,

singly or in combination, as deemed necessary. Documentation of the TB evaluation is required, which includes the information contained on the form "Report of Tuberculosis Screening" recommended by the Virginia Department of Health. The form shall be signed by the qualified licensed practitioner who performs the evaluation.

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

11. A statement that specifies whether the individual is or is not capable of self-administering medication.

12. The signature of the examining physician or ~~his~~ the physician's designee.

C. Subsequent medical evaluations.

1. Each participant shall annually submit a report of physical examination by a physician including the information required in subdivisions B 1 through B 8 and B 10, B 11, and B 12 of this section.

2. At the request of the licensee or director of the center or the Department of Social Services, a report of examination by a physician shall be obtained when there are indications that the center can no longer provide appropriate or safe care because of changes in the participant's physical or mental health. The written report of the physical examination shall be:

a. Dated;

b. Signed by a physician or the physician's designee; and

c. Used in evaluating the participant's continued suitability for adult day ~~care~~ services.

D. Subsequent evaluations for tuberculosis.

1. Any participant 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 participant who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis. Any such participant shall not be allowed to return to the program until a physician has determined that the individual is free of infectious tuberculosis.
3. If a participant develops an active case of tuberculosis, the center shall report this information to the local health department.

22VAC40-61-300. Medication management.

A. The center shall have, keep current, and implement a plan for medication management. The center's medication management plan shall address procedures for administering medication and shall include:

1. Standard operating procedures and any general restrictions specific to the center;
2. Methods to ensure an understanding of the responsibilities associated with medication management including the following:
 - a. Determining that staff who are responsible for administering medications meet the qualification requirements of subdivisions E 7 a and E 7 b of this section;
 - b. Ensuring that staff who are responsible for administering medications are trained on requirements of the center's medication management plan; and
 - c. Ensuring that staff who are responsible for administering medications are adequately supervised, including periodic direct observation of medication administration. Supervision shall be provided by (i) an individual employed by the center who is licensed by the Commonwealth of Virginia to administer medications or

(ii) the director who has successfully completed a training program as required in subdivisions E 7 a and E 7 b of this section.

3. Methods to ensure that authorizations for the administration of medications are current;
4. Methods to secure and maintain supplies of each participant's prescription medications and any over-the-counter drugs and supplements in a timely manner to avoid missed dosages;
5. Methods for verifying that medication orders have been accurately transcribed to medication administration records (MARs), including within 24 hours of receipt of a new order or a change in an order;
6. Methods for monitoring medication administration and the effective use of the MARs for documentation;
7. Methods to ensure that participants do not receive medications or dietary supplements to which they have known allergies;
8. Methods to ensure accurate accounting for all controlled substances whenever received by center staff, returned to participant, or whenever assigned medication administration staff changes;
9. Procedures for proper disposal of medication; and
10. Procedures for preventing, detecting, and investigating suspected or reported drug diversion.

B. The center shall have readily accessible as reference materials for medication aides, at least one pharmacy reference book, drug guide, or medication handbook for nurses that is no more than two years old.

C. Prescription and nonprescription medications, including sample medications, shall be given to a participant according to the center's medication policies and only with written or verbal authorization from the physician or prescriber, or the physician's authorized agent. For the purposes of this section, an "authorized agent" means an employee of the physician who is under his the physician's immediate and personal supervision. Verbal orders shall be reviewed and signed by the physician or prescriber within 10 working days.

D. The center shall maintain a list of all medications, including those taken at home and at the center, for each participant. The center shall attempt to verify and update the list of center-administered medications with the prescribing health care professional at least twice a year. Unsuccessful attempts to verify shall be documented.

E. The following standards shall apply when medications are administered to participants at the adult day care center:

1. All medication shall be in the original container with the prescription label or direction label attached and legible. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the participant's name, the name of the medication, the strength, dosage, and route and frequency of administration, until administered.
2. All medication shall be labeled with the participant's name, the name of the medication, the strength and dosage amount, the route of administration, and the frequency of administration.
3. The medication shall be kept in a locked compartment or area, not accessible to participants. The locked compartment or area shall be free from direct sunlight and high temperatures and free from dampness and shall remain darkened when closed.

4. The area in which the medication is prepared shall have sufficient light so that the labels can be read accurately and the correct dosage can be clearly determined.

5. Medication shall be refrigerated, if required. When medication is stored in a refrigerator used for food, the medications shall be stored together in a locked container in a clearly defined area. If a refrigerator is used for medication only, it is permissible to store dietary supplements and foods and liquids used for medication administration.

6. Unless it is contrary to the center's policy, a participant may take ~~his~~ the participant's own medication provided that:

a. A physician has deemed the participant capable of administering medication to ~~himself~~ oneself;

b. The physician has given written authorization for the participant to self-administer ~~his~~ the participant's medication; and

c. Medications are kept in a safe manner inaccessible to other participants.

7. When the center staff administers medications to participants, the following standards shall apply:

a. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Code of Virginia. All staff responsible for medication administration shall:

(1) Be licensed by the Commonwealth of Virginia to administer medications;

(2) Be a registered medication aide;

(3) Successfully complete a training program approved by the Board of Nursing and accepted for use in adult day care centers; or

(4) Successfully complete a training program approved by the Board of Nursing for the registration of medication aides that consists of 68 hours of student instruction and training.

b. All staff who administer medications, except those licensed by the Commonwealth, shall complete, on an annual basis, four hours of medication management refresher training on topics specific to the administration of medications in the adult day care center setting.

c. Medications shall remain in the original or pharmacy issued container until administered to the participant by the qualified medication staff. All medications shall be removed from the pharmacy container and be administered by the same qualified person within one hour of the individual's scheduled dosing time.

d. Documentation shall be maintained on the MAR of all medications, including prescription, nonprescription, and sample medication, administered to a participant while at the center. This documentation shall become part of the participant's permanent record and shall include:

(1) Name of participant;

(2) All known allergies;

(3) Diagnosis, condition, or specific indications for which the medication is prescribed;

(4) Date medication prescribed;

(5) Drug product name;

(6) Dosage and strength of medication;

(7) Route of administration;

(8) Frequency of administration;

- (9) Date and time given and initials of staff administering the medication;
- (10) Date the medication is discontinued or changed;
- (11) Any medication errors or omissions;
- (12) Notation of any adverse effects or unusual reactions that occur; and
- (13) The name, signature, and initials of all staff administering medications. A master list may be used in lieu of this documentation on individual MARs.

F. In the event of an adverse drug reaction or a medication error, the following applies:

- 1. Action shall be taken as directed by a physician, pharmacist, or a poison control center;
- 2. The participant's physician and family member or other legal representative shall be notified as soon as possible. If not contrary to immediate medical needs of the participant, the participant shall also be notified of the error; and
- 3. Medication administration staff shall document actions taken in the participant's record.

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

- 1. The participant is capable of determining when medication is needed;
- 2. A licensed health care professional administers the medication;
- 3. The participant's physician has provided detailed written instructions, including symptoms that might indicate the need for the medication, exact dosage, exact timeframes the medication is to be given in a 24-hour period, and directions for what to do if symptoms persist; or
- 4. The center staff has telephoned the participant's physician prior to administering the medication and explained the symptoms and received a documented verbal order that includes the information in subdivision 3 of this subsection.

H. Any physician ordered treatment provided by staff shall be documented and shall be within the staff's scope of practice.

22VAC40-61-340. Food service.

A. Meals and snacks shall be provided by the center. The center shall (i) prepare the food, (ii) have the food catered, or (iii) utilize a contract food service.

B. When any portion of an adult day care center is subject to inspection by the Virginia Department of Health, the center shall be in compliance with those regulations, as evidenced by an initial and subsequent annual report from the Virginia Department of Health. The report shall be retained at the center for a period of at least two years.

C. If a catering service or contract food service is used, the service shall be approved by the local health department. The center shall be responsible for monitoring continued compliance by obtaining a copy of the Virginia Department of Health approval.

D. The center shall encourage, but not require, participants to eat the meals and snacks provided by the center. If a participant brings food from home, the food shall be labeled with the participant's name, dated, and stored appropriately until meal or snack time. The fact that the participant brought food does not relieve the center of its responsibility to provide meals and snacks.

E. A minimum of 45 minutes shall be allowed for each participant to complete a meal. If a participant needs additional time to finish his the meal due to special needs, such additional time shall be provided.

22VAC40-61-510. Fire safety: compliance with state regulations and local fire ordinances.

A. The center shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the inspections shall be retained at the center for at least two years.

B. An adult day care center shall comply with any local fire ordinance.

22VAC40-73-10. 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" or "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 ordered dosage and to give it to the resident for whom it is ordered.

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

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he ~~he~~ the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"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 13VAC5-63, the Virginia 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.

"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, or infirm, or disabled who have disabilities 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 Behavioral Health and Developmental 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 that individual by blood or marriage; (iii) a facility or portion of a facility serving individuals who are infirm or disabled persons who have disabilities between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for ~~the handicapped~~ individuals with disabilities 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~~ individuals who are 62 years of age or older or the disabled individuals with disabilities that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, 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 adults who are aged, or infirm, or disabled adults who have disabilities. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an individual who is aged, or infirm, or disabled individual who has a disability.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

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

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and 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.

"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching ~~his~~ the resident's highest level of functioning.

"Commissioner" means the commissioner of the department, ~~his~~ the commissioner's designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"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 (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

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

Individuals 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.

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient or ingredients, (e.g., vitamins, minerals, amino acids, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

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

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"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 denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when 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.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable 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, including 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.

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

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"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 status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living ~~for himself~~ independently without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy 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.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "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.

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"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.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of ~~his~~ the resident's affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as ~~his~~ the resident's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which ~~he~~ the legal representative has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect ~~his~~ the resident's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal

representative" applies solely to the legal representative with the authority to act in regard to the ~~function or~~ functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of ~~his~~ that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

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

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

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

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to ~~his~~ the resident's body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"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 restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

"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 the resident's body.

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

"Premises" means a building or group of buildings, under one license, together with the land or grounds on which located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

"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 antianxiety/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 U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"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. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) 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; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) 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 providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental

Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

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

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day care services are also considered residents.

"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, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of adults who are aged, or infirm, or disabled ~~adults~~ who have a disability for a temporary period of time or temporary periods of time that are regular or intermittent. 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 the resident's 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.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"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 (i) acute or episodic conditions, ~~nor~~ (ii) conditions arising from treatable metabolic or chemical imbalances or ~~caused by~~ (iii) reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect his the individual's own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

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

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

"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.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

22VAC40-73-40. 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 relevant federal, state, and local laws; with other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall:

1. Give evidence of financial responsibility and solvency.

2. Be of good character and reputation in accordance with § 63.2-1702 of the Code of Virginia. Character and reputation investigation includes background checks as required by § 63.2-1721 of the Code of Virginia.
3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).
4. Act in accordance with General Procedures and Information for Licensure (22VAC40-80).
5. Protect the physical and mental well-being of residents.
6. Exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, this chapter, and the welfare of the residents.
7. Ensure that ~~he~~ the licensee, his the licensee's agents, the facility administrator, or facility staff or the relatives of any of these persons 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 Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.
8. Ensure that the current license is posted in the facility in a place conspicuous to the residents and the public.
9. Ensure that the facility keeps and maintains at the facility records, reports, plans, schedules, and other information as required by this chapter for licensed assisted living facilities.
10. Ensure that any document required by this chapter to be posted shall be in at least 12-point type or equivalent size, unless otherwise specified.

11. Make certain that when it is time to discard records, they are disposed of in a manner that ensures confidentiality.

12. Ensure that at all times the department's representative is afforded reasonable opportunity to inspect all of the facility's buildings, books, and records and to interview agents, employees, residents, and any person under its custody, control, direction, or supervision as specified in § 63.2-1706 of the Code of Virginia.

C. 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. Training for such owners and currently employed administrators shall be required at the time of initial application for licensure. In all cases, such training shall be completed prior to the granting of any initial 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 commissioner.

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

D. The licensee shall notify in writing the regional licensing office of intent to sell or voluntarily close the facility. The following shall apply:

1. No less than 60 days prior to the planned sale date or closure, the licensee shall notify the regional licensing office, residents, and as relevant, legal representatives, case managers, assessors, eligibility workers, and designated contact persons of the intended sale or closure of the facility and the date for such.

Exception: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, case managers, assessors, eligibility workers, and designated contact persons as soon as the intent to sell or close the facility is known.

2. If the facility is to be sold, at the time of notification specified in subdivision 1 of this subsection, the licensee shall explain to each resident, ~~his~~ the resident's legal representative, case manager, assessor, and at least one designated contact person that the resident can choose whether to stay or relocate, unless the new licensee specifies relocation. If a resident chooses to stay, there must be a new resident agreement between the resident and the new licensee that meets the specifications of 22VAC40-73-390.

3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

22VAC40-73-110. Staff general qualifications.

All staff shall:

1. Be considerate and respectful of the rights, dignity, and sensitivities of persons who are aged, or infirm, or ~~disabled~~ who have disabilities;
2. Be able to speak, read, understand, and write in English as necessary to carry out their job responsibilities; and
3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

22VAC40-73-280. 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 ensure compliance with this chapter.

B. The assisted living facility shall maintain a written plan that specifies the number and type of direct care staff required to meet the day-to-day, routine direct care needs and any identified special needs for the residents in care. This plan shall be directly related to actual resident acuity levels and individualized care needs.

C. An adequate number of staff persons shall be on the premises at all times to implement the approved fire and emergency evacuation plan.

D. At least one direct care staff member shall be awake and on duty at all times in each building when at least one resident is present.

Exception: For a facility licensed for residential living care only, in buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if (i) none of the residents have care needs that require a staff member awake at night and (ii) the facility ensures compliance with the requirements of 22VAC40-73-930 C.

E. No employee shall be permitted to work in a position that involves direct contact with a resident until a background check has been received as required in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90), unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of the background check regulation (22VAC40-90).

22VAC40-73-490. Health care oversight.

A. Each assisted living facility shall retain a licensed health care professional who has at least two years of experience as a health care professional in an adult residential facility, adult day care center, acute care facility, nursing home, or licensed home care or hospice organization, either by direct employment or on a contractual basis, to provide on-site health care oversight.

1. For residents who meet the criteria for residential living care:

a. The licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least every six months, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or the stability of a resident's condition; or

b. If the facility employs a licensed health care professional who is on site on a full-time basis, a licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least annually, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

2. For residents who meet the criteria for assisted living care:

a. The licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least every three months, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition; or

b. If the facility employs a licensed health care professional who is on site on a full-time basis, a licensed health care professional, practicing within the scope of his the health care professional's profession, shall provide health care oversight at least every six months, or more often if indicated, based on his the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

3. All residents shall be included at least annually in health care oversight.

B. While on site, as specified in subsection A of this section, the licensed health care professional shall provide health care oversight of the following and make recommendations for change as needed:

1. Ascertain whether a resident's service plan appropriately addresses the current health care needs of the resident.
2. Monitor direct care staff performance of health-related activities.
3. Evaluate the need for staff training.
4. Provide consultation and technical assistance to staff as needed.
5. Review documentation regarding health care services, including medication and treatment records, to assess that services are being provided in accordance with physicians' or other prescribers' orders.
6. Monitor conformance to the facility's medication management plan and the maintenance of required medication reference materials.
7. Evaluate the ability of residents who self-administer medications to continue to safely do so.

8. Observe infection control measures and consistency with the infection control program of the facility.

C. For all restrained residents, onsite health care oversight shall be provided by a licensed health care professional at least every three months and include the following:

1. The licensed health care professional shall be at a minimum a registered nurse who meets the experience requirements in subdivision A of this section.

2. The licensed health care professional shall review the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination.

3. The licensed health care professional providing the oversight for this subdivision shall also provide the oversight for subdivisions B 1 through B 8 of this section for restrained residents.

4. The oversight provided shall be a holistic review of the physical, emotional, and mental health of the resident and identification of any unmet needs.

5. The oversight shall include review of physician's orders for restraints to determine whether orders are no older than three months, as required by 22VAC40-73-710 E 2.

6. The oversight shall include an evaluation of whether direct care staff have received the restraint training required by 22VAC40-73-270 and whether the facility is meeting the requirements of 22VAC40-73-710 regarding the use of restraints.

7. The licensed health care professional shall make recommendations for change as needed.

D. The licensed health care professional who provided the health care oversight shall certify that the requirements of subsection B and, if applicable, C of this section were met, including the

dates of the health care oversight. The specific residents for whom the oversight was provided must be identified. The administrator shall be advised of the findings of the health care oversight and any recommendations. All of the requirements of this subsection shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

E. Action taken in response to the recommendations noted in subsection D of this section shall be documented in the resident's record if resident specific, and if otherwise, in the facility files.

22VAC40-80-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative hearing" means a hearing that is conducted pursuant to § 2.2-4020 of the Administrative Process Act.

"Adult care facility" means a licensed assisted living facility or adult day care center.

"Adverse action" means any case where the department either gives notice of revocation or refuses to issue a license for an assisted living facility, adult day care center or child welfare agency or imposes another administrative sanction pursuant to § 63.2-1709 of the Code of Virginia.

"Aggrieved party" means an applicant or licensee who has requested an appeal in accordance with instructions provided after the department has given written notice of the imposition of an administrative sanction or adverse action for an assisted living facility, adult day care center, or child welfare agency.

"Allowable variance" means permission is granted by the department to a licensee or applicant for licensure to meet the intent of a standard by some means other than as specified by the standard when the applicant or licensee has demonstrated that (i) the implementation of a standard would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of persons in care.

"Applicant" means the person, corporation, partnership, association, limited liability company, or public agency that has applied for a license to operate or maintain an assisted living facility, adult day care center, or child welfare agency. For a child welfare agency, the "person who operates or maintains a child welfare agency" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency.

"Board" means the State Board of Social Services.

"Child welfare agency" means a child-placing agency, children's residential facility, child-caring institution, or independent foster home.

"Commissioner" means the Commissioner of the Department of Social Services.

"Complaint" means an accusation that a facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.

"Conditional license" means a license that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Consent agreement" means an agreement between the licensee and the department that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes.

"Day" means a calendar day unless otherwise specified.

"Denial" means the act of refusing to grant a license after receipt of an initial or renewal application.

"Department" means the Department of Social Services.

"Early compliance" means that the licensee has demonstrated full compliance with requirements, allowing the department to replace a provisional or conditional license with a regular license.

"Functional design" means the design features of building and grounds not regulated by the Building Code, necessary for particular activities and operations of a facility subject to licensure by the Department of Social Services.

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

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Hearing coordinator" means the person designated by the Department of Social Services to perform certain administrative functions involved in setting up and carrying out the hearings

concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency, as set out herein.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia to preside at hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency.

"Informal conference" means the informal fact-finding procedures available pursuant to §§ 2.2-4019 and 2.2-4021 of the Code of Virginia.

"Licensee" means the person, corporation, partnership, association, limited liability company, or public agency to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the operation or maintenance of the assisted living facility, adult day care center, or child welfare agency. For a child welfare agency, the "person who operates or maintains a child welfare agency" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency.

"Probationary status" means placing a licensee on notice that the facility or agency is substantially out of compliance with the terms of its license and the health, safety, and well-being of persons in care are at risk. Probationary status is a precursor to more serious action such as revocation, denial, or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license that may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the law and regulations.

"Recommended findings of fact and recommended decision" means the report prepared by the hearing officer upon evidence presented in the administrative hearing based on the applicable laws and regulations under which the department operates.

"Regular license" means a license that is issued for 12 months or more as provided in Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to Title 63.2 of the Code of Virginia by the commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. The 12-month period begins 30 days after notification of the issuance of a special order or at the conclusion of all appeal steps.

"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.

22VAC40-80-30. Responsibility of the department.

Through the administration of the licensing program, the Department of Social Services assumes responsibility to ensure that licensed facilities and agencies provide children and adults with at least a minimum level of care in accordance with regulations prescribed by the State Board of Social Services. The department also has the responsibility to investigate allegations of illegal operations and to initiate action to suppress illegal operations. The Virginia Code requires the

State Board of Social Services to adopt regulations for the licensure of the following categories of facilities and agencies:

1. Adult ~~day-care~~ day centers;
2. Assisted living facilities;
3. Private child placing agencies;
4. Child caring institutions; and
5. Independent foster homes.

22VAC40-80-60. General.

A. A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to children or adults. An organization may be a partnership, association, corporation, limited liability company, or public entity.

B. Pursuant to § 63.2-1712 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates an assisted living facility, adult day ~~care~~ center, or child welfare agency shall be guilty of a Class 1 misdemeanor if he the individual:

1. Interferes with any representative of the commissioner in the discharge of his licensing duties;
2. Makes to the commissioner or any representative of the commissioner any report or statement with respect to the operation of any assisted living facility, adult day ~~care~~ center, or child welfare agency that is known by such person to be false or untrue;
3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked, suspended, or has expired and not been renewed; or

4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated in the license.

C. When a licensee plans to close or sell a facility, the licensee shall notify the appropriate licensing office at least 60 days prior to the anticipated closure or sale date. When the facility closes or the sale is finalized, the license shall be returned to the appropriate licensing office.

22VAC40-80-130. Provider support services.

A. The programmatic regulations require both general and specific training in various subject areas. The department provides preapplication consultation, ongoing technical assistance and consultation, and formal training sessions. The department's licensing representatives will provide assistance to any person seeking information about obtaining a license and information about initial and ongoing training requirements.

B. Applicants for licensure shall complete a prelicensure orientation program that focuses on health and safety standards, and residents' rights where applicable, offered through or approved by the department. The commissioner may, at his the commissioner's discretion, waive the orientation requirement or issue a license conditioned upon the owner's or administrator's completion of the required training.

EXCEPTIONS: The following persons are exempt from the requirements of prelicensure training:

1. An applicant who has previously owned or managed a facility in satisfactory compliance with regulations; and
2. Applicants for adult day care centers and child welfare agencies if notified by the department that such training is unavailable.

22VAC40-80-180. Determination of continued compliance (renewal and monitoring inspections).

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative will make announced and unannounced inspections of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring inspections.

B. All licensed child welfare agencies shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

C. Adult day care centers issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced. Adult day care centers issued a license for a period of one year shall be inspected at least three times each year, and at least two of those inspections shall be unannounced. Adult day care centers issued a license for a period of two years shall be inspected at least two times each year, and at least one of those inspections shall be unannounced. Adult day care centers issued a license for a period of three years shall be inspected at least one time each year, and that inspection shall be unannounced.

D. Assisted living facilities issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced.

E. Assisted living facilities issued a license for a period of one, two, or three years shall be:

1. Inspected at least once each year, and that inspection shall be unannounced; and
2. Inspected as needed based on compliance with applicable laws and regulations.

F. The department's representative may also make such inspections of any homes or facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.

G. For any licensed assisted living facility, adult day care center, or child welfare agency, the department may conduct such other announced or unannounced inspections as are considered appropriate.

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced inspections made to licensed facilities during the year.

22VAC40-80-340. Administrative sanctions.

The commissioner may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation in assisted living facilities, adult day care centers, and child welfare agencies as discovered through any inspection or investigation conducted by the Department of Social Services, the Virginia Department of Health, the Virginia Department of Behavioral Health and Developmental Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;
2. Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for a violation that adversely affects, or is an immediate and substantial threat to, the health, safety, or welfare of residents, or for permitting, aiding, or abetting the commission of any illegal act in an adult care facility;

3. Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license;
4. 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 immediate and substantial risk of harm to residents. This action shall be an attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the commissioner. The contract shall be negotiated in accordance with the provisions of § 63.2-1709 of the Code of Virginia;
5. Issuing a notice of summary 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 or pursuant to proceedings set forth in § 63.2-1710.1 of the Code of Virginia for assisted living facilities operated by agencies of the Commonwealth in conjunction with any proceedings for revocation, denial, or other action when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of residents;
6. Issuing a notice of summary suspension of the license to operate a child welfare agency pursuant to proceedings set forth in § 63.2-1709.1 C of the Code of Virginia or pursuant to proceedings set forth in § 63.2-1710.1 for child welfare agencies operated by an agency of the Commonwealth in conjunction with any proceedings for revocation, denial, or other action, when conditions or practices exist in the child welfare agency that pose an immediate and substantial threat to the health, safety, and welfare of children receiving care; and
7. Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709.2 of the Code of Virginia. These include:

- a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants, or children are at risk;
- b. Reducing the licensed capacity or prohibiting new admissions when the commissioner has determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;
- c. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the commissioner has determined that the lack of such training has led directly to violations of regulations;
- d. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of an adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk;
- e. 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 12-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, are developed by the board and are based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the commissioner in a consistent manner;
- f. Requiring licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

g. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

22VAC40-80-390. Scope.

The appeal process as set forth in this part shall apply whenever the Department of Social Services takes adverse action on a license for an assisted living facility, adult day care center or child welfare agency. Therefore, whenever the department either revokes or refuses to issue or renew a license or imposes any other sanction for an assisted living facility, adult day care center, or child welfare agency, the procedures specified in this part to produce a case decision shall be initiated.

Chapter 90

Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers

22VAC40-90-10. Definitions.

The following words and terms when used in conjunction with this chapter shall have the following meanings:

"Applicant for licensure" means the entity applying for approval as a licensed assisted living facility. An applicant may be an individual, association, partnership, limited liability company, corporation or public agency.

"Barrier crimes" means certain crimes that automatically bar individuals convicted of same from employment at a licensed assisted living facility or adult day care center and that automatically bar licensure of applicants convicted of same from assisted living facility licensure. These crimes, as specified by § 19.2-392.02 of the Code of Virginia, are a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of

subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction. A licensed assisted living facility or adult day care center may hire an applicant or continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any substantially similar offense under the laws of another jurisdiction, if five years have elapsed following the conviction.

"Central Criminal Records Exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request form is processed.

"Criminal history record request" means the Department of State Police form used to authorize the State Police to generate a criminal history record report on an individual.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes; the criminal history record discloses all known conviction data.

"Employee" means compensated personnel working at a facility regardless of role, service, age, function or duration of employment at the facility. Employee also includes those individuals hired through a contract to provide services for the facility.

"Facility" means an assisted living facility or adult day care center subject to licensure by the Department of Social Services.

"Sworn statement or affirmation" means a document to be completed, signed, and submitted for licensure or employment. The document discloses the licensure applicant's or employment applicant's criminal convictions and pending criminal charges that occurred within or outside the Commonwealth of Virginia. For applicants for licensure as an assisted living facility, the document also discloses whether or not the applicant has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth of Virginia. This is required as specified in §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

22VAC40-90-20. Legal base and applicability.

A. Sections 63.2-1702 and 63.2-1721 of the Code of Virginia require all applicants for licensure as assisted living facilities to undergo background checks consisting of a sworn statement or affirmation and criminal history record check. If the applicant is an individual, ~~he~~ the individual must undergo a background check. If the applicant is an association, partnership,

limited liability company, corporation or public agency, the officers and agents of the applicant must undergo background checks.

B. Section 63.2-1720 of the Code of Virginia requires all employees of assisted living facilities and adult day care centers, as defined by § 63.2-100 of the Code of Virginia, to obtain a criminal history record report from the Department of State Police.

C. Section 63.2-1720 of the Code of Virginia requires all applicants for employment at assisted living facilities and adult day care centers to provide the hiring facility with a sworn statement or affirmation.

D. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to § 63.2-1720 of the Code of Virginia.

22VAC40-90-40. General requirements.

A. The applicant for licensure shall submit a criminal history record report upon application for licensure as an assisted living facility.

B. The criminal history record report shall be obtained on or prior to the 30th day of employment for each employee.

C. Any person required by this chapter to obtain a criminal history record report shall be ineligible for employment if the report contains convictions of the barrier crimes.

D. If a criminal history record is requested, it shall be the responsibility of the licensee to ensure that the employee has not been convicted of any of the barrier crimes.

E. Criminal history record reports shall be kept confidential. Reports on employees shall only be received by the facility administrator, licensee, board president, or their designee.

F. A criminal history record report issued by the State Police shall not be accepted by the facility if the report is dated more than 90 days prior to the date of employment.

G. Any applicant denied licensure as an assisted living facility or employment at an assisted living facility or adult day care center because of convictions appearing on his the applicant's criminal history record report shall be provided a copy of the report by the licensing authority or the hiring facility.

H. A facility shall not continue to employ any person who has a conviction of any of the barrier crimes.