



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Jason S. Miyares**  
Attorney General

202 North 9th Street  
Richmond, Virginia 23219  
8804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

**MEMORANDUM**

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

**FROM:** **E. MORGAN BARRY** *EMB*  
Assistant Attorney General

**DATE:** **September 9, 2024**

**SUBJECT:** **Exempt Final Regulation – Amend Administrator Qualifications; 22 VAC 40-73-140.**

You have asked the Office of the Attorney General to review the attached regulation and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

This regulation is adding language and modifying some of the existing language to this Section - 22 VAC 40-73-140 - to comply with legislation impacting sections in the Code of Virginia pertaining to Assisted Living Facility Administrator Qualifications and to improve clarity and increase consistency with the Code.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. I have reviewed the attached regulation, and it is my opinion that the State Board has the authority to promulgate this regulation subject to compliance with the provisions of Executive Order 19, including the Procedures of the Office of Regulatory Management, and that in so doing the State Board does not exceed that authority. Based on the foregoing, it is my view that the amendments to these regulations are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(a).

If you have any questions, please contact me at (804)482-2254.

**Project 7918 - Final**

**Department of Social Services**

**Add Temporary Authorization to Practice for Assisted Living Facilities**

**22VAC40-73-140. Administrator qualifications.**

- A. The administrator shall be at least 21 years of age.
- B. The administrator shall be able to read and write, and understand this chapter.
- C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.
- D. For a facility licensed only for residential living care that does not employ an administrator licensed by the Virginia Board of Long-Term Care Administrators, the administrator shall:
  - 1. Be a high school graduate or shall have a General Education Development (GED) Certificate;
  - 2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study approved by the department that is specific to the administration of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and
  - 3. Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

The requirements of this subsection shall not apply to an administrator of an assisted living facility employed prior to February 1, 2018, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

E. For a facility licensed for both residential and assisted living care, the administrator shall be licensed:

1. Licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia; or

2. Authorized to temporarily practice pursuant to § 54.1-2408.4 of the Code of Virginia.