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Proposed Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22VAC30-110
Regulation title(s)	Assessment in Assisted Living Facilities
Action title	Revise Assessment Regulations to clarify assessment and reassessment procedures
Date this document prepared	January 3, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The intent of the proposed action is to make needed amendments to 22VAC 30-110, Assessment in Assisted Living Facilities. 22VAC 30-110 establishes standards regarding initial assessments and annual reassessments of both public pay and private pay individuals who reside in or wish to reside in assisted living facilities (ALF) in Virginia. The regulation also addresses post-assessment actions, requirements of the ALF staff when they discharge individuals, and relocation procedures when an ALF closes.

Current regulatory language was reviewed and clarified if content was unclear, inconsistent, or outdated. The public pay assessment process was streamlined as much as possible while still ensuring that individuals have an appropriate review of their level of care. Language permitting the use of video conferencing for assessments in specific circumstances was added with a requirement of in-person follow-up within seven days. Minor adjustments to the language addressing the reassessment process

were made with the goal of reducing burdens on assessors while still ensuring that vital information is captured on the UAI. Additionally, content regarding the timing of annual reassessments was added as this issue has been confusing for some assessors.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- AG-Auxiliary Grant
- ALF-Assisted Living Facility
- DARS-Department for Aging and Rehabilitative Services
- DMAS-Department of Medical Assistance Services
- DSS-Department of Social Services
- LDSS-Local department of social services
- UAI-Uniform Assessment Instrument

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 63.2-1804 of the Code of Virginia gives DARS the responsibility promulgating regulations related to the assessment of individuals for ALF placement. Additionally, § 51.5-131 of the Code of Virginia authorized the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action ensures that the regulation content is precisely written. Clarity in regulation content is essential to ensuring that the adult’s health and safety needs are most appropriately met.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

DARS updated and added new definitions in Section 10. More substantive changes in sections 30 and 90 clarified assessment and reassessment procedures. Language in sections 20, 40, 50, 80, 100, and 110 were mainly technical or grammatical in nature.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

- (1) The primary advantage of the proposed amendments is to clarify language that was unclear, inconsistent, or outdated.
- (2) Amendments to the regulation clarify, but do not increase, assessors' responsibilities.
- (3) The primary advantage of the regulatory action is to ensure that assessment standards are evenly applied to individuals in need of ALF admission. Consistent standards ensure that adults safety needs are addressed.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements that specifically address the assessment of individuals residing in ALFs in Virginia.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is disproportionately affected by the proposed regulation. The regulation provides statewide uniform standards for assessment of individuals residing in ALFs.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on

affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Paige McCleary, Adult Protective Services Division Director, 8004 Franklin Farms Drive, Henrico, VA 23229; paige.mccleary@dars.virginia.gov; or 804-662-7605 or 804-662-9531 (fax). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

DARS APS Division staff drafted the regulatory content with the assistance of the following LDSS representatives and partners:

- Diane Meese-Wise County DSS
- Terri Jones-Richmond DSS
- Ramona Schaeffer-DMAS
- Judy Hackler-Virginia Assisted Living Association
- Tonya Cunningham-Henrico DSS
- Susan Jones-Campbell County DSS
- Christi Molinaes-Chesterfield County DSS
- Melissa Johnson-Chesterfield County DSS
- Angie Martin-Tazewell County DSS
- Annette Kelley-DSS Licensing

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>DARS would experience minimal impact from the promulgation of this regulation. DARS APS Division staff would be responsible for updating manuals and training materials, activities that are part of routine work responsibilities and existing Division funding.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no projected cost to localities associated with the changes to these regulations.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The regulation affects professionals who conduct assessments of individuals who are seeking admission to an ALF.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and;</p>	<p>The regulation does not impact small businesses. It does not increase requirements for assessments conducted on private pay individuals. It does not increase any requirements on public pay ALF providers.</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no anticipated costs related to these new regulations. The regulations do not require LDSS to perform additional interventions beyond what the Code of Virginia or DARS guidance manuals mandate currently. The regulatory action does not change any reporting or recordkeeping requirements. The regulatory action has no impact on the development of real estate for commercial or residential purposes.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulation has the beneficial impact of providing a consistent framework during the provision of assessment.</p>

Alternatives

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

No alternative to this regulatory action was considered, as the Code of Virginia addresses the need for regulations regarding ALF assessments.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No alternatives to the regulatory action were considered as § 63.2-1804 and of the Code of Virginia direct DARS to implement regulations addressing assessments in ALFs. Actions described in the regulation focus on ensuring the safety and wellbeing of adults who need ALF assessments or reassessments. Amendments to the regulation do not change recordkeeping or reporting requirements for LDSS. The regulatory action does not change any standards for small businesses or negatively affect small businesses.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

DARS is required to promulgate regulations on ALF assessments pursuant to the Code of Virginia. There were no public comments received during the NOIRA stage. The regulation content is not particularly complex and the language in each section is concise. The regulation does not overlap, duplicate or conflict with federal law.

Public comment

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

No public comments were received during the NOIRA stage.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulatory content will have a positive impact on family stability by ensuring that families with members who are elderly or have an impairment and may need to be assessed, and receive prompt and appropriate interventions from qualified assessors. The regulation content will ensure that services are provided in a manner that supports the adult's dignity, independence, sense of personal responsibility and his or her right to self-determination.

The proposed regulatory action does not impact the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action does not affect marital commitment or disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being

proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Defines terms used throughout the regulation	<p>Comported several definitions with definitions in 22VAC40-73-10 (DSS Licensing regulations) as doing so reduces confusion for assessors and DSS licensing inspectors. The following definitions were amended to align with DSS Licensing regulations:</p> <ul style="list-style-type: none"> • Administrator • Assisted living care • Assisted living facility • Residential living care <p>Added definitions that had never been included in the regulation. The following definitions were added:</p> <ul style="list-style-type: none"> • Department designated case management system • Face-to-face • Local department <p>Streamlined lengthy definitions and removed language to create standalone definitions for clarity. These changes also align with DSS Licensing regulations. The following definitions had been incorporated as part of other definitions but now are stand-alone definitions:</p> <ul style="list-style-type: none"> • Minimal assistance • Moderate assistance <p>Made other changes to definitions in response to legislative changes or for grammatical reasons. Incorporated acronyms when need. Utilized more person-centered terms when appropriate. The following definitions were amended for reasons described above:</p> <ul style="list-style-type: none"> • Auxiliary Grants Program • Dependent • Emergency placement • Private pay • Public pay • Reassessment

			<ul style="list-style-type: none"> Uniform Assessment Instrument
20		Describes people/entities who are able to assess an individual.	<p>Replaced “state approved” with “department designated,” This clarifies that DARS is responsible for the approved training. DARS has been responsible for this training since 2013.</p> <p>Changed “local departments of social services” to “local departments.”</p> <p>Changed “contract” to “signed provider agreement” at the request of DMAS.</p> <p>Added the terms “qualified” and “case manager,” which were missing from the section.</p> <p>Changed “eligibility” to “benefits,” which is the correct term.</p> <p>Struck “qualified assessor”, which was not needed in the sentence.</p>
30		Addresses determination of services to be provided	<p>Removed unnecessary language describing the UAI.</p> <p>Added sentence about the need to complete the prohibited conditions section of the UAI. Prohibited conditions are defined in Section 10 but had never been incorporated into the regulation. It is important that the prohibited conditions section be completed on every UAI.</p> <p>Added clarifying text for when a new UAI is needed.</p> <p>Struck references to “Virginia” and added “local department” as adult protective services workers are employees of the local department.</p> <p>Struck redundant language and added language to sentence to improve clarity.</p> <p>Separated a sentence from a previous paragraph to ensure that the requirement is clearly stated.</p> <p>Struck “of social services” from local department.</p> <p>Added “Virginia” to Department of Social Services as that term is used elsewhere in the regulation.</p>

			<p>Added requirement for local department workers, who conduct the majority of assessments in Virginia, to use the department designated case management system. This is currently a DARS policy requirement but needs to be added to the regulation.</p> <p>Reordered the paragraphs in the section.</p>
40		Describes discharge requirements.	<p>Added “the individual’s” in order to clarify the type of legal representative.</p> <p>Changed “eligibility” to “benefits,” which is the correct term.</p> <p>Added the term “case manager,” which was missing.</p> <p>Updated the reference to DSS licensing regulations.</p> <p>Struck “of social services” from local department.</p>
50		Describes authorization of services.	<p>Added “qualified” and “case manager” as these terms were missing.</p> <p>Struck language that was not needed.</p> <p>Added “Virginia” to Department of Social Services as that term is used elsewhere in the regulation.</p> <p>Struck “of social services” from local department.</p>
80		Describes ratings of levels of care on the UAI.	<p>Made grammatical changes to ensure terms are consistent in section.</p>
90		Describes actions taken upon completion of the UAI.	<p>Changed “admission” to more correct term “initial assessment for admission.”</p> <p>Changed “eligibility” to “benefits,” which is the correct term.</p> <p>Struck “of social services” from local department.</p> <p>Changed “contract” to “signed provider agreement” at the request of DMAS.</p> <p>Changed “completed” to “a copy” which is more accurate.</p> <p>Added “case manager” as these terms were missing.</p>

			<p>Struck “of social services” from local department.</p> <p>Removed unnecessary language.</p> <p>Added language about timeframes for completing a reassessment.</p> <p>Added language about providing choice of housing option, based on availability, to comport with § 51-5-160 of the Code of Virginia.</p>
100		Describes targeted case management for AG recipients.	<p>Added “qualified” and “case manager” as these terms were missing.</p> <p>Added “provider” at the request of DMAS.</p> <p>Struck “of social services” from local department.</p>
110		Describes notification and appeals.	<p>Added “qualified” and “case manager” as these terms were missing. Also made grammatical changes to the first sentence of the section to improve clarity.</p> <p>Added “Virginia” to Department of Social Services as that term is used elsewhere in the regulation.</p> <p>Struck “action” as it was not needed.</p> <p>Struck “of social services” from local department.</p>
DIBR		2005 UAI User’s Manual	Removed the DIBR in accordance with 1VAC7-10-140. This will now be listed as a guidance document.