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## Final Regulation Agency Background Document

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| <b>Agency name</b>                                            | State Board of Social Services                           |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 22VAC40-73                                               |
| <b>VAC Chapter title(s)</b>                                   | <i>Standards for Licensed Assisted Living Facilities</i> |
| <b>Action title</b>                                           | Update regulations to add appeal process for discharges  |
| <b>Date this document prepared</b>                            | 8/17/26                                                  |

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

## Brief Summary

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

Standards for Licensed Assisted Living Facilities, 22VAC40-73, provide regulations for the Department of Social Services (DSS) to license, inspect and monitor assisted living facilities (ALF). This action will amend this regulation as required by Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and requires DSS to adopt regulations regarding involuntary discharge of residents. The amendments in this action add definitions of emergency discharge and involuntary discharge, update the existing definition of discharge, establish the terms and conditions for an emergency or involuntary discharge, and describe the appeal process for ALF residents to appeal certain discharge decisions.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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DSS – Department of Social Services  
VAC – Virginia Administrative Code  
ALF – Assisted Living Facility  
DARS – Department of Aging and Rehabilitative Services  
CSB – Community Services Board

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”*

On 8/17/26, the State Board of Social Services adopted final amendments to the *Standards for Licensed Assisted Living Facilities*, 22VAC40-73.

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### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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Pursuant to Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia, DSS is required to adopt regulations regarding involuntary discharge of residents in assisted living facilities. This action provides ALF and residents requirements for involuntary discharge situations and creates a discharge appeal process to follow should one be needed.

This final regulatory action clarifies the existing definition of *discharge* to improve understanding. The regulations have been reorganized to clearly outline the requirements for all three types of discharge. Clarification has been added regarding the responsibilities of ALF following a final case decision in the appeals process under specific circumstances.

### Legal Basis

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

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The State Board of Social Services has the legal authority to adopt regulations and requirements for licensing ALF in accordance with §§ 63.2-217, 63.2-217.1, 63.2-1732, 63.2-1805, and 63.2-1808. The Code mandates promulgation of regulations to address involuntary discharge of ALF residents, including time frames, notification requirements, conditions, and the process for appeal. This regulatory action will provide direction for involuntary discharge, pursuant to § 63.2-1805.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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This action amends this regulation as required by Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and requires DSS to adopt regulations regarding involuntary discharge of residents. The amendments define "emergency discharge" and "involuntary discharge," clarify the term "discharge," establish conditions under which an involuntary discharge may occur, outline the resident's right to appeal certain discharge decisions and the ALFs notification responsibility of these processes. These changes are necessary to safeguard the health, safety, and welfare of ALF residents by ensuring discharges are conducted appropriately and that residents have access to a formal appeal process.

## Substance

*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.*

This amendment will clarify the three types of discharge from an ALF. 'Emergency discharge' and 'involuntary discharge' are defined, and the definition of discharge was revised. Amendments add the terms and conditions for when and how these types of discharges are permitted, including time frames and the process for a resident to appeal the facility's decision to discharge. A new section was added to the chapter describing the appeals process and requirements when an appeal is filed.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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The primary advantage of this action for the public is allowing residents in ALF to appeal an involuntary discharge, which has not previously been permitted. There are no disadvantages to the public from this action. There are no advantages or disadvantages to the agency or Commonwealth, as this action is required by § 63.2-1805 of the Code of Virginia. There could be disadvantages to the regulated programs (ALFs) if the programs do not follow requirements when involuntarily discharging residents, as the residents can now appeal the discharge, and there is a legal remedy for residents that previously did not exist.

## Requirements More Restrictive than Federal

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than*

*applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no applicable federal requirements.

### **Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

#### Other State Agencies Particularly Affected

There is currently one ALF operated by another state agency, the Department of Veteran's Services. The impact to this state agency could be additional costs for attorney fees if a resident appeals an involuntary discharge and maintaining the resident's health and safety during the appeal, or additional costs for relocation assistance, if needed by the resident. There is no change to the information previously reported for this action.

#### Localities Particularly Affected

There are currently two ALF operated by Chesterfield and Orange counties. The impact to these localities could be additional costs for attorney fees if a resident appeals an involuntary discharge and to maintain the resident's health and safety during the appeal or additional costs for relocation assistance, if needed by the resident. There is no change to the information previously reported for this action.

#### Other Entities Particularly Affected

There are currently six ALF operated by other entities: the Fairfax County Redevelopment and Housing Authority operates 2 ALF, Mount Rogers CSB, New River Valley CSB, Region Ten CSB, and Western Tidewater CSB. The impact to these other entities could be additional costs for attorney fees if a resident appeals an involuntary discharge and to maintain the resident's health and safety during the appeal or additional costs for relocation assistance if needed by the resident. There is no change to the information previously reported for this action.

### **Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

| Commenter                                         | Comment                                                                                                                                                                                                                                                                                       | Agency response                           |
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| Lucy Beadnell<br><br>The Arc of Northern Virginia | "On behalf of The Arc of Northern Virginia, a nonprofit organization that serves individuals with developmental disabilities (DD) and their families across the lifespan, we write in strong support of the proposed regulatory change requiring Assisted Living Facilities (ALFs) to provide | The comment supports the regulatory text. |

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|                                                                        | <p>discharge notices to the Virginia Department of Social Services.”</p> <p>The comment went on to address the importance of what this regulation could accomplish in supporting the vulnerable members of the community. There was hope outlined for data that could be collected regarding discharges to further accountability for ALF.</p> <p>The comment addressed the consequences of improper discharges and how this regulation supports transparency in discharge practices to support residents and their families.</p> <p>The commenter feels this regulation aligns with the values of person-centered care, respect and community integration, holding ALFs to a higher standard of care for vulnerable adults.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                        |
| <p>Judy Hackler</p> <p>Virginia Assisted Living Association (VALA)</p> | <p>The Virginia Assisted Living Association (VALA) has worked with licensed assisted living providers to review the proposed changes to 22VAC40-73 regarding involuntary discharges within assisted living facilities. Listed below are some recommendations, marked in red and highlighted, to improve the proposed regulations in the best interest of the residents and the continued operation of the assisted living facility.</p> <p><b>22VAC40-73-10. Definitions</b><br/> <u>“Involuntary discharge” means the permanent movement of a resident out of the assisted living facility that is initiated by the facility.</u></p> <ul style="list-style-type: none"> <li>Without including the word “permanent,” then a temporary transfer to a hospital or rehab center could technically be considered an “involuntary discharge.”</li> </ul> <p><b>22VAC40-73-430. Discharge of Residents</b><br/> <u>E. 3. The resident's failure to substantially comply with the terms and conditions relating to the basis for discharge, as allowed by this chapter, of the resident agreement between the resident and the assisted living facility, provided that the</u></p> | <p>This change was not made as acceptance back into the facility for instances of temporary detention orders is addressed in 22VAC40-73-420. As stated in subsection 420 B, a facility can have a bed hold policy when a resident is hospitalized.</p> |

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|  | <p><u>resident and the resident's legal representative or designated contact person, if any, has been given written notice and at least 30 days to cure the basis for discharge.</u></p> <ul style="list-style-type: none"> <li>The stricken language is irrelevant, as E states "Involuntary discharge of residents may only occur under the following circumstances..."; therefore, 3 is only applicable to the basis for discharge.</li> </ul> <p><u>I. The facility shall offer to provide relocation assistance for residents who are being involuntarily or emergency discharged, which shall include:</u></p> <p><u>1. Assisting the resident and the resident's legal representative or designated contact person, if any, in the discharge or transfer process;</u></p> <p><u>2. Providing the website address to search VDSS records of licensed assisted living facilities and the CMS Care Compare website for different types of Medicare providers a list of facilities that may be able to meet the resident's needs or arranging an appointment with to the resident and the resident's legal representative or designated contact person, if any, and, if requested, a case manager who can provide such information;</u></p> <ul style="list-style-type: none"> <li>The Virginia Department of Social Services and CMS maintains current listings of licensed providers and should be a source for helping to find appropriate housing and services.</li> </ul> <p><u>3. If needed, providing assistance with packing the resident's possessions or paying for a third party to do so, less any insurance, government, or other comparable assistance that the resident is entitled to receive; and</u></p> <p><u>4. If needed, providing assistance with moving and transportation to the resident's new location or paying for a third party to provide such moving and transportation, less any insurance, government, or other comparable assistance that the resident is entitled to receive.</u></p> | <p>This change was not made as this language clarifies that the specific terms and conditions, relating to the basis of discharge, are named and the resident is given 30 days to cure those behaviors.</p> <p>§ 63.2-1805 uses the language "shall provide" which is the language in the final text.</p> <p>Leaving the text as drafted in the proposed regulation as it allows the ALF the flexibility to determine the best way to provide a list of facilities.</p> |
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|  | <p><del>J. No facility shall be required to pay more for relocation assistance as described in subsection I of this section than the monthly charges for accommodations, services, and care as described in the resident agreement (22VAC40-73-390 A), and no facility shall be required to move and transport a resident's belongings outside the state unless such assistance is for a location outside the state within 50 miles of the facility.</del></p> <p><del>K. If the facility employs a third party to pack, move, or transport the resident's belongings as described in subdivisions I 3 and I 4 of this section, no costs shall be billed to the resident.</del></p> <ul style="list-style-type: none"> <li>• Requiring the assisted living facility to financially cover the discharge process of the resident was not directed by §63.2-1805 and could cause a significant burden on the facility. Requiring financial obligations such as with staff time and materials to pack belongings and to provide moving and transportation assistance to the new location is also in excess of what the federal government requires of skilled nursing facilities in discharges.</li> </ul> <p><b>22VAC40-73-435. Involuntary and emergency discharge appeals</b></p> <p><del>D. 1. Allow the resident to continue to reside in the facility, free from retaliation, until the lesser date of 1. the appeal has a final department case decision, as defined in § 2.2-4001 of the Code of Virginia, or 2. 30 days after confirmation of receipt of the discharge appeal hearing request form by the Division of Appeals and Fair Hearings unless the discharge is an emergency discharge or the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia, and the resident is no more than 30 days in arrears in monthly charges;</del></p> <ul style="list-style-type: none"> <li>• Requiring the facility to retain a resident that has already potentially been in non-compliance of contractual agreements for extended periods of time after the initial notification periods can create significant burdens on the</li> </ul> | <p>Pursuant to § 63.2-1805 A 5 of the Code of Virginia, the Board is authorized to promulgate regulations for providing relocation assistance for residents subject to involuntary discharge. No changes were made to these provisions, as they reflect the Board's recommended requirements.</p> |
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|  | <p>continued operation of the facility and the well-being of other residents. We recommend having defined timeframes for the continued residency during the appeal is needed. The resident should be required to be in compliance with the contracted payments to continue to reside at the facility during an appeal, or this will continue to exacerbate the financial burden on the community, which could impact services to other residents that are in compliance with their resident agreements.</p> <p><u>D. 2. Assist the resident and the resident's legal representative or designated contact person, if any, with filing the appeal by providing the required information in § 63.2-1805 of the Code of Virginia and this chapter; and</u></p> <ul style="list-style-type: none"> <li>• Adding this statement creates a clear understanding of how the facility is to assist with the appeal.</li> <li>• While facilities are required to inform residents of their right to appeal an involuntary discharge, providing direct assistance in completing or submitting the appeal paperwork may create a legal and ethical conflict of interest. Because the facility is the initiating party in the proposed discharge, its interests are inherently adverse to the resident's in the appeal process. Any involvement in drafting or influencing the appeal could undermine the resident's autonomy, compromise the fairness of the proceeding, and expose the facility to allegations of coercion, manipulation, or obstruction of due process. To preserve the integrity of the appeal and ensure the resident's rights are protected, facilities should refer residents to independent advocates, such as the Long-Term Care Ombudsman Program, legal aid, or other neutral third parties who can assist without bias or conflicting interests.</li> </ul> <p><u>E. 2. The Division of Appeals and Fair Hearings will provide written confirmation of receipt of the discharge appeal hearing request form to the resident and the resident's legal representative or designated contact person, if any, and the</u></p> | <p>Pursuant to § 63.2-1805 A 5 of the Code of Virginia residents have the right to reside in the facility, free from retaliation during the appeal process. No changes were made to this language.</p> <p>According to § 63.2-1805 of the Code of Virginia, the facility is obligated "to assist the resident in filing an appeal and provide, upon request, a postage prepaid envelope addressed to the Department." This support does not constitute a conflict of interest. No changes were made to this regulation.</p> |
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|                                                                             | <p><u>facility within <del>10</del> 5 days of receipt of the discharge appeal hearing request form.</u></p> <p><u>E. 3. The hearing officer will conduct an appeal hearing within <del>30</del> 15 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer.</u></p> <p><u>E. 4. The burden of proof shall be upon the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and this chapter.</u></p> <p><u>5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within <del>20</del> 15 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence.</u></p> <ul style="list-style-type: none"> <li>• Since the involuntary discharge is not initiated without an original 30-day window of noncompliance, the set timelines for the subsequent steps need to be narrowed to minimize the financial burden on the community, which could impact services to other residents that are in compliance with their resident agreements.</li> </ul> | <p>To ensure adequate time for all parties to prepare for the appeal, conduct the hearing and a final case decision to be issued, the established timeframes will remain the same as in the proposed action.</p> |
| <p>William Way</p> <p>Chair of the Arlington County Commission on Aging</p> | <p>“On behalf of the Arlington Commission on Aging, we write in strong support of the proposed regulatory changes concerning involuntary discharge of residents. The Commission on Aging serves as a key advisory body to the County Board of Arlington County with a mission to promote the quality of life for all older persons and to ensure their needs are included in all planning and activities.”</p> <p>The comment expressed that currently nursing home residents have access to discharge hearings and tenants have protections, leaving ALF residents without any protections. Concern was expressed for the increase of homelessness for older adults in Arlington. Without the discharge protections in place as described this regulation unplanned discharges could result in homelessness.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>The comment supports the regulatory text.</p>                                                                                                                                                                 |

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|                                                                 | <p>The comment expressed that the requirement to have ALF send involuntary and emergency discharges to the Ombudsman office will increase data available for discharge reasons. With this additional data the commenter hopes the Long-Term Care Ombudsman's office can look at trends and patterns to improve trainings and support.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                  |
| <p>Colleen Miller<br/>DisAbility Law<br/>Center of Virginia</p> | <p>dLCV supports the proposed regulation by the Virginia Department of Social Services (DSS) for establishing an appeals process for involuntary discharges from Assisted Living Facilities (ALFs), especially for vulnerable residents.</p> <p><b>Points of Support:</b></p> <ol style="list-style-type: none"> <li><b>Protection for SSA/SSI Beneficiaries:</b><br/>Residents may face delays in receiving benefits due to application processing or changes in representative payees. The appeals process allows residents to explain nonpayment and avoid unjust discharges.</li> <li><b>Safeguard Against Financial Exploitation:</b><br/>Residents with third-party payors (e.g., conservators, representative payees) have a risk of financial mismanagement. The regulation ensures discharge notices are shared with the Long-Term Care Ombudsman, creating oversight and protection.</li> <li><b>Prohibition on Charging for Moving Costs:</b><br/>Residents on Auxiliary Grants have extremely limited funds. The regulation prevents additional financial burden during involuntary or emergency discharges.</li> <li><b>Tracking Problematic Providers:</b><br/>Requiring discharge notices to be sent to DSS Licensing helps identify facilities with frequent discharges. This data can be used to monitor trends and intervene with problematic providers.</li> </ol> <p><b>Recommendations:</b></p> | <p>The comments support the regulatory text.</p> |

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|                                                                                   | <p><b>1. Training for LTC Ombudsman:</b><br/>Train the Ombudsman offices to report misuse by third-party payors to Social Security and Adult Protective Services. Encourage referrals to dLCV for complaints against organizational payees.</p> <p><b>2. Resident Education:</b><br/>Place fact sheets about involuntary discharge appeals in common areas of all licensed ALFs to inform residents of their rights.</p> <p><b>3. Administrator Training and Resources:</b><br/>DSS should conduct mandatory training for ALF administrators. Provide manuals with regulatory guidance, sample discharge notices, and materials for resident education.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>All memos and training information related to this action will be available on the DSS website.</p> <p>Residents are required to receive information from ALF regarding the criteria for discharge per 22VAC40-73-50 A subdivision 4 h.</p> <p>Memos with training information about this action will be available on the DSS website.</p> |
| <p>Joani Latimer</p> <p>Office of the State Long-Term Care Ombudsman (OSLTCO)</p> | <p>OSLTCO fully supports the proposed regulations and urges prompt implementation to protect vulnerable assisted living facility (ALF) residents. The comment commends DSS, the Board, and stakeholders for their collaborative efforts in developing these long-overdue protections.</p> <p>Below is a summary of the support from OSLTCO:</p> <p><b>Closing a Longstanding Protection Gap</b><br/>ALF residents have historically lacked both landlord-tenant eviction protections and a formal discharge appeal process. The proposed regulations address this critical due process gap, offering residents a meaningful way to challenge improper or arbitrary discharges.</p> <p><b>High Frequency and Impact of Involuntary Discharges</b><br/>Involuntary discharge is consistently among the top five complaints received by the Long-Term Care Ombudsman Program. These discharges often affect the most vulnerable residents-those with limited income, physical or mental health challenges, and no support system-leading to traumatic outcomes such as homelessness or hospitalization.</p> | <p>The comment supports the regulatory text.</p>                                                                                                                                                                                                                                                                                              |

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|                                          | <p><b>Importance of Data Collection and Oversight</b><br/>The regulation's requirement for automatic notice of discharges to DSS and the Ombudsman Program is essential. This will enable systematic tracking of discharge incidents, improve oversight, and support timely advocacy for affected residents.</p> <p><b>Need for Clear Discharge Criteria</b><br/>The absence of clear standards has made it difficult for the Ombudsman Program to advocate effectively against inappropriate discharges. The proposed regulations provide much-needed clarity and encourage providers to pursue alternatives to discharge when possible.</p> <p><b>Support for Especially Vulnerable Residents</b><br/>The regulations emphasize the importance of protecting residents who lack advocates. The required notice to the Ombudsman Program ensures these residents receive support during discharge proceedings.</p> <p><b>Trauma and Disruption from Discharges</b><br/>Discharges can be deeply destabilizing, especially for residents who view the ALF as their home. The appeal process offers a safeguard against unnecessary upheaval and promotes stability for residents facing complex challenges.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>Megann Phelps<br/>The Laurels RAL</p> | <p>Questions were asked about the following scenarios during involuntary discharges:</p> <p><b>Safety Risks During Appeals:</b><br/>If a resident is being discharged for violent or dangerous behavior (e.g., physical aggression, fire-starting), the facility may still be required to house them during the appeal process. This could pose serious safety risks to other residents and staff while waiting for a decision.</p> <p><b>Challenges with Non-Ambulatory Residents:</b><br/>If a resident becomes physically or mentally non-ambulatory and the facility</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>The resident agreement remains in effect during the appeal process. The facility would continue to be responsible for updating and implementing the Individualized Service Plan, working with the resident to meet their needs during this time. This action defines "emergency discharge" and residents discharged under this provision are not permitted to remain at the facility during the appeal process.</p> |

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|                                                  | <p>can no longer meet their needs, the appeal process may delay necessary discharges. This could interfere with the facility's ability to ensure appropriate care levels.</p> <p><b>Complications with Rehab Returns</b><br/>Noted concern if a resident develops a new condition while in rehab that is a prohibited condition.</p> <p>Support for this action was expressed to help prevent facilities from discharging residents for vague or unjustified reasons.</p> <p>Lastly a concern was noted about the burden of moving responsibilities:</p> <p>The regulation appears to place the responsibility for packing and moving on the facility. Traditionally, families handle these tasks with facility support as needed; shifting full responsibility to the facility could be burdensome and unclear.</p>                                                                                                                                                                                                                                                                                                                       | <p>§ 63.2-1805 D of the Code of Virginia outlines prohibited conditions. This did not change during this regulatory action.</p> <p>§ 63.2-1805 D outlines prohibited conditions. This did not change during this regulatory action.</p> <p>The comment supports the action.</p> <p>As noted in 22VAC40-73-430 the new subsection I subdivision 4, the moving assistance is to be provided, if needed.</p>                                                                                                                                                                                                                                                              |
| <p>Anne McCray</p> <p>Sunrise of Springfield</p> | <p>I am writing to submit my commentary on the proposed action for section 435 regarding the appeals process. I believe that this regulation will be detrimental to the assisted living environment in our commonwealth. There is no insurance policy that will pay a community for the back time owed during this appeal process. Having a potential 120 day period of non-payment has the potential to cause low-income communities to outright close as well as cause residents who could have benefited for a short time to potentially face a more stringent screening process.</p> <p>Additionally, if a resident is being discharged for behaviors, 120 days is a long time to put other residents in a facility in potential danger if this cannot be managed by the community. That long of a window will also impact financially as other residents will be unlikely to want to continue to live in an environment where the behavior is seemingly not being addressed.</p> <p>I implore that this regulation be properly reviewed and rejected to avoid placing an undue burden on the communities and the other residents.</p> | <p>Pursuant to § 63.2-1805 of the Code of Virginia, the ALF is required to allow the resident 30 days to cure payment delinquency. The board promulgated regulations in consideration of this timeframe and compliance with the Code, including the Administrative Process Act.</p> <p>§ 63.2-1805 D of the Code of Virginia outlines prohibited conditions. The resident agreement remains in place while the resident resides at the facility. This action defines "emergency discharge" and residents discharged under this provision are not permitted to remain at the facility during the appeal process. This did not change during this regulatory action.</p> |

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| <p>Dana Parsons</p> <p>Leading Age Virginia</p> | <p>Thank you for the opportunity to comment on the proposed appeal process for assisted living discharges. LeadingAge Virginia reviewed the proposal and offers the following recommendations:</p> <p><b>22VAC40-73-430 Discharge of residents</b><br/> <b><u>Proposed:</u></b> K. If the facility employs a third party to pack, move, or transport the resident's belongings as described in subdivisions I 3 and I 4 of this section, no costs shall be billed to the resident.</p> <p><b><u>Recommendation:</u></b> The proposed language would require the assisted living to absorb the costs of packing, moving, or transporting a resident's belongings when using a third party. These costs should instead be billed to the resident because they are directly tied to the resident's personal property and relocation, not to the assisted living operations or provision of care.</p> <p><b>22VAC40-73-435 Involuntary and emergency discharge appeals</b><br/> <b><u>Proposed:</u></b> D. When a resident appeals a discharge, the facility shall: 1. Allow the resident to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision, as defined in § 2.2-4001 of the Code of Virginia, unless the discharge is an emergency discharge or the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia;</p> <p><b><u>Recommendation:</u></b> We recommend developing a statement of condition that clarifies the circumstances under which a resident may remain in an assisted living during the appeal process. This statement should include, but not be limited to, conditions such as the resident must meet contractual requirements and not pose an immediate threat to their own health or safety, or that of other residents.</p> <p>Additionally, we recommend establishing a clear time frame for vacating the assisted living community following the resolution of the appeal to ensure both resident and</p> | <p>Pursuant to § 63.2-1805 A 5 of the Code of Virginia, the Board is authorized to promulgate regulations for providing relocation assistance for residents subject to involuntary discharge. No changes were made to these provisions, as they reflect the Board's recommended requirements.</p> <p>This is addressed in § 63.2-1805 A 5 (v) of the Code of Virginia.</p> <p>A timeframe for leaving the ALF was not added to the regulation as situations may vary by each ALF's resident agreement and policies.</p> |
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|                                                                                         | <p>community expectations are clear and consistent.</p> <p><b>Proposed:</b> E. The discharge appeal process.</p> <p>...</p> <p>3. The hearing officer will conduct an appeal hearing within <del>30</del> 14 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer.</p> <p>...</p> <p>5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within <del>20</del> 10 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence.</p> <p><b>Recommendation:</b> We recommend reducing the timeframes as noted above to help minimize the financial and administrative burdens on assisted living communities.</p> | <p>To ensure adequate time for all parties to prepare for the appeal, conduct the hearing and a final case decision to be issued, the established timeframes will remain the same as in the proposed action.</p>                                                                                  |
| <p>Virginia Health Care Association-Virginia Center for Assisted Living (VHCA-VCAL)</p> | <p>The Virginia Health Care Association-Virginia Center for Assisted Living (VHCA-VCAL) submits this comment on behalf of its members.</p> <p><b>22VAC40-73-430 Discharge of Residents</b></p> <ol style="list-style-type: none"> <li>1. Recommended edits for clarity and practicality:<br/> <u>(I) 2. Providing access to a listing of licensed facilities that may be able to meet the resident's needs or arranging an appointment with the resident and the resident's legal representative or designated contact person, if any, and, if requested, the contact information for the local DSS agency to request a case manager who can provide such information;</u></li> <li>2. Existing law or policy does not require facilities to pay for or handle packing and moving individuals. Adding such requirements could strain resources and create operational</li> </ol>                                                           | <p>Pursuant to § 63.2-1805 A 5 of the Code of Virginia, the Board is authorized to promulgate regulations for providing relocation assistance for residents subject to involuntary discharge. No changes were made to these provisions, as they reflect the Board's recommended requirements.</p> |

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|  | <p>challenges and undue negative implications.</p> <p>VHCA-VCAL recommended removing the regulatory text of 22VAC40-73-430 subsections: I 3, I 4, J and K.</p> <p><b>22VAC40-73-435 Involuntary and emergency discharge appeals</b></p> <p>1. Under the proposal, a person may stay at the facility for up to 80 days following an involuntary discharge notice. Given that a 30-day advance notice is required prior to discharge, it is recommended that the Division of Appeals and Fair Hearings adopt expedited timelines compared to those outlined in the proposed regulations.</p> <p><u>(E) 2. The Division of Appeals and Fair Hearings will provide written confirmation of receipt of the discharge appeal hearing request form to the resident and the resident's legal representative or designated contact person, if any, and the facility within <del>10</del> 7 days of receipt of the discharge appeal hearing request form.</u></p> <p><u>(E) 3. The hearing officer will conduct an appeal hearing within <del>30</del> 15 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer.</u></p> <p><u>(E) 5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within <del>20</del> 7 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence.</u></p> | <p>To ensure adequate time for all parties to prepare for the appeal, conduct the hearing and a final case decision to be issued, the established timeframes will remain the same as in the proposed action.</p> |
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### Detail of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

| Current chapter-section number | New chapter-section number, if applicable | New requirement from previous stage | Updated new requirement since previous stage                                                  | Change, intent, rationale, and likely impact of updated requirements                                                                                                                                                                                                                                                                                                                      |
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| 10                             |                                           |                                     | Updated existing definition of "Discharge"<br><br>Updated definition of "Emergency discharge" | *Added language to the existing definition of discharge to clarify that a 'discharge' is initiated by a resident.<br><br>*Removed language to clarify the requirement.<br><br>The intent, rationale and impact for this change is to provide clarity of the three types of discharges from an ALF: a discharge that is resident initiated, involuntary discharge and emergency discharge. |

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| 430 |  |  | <p>Clarified throughout section the name of the department-approved forms are: "involuntary or emergency discharge notice form" or "involuntary or emergency appeal hearing request form"</p> <p>Updated subsection D</p> <p>Updated subsection E</p> <p>Updated subsection F</p> <p>Updated subsection G subdivision 1</p> <p>Updated subsection H</p> <p>Updated subsection I subdivision 1</p> <p>Updated L to create 3 subdivisions for clarity. L was moved to L 1, M was moved to L 2 and N was moved to L 3.</p> | <p>The intent, rationale and impact for this change is to ensure that residents who are discharged under an involuntary or emergency basis are given the department-approved forms for notice and the appeal hearing request form.</p> <p>The intent, rationale and impact for this change is to ensure that residents who are discharged under an involuntary or emergency basis are given the required information in accordance with subsection G.</p> <p>The intent, rationale and impact for this change is to clarify in subdivisions 1-3 the reasons a resident can be involuntarily discharged.</p> <p>The intent, rationale and impact of this change is to clarify the requirements for an ALF before issuing an involuntary discharge notification.</p> <p>Added "involuntary" to clarify a requirement for the timeframe of an involuntary discharge notification.</p> <p>Updated the Code authority, allowing a resident who has been issued an involuntary discharge to remain at the facility throughout the appeal to § 63.2-1805 of the Code of Virginia.</p> <p>Removed "or transfer" to clarify the requirement applies to discharges only, as "transfer" is defined in 22VAC40-73-10.</p> <p>Subsection L was reordered with the intent, rationale and impact that requirements in subdivisions 1-3 apply to all discharges.</p> |
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| 435 |  | Added subsection E | Updated subsection B                                                     | Replaced 'discharge' with 'involuntary or emergency discharge' for clarity as section 435 pertains to involuntary or emergency discharges.                                                                                                                                                                                                                                                                                                                                                                                        |
|     |  |                    | *Updated subsection D to outline requirements for involuntary discharges | *Removed references to emergency discharges to clarify the requirements in this subsection pertain to involuntary discharges.                                                                                                                                                                                                                                                                                                                                                                                                     |
|     |  |                    | The previous subsection E is now subsection F.                           | Reordered subsection E to subsection F to improve understanding of the section.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|     |  |                    | *Removed subsection F subdivision 7                                      | *Removed as subdivision 6 addresses that any appeal to the final department case decision is subject to the Administrative Process Act.                                                                                                                                                                                                                                                                                                                                                                                           |
|     |  | Added subsection G |                                                                          | *Added language outlining an exception, explaining that the ALF is not required to receive the resident back in the facility if there was an involuntary discharge and the resident voluntarily moves out before a final case decision. The intent, rationale and impact of this subsection is to clarify the regulation.                                                                                                                                                                                                         |
|     |  |                    | Added subsection H and subdivisions H 1- 4.                              | *Added language describing the responsibility of the ALF if an emergency discharge is reversed and the resident wants to move back to the ALF.<br>*The ALF will need to determine if the resident has a prohibited condition, receive the resident back into the ALF, have the resident sign a new resident agreement, and update the Individualized Service Plan and Uniform Assessment Instrument to ensure appropriate services are provided to the resident.<br><br>*The intent, rationale and impact of the addition of this |

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|  |  |  |  | subsection is to clarify the regulations for a resident's return to the ALF if the final case decision reverses an emergency discharge. |
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### Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC                     | Change, intent, rationale, and likely impact of new requirements                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Throughout chapter             |                                           | The terms "he, his, him, and himself" are used. | Replaced the terms with the individual the regulation requirement applies to for clarification.                                                                                                                                                                                                                                                                                                                                                                                       |
| 22VAC40-73-10                  |                                           | Definitions used in regulation                  | <p>Removed definition for chapter as it is unnecessary.</p> <p>Technical edits were made throughout this section for clarification and ease of understanding.</p> <p>*Added to the current definition for discharge for clarification and differentiation in discharge classification.</p> <p>*New definitions added: emergency discharge and involuntary discharge.</p> <p>The intent, rationale, and impact is for ALF and the public to understand the meaning of these terms.</p> |

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| 22VAC40-73-430 |  | <p>Section describes discharge requirements, including discharge planning, notifications, and assistance the ALF provides the resident who is being discharged.</p> | <p>The current subsections A-H are reorganized. The new subsection A is reworded requirements from current subsection C that the ALF shall develop and implement written policies and procedures regarding discharge to align with § 63.2-1805 and new section 435.</p> <p>The new subsection B is reworded requirements from current subsection C regarding minimum length of notice to the ALF when a resident initiates plans to move from the facility.</p> <p>The new subsection C is reworded requirements from current subsection A adding resident's preferences to the list of reasons for discharge planning and removing the requirement for the resident to move in 30 days.</p> <p>*The new subsection D is reworded requirements from current subsection B to describe discharge notification requirements for involuntary or emergency discharge, as required by § 63.2-1805.</p> <p>The current subsection C is removed. Requirements in current subsection C included in new subsection A and B.</p> <p>*The new subsections E and F describe situations that allow involuntary discharges from the ALF. *These sections include requirements to notify</p> |
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|  |  | <p>residents of the reason for certain discharges and provide 30 days to cure the basis prior to receiving a discharge notice, as required by § 63.2-1805 A 5.</p> <p>Requirements in current subsections E-F were incorporated into subsection G.</p> <p>*The current subsection G was reworded to add the requirement to use the DSS-provided involuntary or emergency discharge notice form and describes the notification requirements from § 63.2-1805 A 5 and removes the notification requirement for public-pay residents as this is addressed in Department of Aging and Rehabilitative Services (DARS) regulations 22VAC30-80-45 and 22VAC30-110-40.</p> <p>*Subsection H was revised to incorporate the requirement from § 63.2-1805 A 5 mandating that the Department's involuntary or emergency discharge appeal hearing request form be provided at the time of an involuntary or emergency discharge. Provisions related to the discharge statement were removed, as this information is now included in the involuntary or emergency discharge notice form referenced in subsection G.</p> <p>*Subsection I is revised to describe requirements to provide relocation assistance to residents who are being involuntarily or emergency discharged from the facility. The current subsection I</p> |
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|  |                |  | <p>is now subsection L subdivision 2 and is amended for technical changes for ease of understanding.</p> <p>*The new subsection J provides exceptions to the relocation assistance requirements found in subsection I.</p> <p>*The new subsection K prohibits the facility from billing the resident for the fees from a third-party provider of relocation assistance.</p> <p>The new subsection L outlines requirements that apply to all types of discharges.</p> <p>The current subsection J is the new subsection L subdivision 3 which is amended for technical changes for ease of understanding.</p> <p>The intent and rationale is to clearly describe all discharge requirements in one section, so that the ALF, residents, and the public understand the different requirements for different types of discharges.</p> <p>The impact is clearer understanding and compliance with Code and regulation requirements for ALF discharges.</p> |
|  | 22VAC40-73-435 |  | <p>*A new section 435 was written to incorporate the requirements from § 63.2-1805 A 5 of the Code of Virginia. *It describes the process and requirements for appealing involuntary or emergency discharges, the ALF requirements when</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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|  |  | <p>a resident files an involuntary or emergency discharge appeal, and the involuntary and emergency discharge appeal process, including timeframes for notifications, a hearing, and the appeal case decision. *Added language outlining an exception, explaining that the ALF is not required to receive the resident back in the facility if there was an involuntary discharge and the resident voluntarily moves out before a final case decision. The intent, rationale and impact of this subsection is to clarify the regulation. *It also includes requirements for the ALF when an emergency discharge is reversed, and the resident wishes to move back to the ALF.</p> <p>The intent and rationale is to clearly describe the involuntary or emergency discharge appeal process so that residents, ALF, and the public understand the requirements and protections provided for involuntary and emergency discharge appeals.</p> <p>The impact is understanding and compliance with the Code of Virginia and regulation requirements for discharge appeals.</p> |
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