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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-73
VAC Chapter title(s)	Standards for Licensed Assisted Living Facilities
Action title	Amendments to establish a minimum amount of liability insurance
Date this document prepared	April 13, 2026

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.

The Department of Social Services was directed in Chapter 580 of the 2023 Acts of Assembly to promulgate emergency regulations that require all assisted living facilities to maintain a minimum amount of liability insurance, as determined by the Board of Social Services based on the number of residents for which the assisted living facility is licensed, and provide notice of such insurance, upon request, to any resident or prospective resident.

The emergency regulation became effective on July 26, 2024, and expires on July 24, 2026. This action follows the regulatory process for the proposed regulation to become permanent. The final regulation has no changes to the proposed regulation.

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.

ALF - Assisted Living Facilities
DSS - Department of Social Services
VAC - Virginia Administrative Code

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 June 15, 2026 the State Board of Social Services adopted final amendments to the *Standards for Licensed Assisted Living Facilities*, 22VAC40-73.

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.

Chapter 580 of the 2023 Acts of Assembly amended § 63.2-1805 of the Code of Virginia. Chapter 580 requires all ALF to maintain a minimum amount of liability insurance according to licensed capacity tiers and is currently covered by an emergency regulation which is in effect until July 24, 2026. As this is a mandated change from the 2023 Acts of Assembly, this action will undergo the standard regulatory process. No additional issues need to be addressed as a part of this regulatory change.

Legal Basis

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

The State Board of Social Services has the legal authority to adopt regulations and requirements for licensed assisted living facilities in accordance with §§ 63.2-217, 63.2-1732, and 63.2-1805 of the Code of Virginia. The Code of Virginia mandates promulgation of regulations for the activities, services, and facilities to be employed by people and agencies required to be licensed, which shall be designed to ensure that such activities, services, and facilities are conducive to the well-being of adults who are aged or infirm or who have disabilities residing in ALF. This regulatory action will provide the requirements for the minimum amounts of liability insurance based on tiers determined by the licensed capacity of the ALF 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.

This action will amend this regulation as required by Chapter 580 of the 2023 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and required DSS to promulgate regulations that require all ALF to maintain a minimum amount of liability insurance based on licensed capacity. This action is essential to protect the health, safety, and well-being of adults who are aged or infirm or who have disabilities residing in ALF to require a minimum amount of liability insurance to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.

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.

Amendments to this chapter will remove the existing requirement which requires a minimum amount of liability insurance coverage to be maintained by ALF for the purposes of disclosure and will add the requirement that all ALF shall maintain liability insurance coverage in the amounts based upon the licensed capacity of the facility. These amendments will also clarify the requirements of notifying, upon request, residents and prospective residents of the minimum liability insurance coverage maintained by the ALF. The final regulation has no changes to the proposed regulation.

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.

The primary advantage to the public is that residents of ALF will have a financial recourse option in the event of injuries or losses due to a negligent act of the facility. The primary advantage to the ALF is financial coverage in the event of a lawsuit by a resident. There could be a disadvantage to the ALF as this will be an additional expense if the facility has not previously maintained liability insurance. There are no advantages or disadvantages to the agency or Commonwealth, as this action requires licensed ALF to maintain a minimum amount of liability insurance.

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 federal requirements related to liability insurance requirements for assisted living facilities as they are regulated through state law.

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. This ALF has carried at least the minimum amount of liability insurance required of its facility for several years. Currently, there is no additional fiscal impact to the state agency.

Localities Particularly Affected

There are currently two ALF run by local agencies, Chesterfield County and Orange County. The financial impact will be the cost of the liability insurance policy if the facility does not already have an existing policy.

Other Entities Particularly Affected

There are currently six ALF that are run by local authorities: Mount Rogers Community Services Board (CSB), Fairfax County Redevelopment Housing Authority operates two ALF, Region Ten CSB, New River Valley CSB, and Western Tidewater CSB. The impact to the CSBs will be the cost of the liability insurance policy if the facility does not already have an existing policy.

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.

The Board received no public comment following the publication of the proposed stage.

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 chaptersection number	New chaptersection number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
N/A	N/A	N/A	N/A	N/A

No changes are made to the regulatory text between the proposed stage and final stage.

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 chaptersection number	New chaptersection number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
Throughout chapter		The terms “his and him” are used.	Removes or replaces the terms with “the resident” for clarification.
22VAC40-73-45		This section addresses the minimum amount for liability insurance based on licensed capacity.	<p>Changes to the title of this section clarify that this section requires liability insurance coverage.</p> <p>Adds the requirement that ALF shall maintain liability insurance per occurrence based on licensed capacity tiers pursuant to § 63.21805. Tier I requires a minimum of \$250,000 for facilities licensed for 25 residents or less. Tier II requires a minimum of \$400,000 for facilities licensed for 26-75 residents. Tier III requires a minimum of \$500,000 for facilities licensed for 76-150 residents and tier IV requires a minimum of \$1,000,000 for facilities licensed for 151 or more residents. ALF has been required to maintain the required amount of liability insurance since January 23, 2025, through the emergency action which became effective July 26, 2024.</p> <p>Removes the requirement that facilities shall not disclose liability insurance policy information unless it is the minimum amount of coverage</p>

			<p>since this regulatory change requires all ALF to maintain a certain amount of liability insurance based on licensed capacity.</p> <p>Adds the requirement that all ALF are required to provide, upon request, a statement that the facility maintains liability insurance on a form developed by the department.</p> <p>Amendments in this section ensure consistency with state law and the intent is to protect the residents.</p>
<p>22VAC40-73-50</p>		<p>This section addresses the disclosure requirements to residents and prospective residents.</p>	<p>Removes the requirement for disclosure of minimum amounts of liability insurance.</p> <p>Amendments in this section ensure consistency with state law.</p>
<p>22VAC4073-390</p>		<p>390 A 4. m. The resident, upon request, has been notified in writing that the facility maintains liability insurance that provides the minimum amount of coverage set forth in 22VAC4073-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The written notification must be on a form developed by the department; and</p>	<p>Removes a repetitive requirement requiring the notification to residents, upon request, regarding liability insurance be made using a DSS developed form. This is addressed in subsection 45 B and removed in subdivision 390 A 4 m in this action, as it is unnecessary to repeat the requirement.</p>

