



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Long-Term Care Administrators, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC95-30-10 et seq.
Regulation title	Regulations Governing the Practice of Assisted Living Facility Administrators
Action title	Oversight of acting administrators
Date this document prepared	6/16/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the regulatory action is to comply with the second enactment of Chapter 609 of the 2011 Acts of the Assembly, which requires: *“That the Board of Long-Term Care Administrators shall promulgate regulations for the oversight of acting administrators of assisted living facilities who have sought licensure but who are not yet licensed as long-term care administrators by a preceptor registered or recognized by the Board.”* To implement provisions of Chapter 609, the Board will amend certain regulations for an administrator-in-training to ensure adequate oversight by the preceptor who is supervising the training of a person serving as the acting administrator for an assisted living facility. Regulations are intended to clarify that the acting administrator is in training, that the preceptor is responsible for appropriate oversight, and that survey visit reports for the facility become part of the administrator-in-training reports.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC95-30-10 et seq. Regulations Governing the Practice of Assisted Living Facility Administrators are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

In addition, the Board has specific authority in § [54.1-3103.1](#) (as amended by Chapter 609) for regulation of an acting administrator for operation of assisted living facility:

A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of an administrator licensed by the Board, except as provided in subsection B of § [54.1-3102](#). If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to perform his duties, the assisted living facility may continue to operate with an acting administrator in accordance with the provisions of § [63.2-1803](#). The facility shall immediately notify the Board of Long-Term Care Administrators and the regional licensing office of the Department of Social Services that the assisted living facility is operating without the supervision of a licensed assisted living facility administrator and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of Social Services of his employment and, if he is intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board within 10 days of employment.

B. Nothing in this chapter shall prohibit an assisted living administrator from serving as the administrator of record for more than one assisted living facility as permitted by regulations of the licensing authority for the facility.

Applicable law for the Department of Social Services was amended by Chapter 609 accordingly:

§ [63.2-1803](#). Staffing of assisted living facilities.

A. An administrator of an assisted living facility shall be licensed as an assisted living facility administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ [54.1-3100](#) et seq.) of Title 54.1. However, an administrator of an assisted living facility

licensed for residential living care only shall not be required to be licensed. Any person meeting the qualifications for a licensed nursing home administrator under § [54.1-3103](#) shall be deemed qualified to (i) serve as an administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to perform his duties, the assisted living facility shall immediately employ a licensed administrator or appoint an acting administrator who is qualified by education for an approved administrator-in-training program and has a minimum of one year of administrative or supervisory experience in a health care or long-term care facility, or has completed such a program and is awaiting licensure. The facility shall give immediate notice to the regional licensing office of the Department of Social Services and to the Board of Long-Term Care Administrators and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of his employment and, if intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board of Long-Term Care Administrators within 10 days of employment. An assisted living facility may be operated by an acting administrator for no more than 150 days, or not more than 90 days if the acting administrator has not applied for licensure, from the last date of employment of the licensed administrator.

C. The Department may grant an extension of up to 30 days in addition to the 150 days from the last date of employment of a licensed administrator if the acting administrator has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ [54.1-3100](#) et seq.) of Title 54.1, has completed the administrator-in-training program, and is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice to the Board of Long-Term Care Administrators. In no case shall an assisted living facility be operated with an acting administrator for more than 180 days, including the 30-day extension, from the last date of employment of a licensed administrator.

D. No assisted living facility shall operate under the supervision of an acting administrator pursuant to § [54.1-3103.1](#) and this section more than one time during any two-year period unless authorized to do so by the Department. Determinations regarding authorization to operate under the supervision of an acting administrator for more than one time in any two-year period shall be made by the Department on a case-by-case basis.

E. The assisted living facility shall have adequate, appropriate, and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Assisted living facilities (ALF's) report that they find it very difficult to hire a licensed administrator as a replacement and must generally get someone from within the organization trained to become the licensed administrator. It is not possible to accomplish that within 90 days. Amendments to law in Chapter 609 (SB1093) would ensure that the person named as acting administrator is qualified by education to become licensed and that he is enrolled in an administrator-in-training program (AIT). Enrollment in an AIT program as a preceptee will at least ensure that there is some oversight and supervision by a preceptor of the acting administrator practice. The licensee who is the preceptor is held responsible for appropriate supervision but not for all activities that occur within the ALF under an acting administrator. The acting administrator may only serve for 150 days, but if the acting administrator has completed the program and taken the examination, a 30-day extension is allowed while he is awaiting the results of the examination and subsequent licensure by the Board.

Since the revised law will allow an acting administrator (unlicensed person) to remain in charge of an assisted living facility for up to 180 days (rather than the current 90 days), it is essential for the health, welfare and safety of residents in that facility to ensure appropriate oversight by the person who is supervising and training the acting administrator and to identify the status of the acting administrator to the public.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Amendments to regulation will address the administrator-in-training (AIT) program as it applies to persons who are concurrently serving as the acting administrator for an assisted living facility. The maximum number of AIT hours required for persons with minimal educational qualifications is 640. Since persons typically complete an AIT program while otherwise employed in another capacity, they are given 24 months to complete the training. However, the law requires that unlicensed persons acting as administrators must complete the training within 150 days and become licensed within 180 days, or the facility must hire someone else who is a licensed administrator. Regulations will be amended for clarity and consistency with the law.

To ensure appropriate oversight on an acting administrator in an AIT program, the responsibility of the preceptor for training will be somewhat more explicit and may specify a minimum number of hours the preceptor should be personally in the building for oversight and training. Additionally, regulations may specify that the acting status of an administrator should be identified on a name tag and that the name of the acting administrator and preceptor license should be displayed so the public has information available to report possible violations.

Finally, the Board may specify that survey visit reports (conducted by Department of Social Services) during the period when the person in the AIT program should be included in progress reports, so the Board has knowledge of any major violations that may have occurred while the acting administrator (who is seeking full licensure) was in charge of the facility.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to the proposed regulatory action; it is mandated in the second enactment of Chapter 609. The Board will consider regulatory language that is reasonable and not overly burdensome but that accomplishes the intent of protecting the residents of assisted living facilities. The Virginia Health Care Association, the Virginia Association of Non-profit Homes of the Aging and the Virginia Alzheimer's Association have already commented with a recommendation that language be added to requirements for preceptors that assures responsibility for the oversight of the administrator-in-training when the trainee is acting as the administrator of record.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held after proposed regulations have been adopted and approved for publication. Notice of the hearing will be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and will be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board will utilize the Regulatory/Legislative Committee for the development of proposed regulations. All interested parties are noticed when meetings are scheduled and are encouraged to participate.

Family impact

Assess the potential impact of the proposed 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.

If residents are placed in jeopardy by inadequate, unsafe conditions within an assisted living facility, the family of those residents can be significantly impacted. The purpose of a licensure law is to ensure qualified, knowledgeable persons provide oversight for the facility.