



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-745
Regulation title	Assessment in Adult Care Residences
Action title	Comply with Assisted Living Facility Regulation and DMAS Policy
Document preparation date	October 22, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This regulation provides guidelines for assessing the needs of individuals who are applying to or are residents of assisted living facilities (ALFs) (formerly called "adult care residences"). The ALF assessment using a uniform assessment instrument is a standardized approach that uses common definitions to gather sufficient information on applicants to and residents of ALFs to determine their care needs. Assessment is the prior-authorizing mechanism for public reimbursement for ALF services.

The purpose of the proposed action is to bring the regulation into compliance with changes in the Department of Social Services' regulation on licensure of assisted living facilities and with the Department of Medical Assistance Services' administrative policy for reimbursement of assisted living services. In addition, the term "adult care residence" will be replaced with "assisted living facility" throughout, including in the regulation's title.

Basis

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

The legal basis for this regulation is the *Code of Virginia*, §§ 63.2-1601 and 1732. The regulation does not exceed the scope of what the *Code* allows.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The amended regulation is essential to the health, safety, and welfare of individuals applying to or residing in an ALF. The purpose of the proposed action is to bring the regulation into compliance with changes in the Department of Social Services' regulation on licensure of assisted living facilities and with the Department of Medical Assistance Services' administrative policy for reimbursement of assisted living services. In addition, the term "adult care residence" will be replaced with "assisted living facility" throughout, including in the regulation's title.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The major changes are technical in nature and not substantive, including language changes to bring the regulation into compliance with current *Code* language, clarifying definitions of terms, and deleting outdated terminology.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantage to making these changes is to bring the regulation into compliance with previously promulgated changes. This helps to ensure that assessments of applicants to and residents of ALFs are complete in a consistent manner across the state. This regulatory action poses no disadvantages to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There is no additional fiscal impact to the state.
Projected cost of the regulation on localities	There is no additional fiscal impact to local departments as a result of this amended language.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Assisted living facilities, applicants to and residents of assisted living facilities, and local departments of social services.
Agency’s best estimate of the number of such entities that will be affected	There are approximately 675 assisted living facilities, close to 10,270 Auxiliary Grant residents in assisted living facilities, and 120 local departments of social services who participate in assessment and reassessment of adults in care.
Projected cost of the regulation for affected individuals, businesses, or other entities	Not applicable.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

This regulation was developed with the assistance of representatives of local departments of social services and field staff, staff of the Department’s Division of Licensing Programs, and staff of the Department of Medical Assistance Services. Adult Services’ philosophy is that adults should be provided the most appropriate and least restrictive level of residential care and services. No other alternatives have been considered.

Public comment

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

Commenter	Comment	Agency response

No public comments were received during the 30-day period following the publication of the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action has no specific impact on the institution of the family and family stability. The regulation does promote the appropriate assessment of care needs for Virginia’s vulnerable adults.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-745-10 (Changes to definitions are maintained throughout the regulation.)		The terms “adult care residences” or “ACR’s” are used.	The terms “assisted living facilities” or ALF’s are used. The change complies with previous <i>Code</i> changes.

		<i>Code</i> was referenced as § 63.1.	<i>Code</i> reference was changed to 63.2 per the recodification changes effective October 1, 2002.
			Clarified definition of “applicant” to mean someone who is planning to reside in an ALF and added definition of “resident” to mean someone who lives in an ALF.
		Referred to “intensive assisted living.”	Deleted references to intensive assisted living level of care per Centers for Medicare and Medicaid (CMS) non-renewal of this waiver.
		Referred to “assessor,” “qualified assessor” and “case manager.”	Clarified definitions of “qualified assessor” and “case manager.” Deleted definition of “assessor” for clarity. “Qualified assessor” is used to specify entities who may assess applicants to and residents of ALFs. “Case manager” is used when referring to Medicaid-funded targeted case management.
			Added <i>Code</i> references for Departments of Rehabilitative Services and Corrections.
			Defined “significant change” as it relates to when there is a change in the resident’s condition.
22 VAC 40-745-20			Clarified language when a resident is to be assessed.
			Clarified language regarding who may assess both a public pay and a private pay resident and added Department of Corrections, Community Release Units, to list of assessors for public pay. Some localities were reluctant to go into correctional facilities to assess inmates who need ALF placement. Corrections staff have been trained in the use of the uniform assessment instrument.
22 VAC 40-745-30			Defined what is meant by “short” and “full” uniform assessment instrument.
22 VAC 40-745-40			Clarified role of the ALF in discharge planning and who is to be notified.
			Included that the ALF must notify the eligibility worker and the qualified assessor within 10 days of a change in the resident’s status, including death.

22 VAC 40-745-50			Added section on how DMAS and DSS are to handle the finding of an inappropriate determination of level of care during a review.
22 VAC 40-745-90			Clarified who may perform the annual reassessment and change in level of care.
			Specified that community services board (CSB) staff are to complete assessments, reassessments, and changes in level of care for CSB clients who reside in an ALF.