



## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40 -745
<b>Regulation title</b>	Assessment in Adult Care Residences
<b>Action title</b>	Comply with ALF Regulation and DMAS Policy
<b>Document preparation date</b>	August 18, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](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 (formerly called "adult care residences"). The assisted living facility assessment using the Virginia Uniform Assessment Instrument is a standardized approach that uses common definitions to gather sufficient information on applicants to and residents of assisted living facilities to determine their care needs. Assessment is the prior-authorizing mechanism for public reimbursement for assisted living facility 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. Changes were also made due to the recodification of the Social Services chapter of the Code of Virginia in which § 63.1 was replaced by § 63.2. In addition, the term "adult care residence" will be replaced with "assisted living facility" throughout, including the regulation's title.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The State Board of the Virginia Department of Social Services approved the final regulations for 22 VAC 40-745 Assessment in Assisted Living Facilities on August 18, 2004.

**Legal 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.*

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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.*

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The amended regulation is essential to the health, safety, and welfare of adults applying to or residing in an assisted living facility because the regulation helps to ensure that adults receive services appropriate to their identified needs. The purpose of the proposed action is to bring the regulation into compliance with changes in the State Board 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 the regulation's title.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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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 the public in making these changes is to bring the regulation into compliance with previously promulgated Code and regulatory changes. This will ensure that assessments of applicants to and residents of assisted living facilities are completed in a consistent manner across the state. The regulation also helps to ensure that adults in assisted living facilities receive appropriate services. This regulatory action poses no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement in proposed regulation</b>	<b>Proposed change in final regulation and rationale</b>
22 VAC 40-745-10	"Assisted living <del>[care]</del> " means a level of service provided by an <del>adult care residence</del> <u>assisted living facility</u> for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living.	"Assisted living care" is consistent with the Virginia Department of Social Services Division of Licensing (hereafter "Licensing") and Department of Medical Assistance Services (hereafter "DMAS") regulations.
22 VAC 40-745-10	<del>["Community-based waiver services" means a service program administered by the Department of Medical Assistance Services under a waiver approved by the United States Secretary of Health and Human Services.]</del>	In response to Virginia Office for Protection and Advocacy (VOPA), the definition of Community-based waiver services was stricken because its only reference in the regulation was to a section previously deleted.
22 VAC 40-745-10	<del>For private pay individuals, a qualified assessor is staff of the assisted living facility or an independent private physician [trained in the completion of the Uniform Assessment Instrument.]</del>	Physicians do not need to be trained to complete the Virginia Uniform Assessment Instrument (hereafter "UAI"). They are considered exempt from training because a) their extensive education and experience qualifies them to evaluate an assisted living facility (hereafter "ALF") resident; b) attending a one-day

		training for UAI completion would be a hardship to physicians and their patients; and c) there has been no indication that physicians have completed UAIs improperly or inadequately.
22 VAC 40-745-10	"Residential living <del>[care]</del> " means a level of service provided by an <del>adult care residence</del> <u>assisted living facility</u> for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living.	"Residential living care" is consistent with Licensing and DMAS regulations.
22 VAC 40-745-20 A	<del>Effective February 1, 1996, all</del> <u>All residents of and applicants of to ACRs assisted living facilities must be assessed [face-to-face] using the Uniform Assessment Instrument prior to admission, at least annually, and whenever there is a significant change in the resident's condition [that appears to be permanent].</u>	In response to a strong recommendation by VOPA, VDSS is clarifying that interviews must be face-to-face to eliminate telephonic assessments.  The phrase "that appears to be permanent" is deleted because it contradicts the definition of "significant change." Significant change refers to conditions expected to last longer than 30 days, not conditions that appear to be permanent.
22 VAC 40-745-20 B	Qualified staff of the <del>ACR assisted living facility</del> <u>is an employee of the facility [with completion documented of who has successfully completed] state-approved documented training by completion of a state-approved course on in the completion of [on] the Uniform Assessment Instrument for either public or private pay assessments. [The assisted living facility maintains documentation of the completed training.]</u>	The wording change was due to comments from Licensing and VOPA staff who felt the section was incomplete and unclear. The change in wording intends to convey two separate points—that the training must be successfully completed, not just attended; and that there is documentation that an employee has completed the training.
22 VAC 40-745-20 C	For public pay individuals, a Uniform Assessment Instrument shall be completed by a case manager or <del>other [a]</del> <u>qualified assessor to determine the need for residential [care] or assisted living [care] services.</u>	Case managers are not necessarily qualified assessors, so the more accurate wording would be "a" qualified assessor instead of "other" qualified assessor.  "Care" was added to residential and living services to be consistent with Licensing and DMAS regulations.
22 VAC 40-745-20 C	<u>The assessor is qualified to complete the assessment if [he the assessor] has completed a state-approved training course on the state-designated Uniform Assessment Instrument.</u>	Change of masculine pronoun to gender-neutral noun to conform to the <i>Virginia Form, Style, and Procedure Manual</i> .
22 VAC 40-745-30 A	The Uniform Assessment Instrument shall contain the following items: Full name of the individual;... admissions to hospitals, nursing facilities or <del>[adult care residences</del> <u>assisted living facilities]</u> for medical or rehabilitation reasons; ...	"Adult care residences" was changed throughout the regulation to "assisted living facilities" to be similar to DMAS and Licensing regulations, and current practice.

<p>22 VAC 40-745-30 E</p>	<p>At the request of the <del>ACR</del> <u>assisted living facility</u>, <del>[the resident]</del>, the resident's representative, the resident's physician, DSS, or the local department of social services, an independent assessment using the Uniform Assessment Instrument shall be completed to determine whether the resident's care needs are being met in the current placement.</p>	<p>The regulation was changed to include the resident in the discussion about appropriate placement. The change was based on a strong concern voiced by VOPA.</p>
<p>22 VAC 40-745 40</p>	<p>Staff of the <del>ACR</del> <u>assisted living facility</u> must plan for post-discharge services when the <u>[public pay]</u> resident is returned to a home-based placement, <del>or a nursing facility, or other placement.</del></p>	<p>This section refers to residents whose assisted living facility placement was paid through Auxiliary Grants. The qualifier "public pay" clarifies that this section excludes private pay residents.</p>
<p>22 VAC 40-745-40</p>	<p><u>The assisted living facility must make these notifications within 10 days of the [resident's discharge or death change in the resident's status].</u></p>	<p>"Change in resident's status" is not clear. The phrase was modified to "resident's discharge or death," based on comments by Licensing.</p>
<p>22 VAC 40-745-60</p>	<p>Criteria for residential living <u>[care]</u>.</p>	<p>"Care" was added to residential living to be consistent with DMAS and Licensing regulations.</p>
<p>22 VAC 40-745-70</p>	<p>Criteria for assisted living <u>[care]</u>.</p>	<p>"Care" was added to residential living to be consistent with DMAS and Licensing regulations.</p>
<p>22 VAC 40-745-90 A. 4</p>	<p><u>Clients of a community services board will be assessed and reassessed by [staff of qualified assessors employed by] the community services board.</u></p>	<p>Staff of community services boards are not necessarily considered qualified assessors, as defined in 22 VAC 40-745-10.</p>
<p>22 VAC 40-745-100 A</p>	<p>It shall be the responsibility of the assessor who identifies the individual's need for residential <u>[care]</u> or assisted living <u>[care]</u> in an <del>ACR</del> <u>assisted living facility</u> to assess the need for targeted case management services as defined in 12 VAC 30-50-410 et seq.</p>	<p>"Residential care" and "assisted living care" are consistent with DMAS and Licensing regulations.</p>

**Public comment**

*Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Sherry Confer, Virginia Office for Protection and Advocacy	22 VAC 40-745-10: VOPA recommends requiring that this assessment be conducted face-to-face with the applicant to/resident of the ALF.	Face-to-face interviews are preferable. Changes were made to 22 VAC 40-745-20 A to require that the UAI assessments be conducted face-to-face.
	VOPA recommends inserting “with the individual” after “. . . of a plan of care,”	Wording would be awkward. The section stands as: “Case management may include a variety of common components such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.” The individual may or may not be involved in planning care.
	VOPA recommends inserting “with the identified individual needing care/services” after “. . . plans of care.”	Wording would be awkward and the plan of care does not necessarily require the individual’s involvement. The definition of case manager stands as a human service agency employee “who is qualified and designated to develop and coordinate plans of care.”
	Definition of “community-based waiver services:” we didn’t see this phrase used in this set of regulations.	In the previous version of the regulation, “community-based waiver services” was defined and was referred to as a facility in which a UAI was done. The definition of “community-based waiver services” was deleted in the July 23 version of the final regulation 22 VAC 40-745-10.
	Definition of “consultation:” VOPA recommends inserting “and providers for the individual” after “. . . other professionals. . . “	Current definition of consultation includes “. . .guidance from appropriate human service agencies and other professionals...” Adding “other providers” is not needed since “providers” are essentially encompassed into the category of “professionals.” Adding “other providers” lays the groundwork for trying to identify the myriad of professions that may be involved in a consultation, with providers being only one of dozens.

<p>Sherry Confer, Virginia Office for Protection and Advocacy, cont.</p>	<p>VOPA recommends the “certain” be more clearly defined for the assessors. This is very broad and leaves too much room for individual assessors’ interpretation as to when it is necessary or helpful to consult with others about the individual’s strengths and needs. By not specifying when to consult, it leaves open the option to not consult.</p>	<p>“Certain” is used ambiguously in the definition of consultation, in the phrase “assessment data indicate certain social, physical and mental health conditions.” The ambiguity is purposeful as it allows assessors the flexibility to consult when they deem fit. The intent of the regulation is not to identify the conditions under which a consultation is necessary. The option to consult or not consult needs to be based on the issues that arise in assessing the individual and the knowledge and skill of the assessor. A regulation that determines the conditions under which to consult suggests excessive governmental interference into the process.</p>
	<p>Definition of “Independent physician”: VOPA recommends that this definition be strengthened by requiring that the physician also complete the required state approved training and has a written agreement with DMAS to complete the UAI. Conducting a physical examination is not the same as completing a functional assessment.</p>	<p>Independent physicians are considered qualified to conduct the Uniform Assessment Instrument through their extensive education and experience in diagnosing. Requiring all physicians in Virginia to undergo one-day training to complete a form would certainly alienate physicians and potentially lead to physicians directing others to complete the assessments.</p>
	<p>Definition of “Significant change”: VOPA has considerable concern with this definition as it is. A resident who has had oral surgery and needs either soft or blender prepared food could suffer neglect if the assessment and resulting care plan do not reflect this new need; even if it is only perhaps a 7-10 day need. A resident with an ear infection that affects his balance could suffer a fall if the assessment/care plan do not reflect the need for additional supports. The assessment and care plan should be working documents that are updated as the resident’s needs change and as they hopefully increase their ability to manage their own ADL/IADL.</p>	<p>Licensing confirmed that the care plan is the appropriate document for assessing and planning short-term conditions. The care plan follows the UAI and would be updated as a resident incurs a short-term illness or is recovering from surgery. Having to conduct a UAI reassessment every time a resident’s condition changes would be cost-prohibitive; there are not enough qualified assessors to handle the extensive amount of reassessments that would arise.</p>

<p>Sherry Confer, Virginia Office for Protection and Advocacy, cont.</p>	<p>22 VAC 40-745-20.A. VOPA has considerable concern with the loosening of the 12 month re-assessment requirement. By changing this to an annual requirement, there could be as much as 23 months between assessments. This is unacceptable. The assessment and care plan should be working documents that are to be updated as the resident's needs change and as they hopefully increase their ability to manage their own ADL/ IADL. In addition, we repeat our concern about the use of "significant change" here.</p>	<p>The requirement for annual re-assessments was not loosened in this regulation. The previous version of the regulation required assessments at least every 12 months. The revised regulation requires assessments prior to admission, at least annually, and when there is a significant change in the resident's condition. The frequency of assessments, then, are greater, not less often, than previously required.</p>
<p>.</p>	<p>22 VAC 40-745-20 B Who is the appropriate authority to "deem" these previous assessors as qualified? VOPA has been informed that some current assessors simply telephone the resident in order to complete the reassessment; without seeing the resident, without talking with ALF staff, etc. This causes one to question the quality of the assessment and the ability of some assessors to handle this responsibility appropriately/ adequately. VOPA recommends inserting "to perform UAIs" at the very end of this section.</p>	<p>Human service agency staff completed training on the Uniform Assessment Instrument during their initial employment and have experience in completing the instrument, so they are well qualified to continue conducting the UAI without additional training. The State Board of Social Services will address VOPA's concern that some current assessors conduct the evaluation over the telephone by requiring face-to-face interviews. Face-to-face evaluations were added to 22 VAC 40-745-20 A. The last sentence of 22 VAC 40-745-20 B is: "When a <u>public human services agency assessor</u> completes the Uniform Assessment Instrument for a private pay individual, the agency may determine and charge a fee for private pay applicants and residents; the fee may not exceed the fee paid by DMAS for public pay applicants and residents." The implication that the fee is for administering the UAI is clear.</p>
<p>.</p>	<p>22 VAC 40-745-20.D VOPA recommends inserting "the applicant/resident and" after "...coordinate with..." VOPA also recommends that the regulations be strengthened to clarify that the assessment/reassessment should be coordinated/conducted in a manner that does not disrupt the individual's plan of care, day support, work schedule, etc.</p>	<p>The State Board of Social Services is concerned that prioritizing the applicant/resident's routine will compromise the timeliness. The Uniform Assessment Instrument must be completed within 30 days of admission, annually, and during significant changes. Delaying the completion due to the resident's personal or health care schedule may have deleterious effects on the resident. Assessors are trained to be respectful of the rights and needs of residents. To mandate prioritizing the resident's needs suggests that assessors require regulatory control to work in a professional manner.</p>

<p>Sherry Confer, Virginia Office for Protection and Advocacy, cont</p>	<p>22 VAC 40-745-30 A There is an “adult care residences” that should be changed to assisted living facilities about midway in this paragraph.</p>	<p>“Adult care residences” was changed to “assisted living facilities.”</p>
	<p>22 VAC 40-745-30.C VOPA recommends that the UAI be completed face-to-face with the individual.</p>	<p>Face-to-face interviews are preferable. Changes were made to 22 VAC 40-745-20 A to require that the UAI assessments be conducted face-to-face.</p>
	<p>22 VAC 40-745-30.C.2 Please see previous recommendations about limiting the assessment update to only “significant changes.”</p>	<p>Licensing confirmed that the care plan is the appropriate document for assessing and planning short-term conditions. The care plan follows the UAI and would be updated as a resident incurs a short-term illness or is recovering from surgery. Having to conduct a UAI reassessment every time a resident’s condition changes would be cost-prohibitive; there are not enough qualified assessors to handle the extensive amount of reassessments that would arise.</p>
	<p>22 VAC 40-745-30 C 3 VOPA recommends that the UAI be completed face-to-face with the individual.</p>	<p>Face-to-face interviews are preferable, but was not added in this section because it would be overly wordy.</p>
	<p>22 VAC 40-745-30 D VOPA recommends that the UAI be completed face-to-face with the individual. VOPA has considerable concern with the loosening of the 12 months re-assessment requirement. By changing this to an annual requirement, there could be as much as 23 months between assessments. This is unacceptable. The assessment and care plan should be working documents that are to be updated as the resident’s needs change and as they hopefully increase their ability to manage their own ADL/ IADL. In addition, we repeat our concern about the use of “significant change” here. Perhaps DSS would consider strengthening this regulation by identifying a sanction when the assessment/ re-assessment is not completed within designated timeframes. It has been relayed to VOPA that the DSS Licensing cites the ALF, not the assessor, when the UAI is not completed in a timely manner.</p>	<p>See previous responses regarding the face-to-face interview, 12-month requirement, and “significant change” issues.</p> <p>VDSS applies sanctions for untimely assessments through its Licensing regulations. The assisted living facility is the appropriate target for sanctions, not the individual assessor, since a) the facility may be able to use another assessor; b) the facility can link work performance criteria to assessment timeliness; and c) the facility may be able to modify the assessor’s workload to prevent further delays in assessments. Facilities, not individual employees, are typically the ones responsible for timely assessments.</p>

Sherry Confer, Virginia Office for Protection and Advocacy, cont	22 VAC 40-745-30 E VOPA recommends inserting “resident” after “At the request of the...” VOPA recommends that the ALF assist the resident and/or their representative in obtaining an independent assessment. Please clarify who will pay the assessor if it is found the placement is inappropriate.	“Resident” was added, so 22 VAC 40-745-30 E is now: “At the request of the <u>assisted living facility</u> , <u>[the resident]</u> , the resident’s representative, the resident’s physician, DSS, or the local department of social services, an independent assessment using the Uniform Assessment Instrument shall be completed...”
	22 VAC 40-745-30 F VOPA recommends striking “as needed.” VOPA recommends inserting “and providers” after “professionals...”	As with the definition of “Consultation,” the intent of the regulation is not to identify the conditions under which a consultation is necessary, so VDSS will maintain “as needed”. The option to consult or not consult needs to be based on the issues that arise in assessing the individual and the knowledge and skill of the assessor. A regulation that determines the conditions under which to consult suggests excessive governmental interference into the process. Adding “providers” is not needed since providers are encompassed into the category of “professionals.” Adding “providers” lays the groundwork for trying to identify the myriad of professions that may be involved in a consultation, with providers being only one of hundreds.
	22 VAC 40-745-40 VOPA recommends that the ALF must plan for post-discharge services with the resident and/or their representative.	For both 22 VAC 40-745-40 and 22 VAC 40- 745-50 B sections: Discharge planning is under the purview of Licensing regulations. The State Board is reluctant to use Adult Services regulations to mandate who is involved in discharge planning.
	22 VAC 40-745-50 B VOPA recommends that the ALF must plan for post-discharge services with the resident and/or their representative.	
	22 VAC 40-745-50 D VOPA recommends that the change in level of care be completed after a face-to-face assessment with the individual by the Department, DMAS or local DSS representative.	A face-to-face assessment is not pertinent during a review or inspection. A change can be made to the care plan at any time per 22 VAC 40-71-170 H that states that the ISP (individual services plan) “...is reevaluated as needed as the condition of the resident changes.”
	22 VAC 40-745-90 A 1 Please see previous comments about “significant change” and the loosening of the 12-month requirement.	See previous responses.

Sherry Confer, Virginia Office for Protection and Advocacy, cont	22 VAC 40-745-90 A 4 VOPA recommends the following language be inserted at the end of this regulation "...who have been determined to meet the qualified assessor criteria and in accordance with these regulations."	Changed to: <u>4. Clients of a community services board shall be assessed and reassessed by [staff of qualified assessors employed by] the community services board.</u> "In accordance with these regulations" is implied throughout the regulation.
	22 VAC 40-745-90.B VOPA recommends that the re-assessment timeframes for private pay and public pay be the same.	All residents in assisted living facilities, whether private or public pay, are assessed at admission, annually, and during significant changes in their conditions.
	22 VAC 40-745-110 VOPA recommends that for those applicants/residents who have representatives that the assessment results, level of care determination and the appeal rights be provided to them as well. VOPA recommends that the regulations designate a specific timeframe as to when the appeal rights are given. VOPA recommends immediately. Although the Virginia Code citation provided notes the right to appeal to DSS, the regulations do not provide any direction on how to appeal to DSS or to DMAS. VOPA recommends that this be included in the regulations.	The issue of representatives is not within the scope of this regulation. The situations in which a representative serves as proxy for the resident would need to be defined and clearly delineated. The issue requires careful consideration in the protection of the rights of the resident. Representatives may gain access to residents' Uniform Assessment Instrument, care plan, and other documents under § 37.1-134.22. The purpose of the regulation is to require assessments for assisted living facility residents. The issue of appeal rights are identified in 22 VAC 40-745-110. The section references the Code citation that addresses the timeframe and process to appeal Auxiliary Grant denials. Adding the same language in this section would be duplicative.
Karen Cullen, VDSS Division of Licensing Programs	22 VAC 40-745-10 and -60. Definition of "Assisted living" changed to "Assisted living care" for consistency with Licensing.	Changed in 22 VAC 40-745-10; 22 VAC 40-745-20 C; 22 VAC 40-745-60; and 22 VAC 40-745-100A.
	22 VAC 40-745-10 and -70. Definition of "Residential living" changed to "Residential living care" for consistency with Licensing.	Changed in 22 VAC 40-745-10; 22 VAC 40-745-20 C; 22 VAC 40-745-70; and 22 VAC 40-745-100 A.
	22 VAC 40-745-20B and 20C. Put the following in the definitions section 10. <u>"Qualified staff of the assisted living facility is an employee of the facility with documented training by completion of a state-approved course on the Uniform Assessment Instrument for either public or private pay assessments."</u>	Definitions section already includes definition of a Qualified Assessor, who is defined as an employee who has completed state-approved training on the Uniform Assessment Instrument.

Karen Cullen, VDSS Division of Licensing Programs, cont.	22 VAC 40-745-20C. Change: “For public pay individuals, a Uniform Assessment Instrument shall be completed by a case manager or <del>other [a]</del> qualified assessor to determine the need for residential <u>[care]</u> or assisted living <u>[care]</u> services.”	Changed to: For public pay individuals, a Uniform Assessment Instrument shall be completed by a case manager or <del>other [a]</del> qualified assessor to determine the need for residential <u>[care]</u> or assisted living <u>[care]</u> services.
	22 VAC 40-745-40. Change: “The assisted living facility must make these notifications within 10 days of the <del>change in the resident’s status</del> <u>[death or discharge]</u> .”	Changed to: “The assisted living facility must make these notifications within 10 days of the <del>[change in the resident’s status]</del> <u>resident’s discharge or death.</u> ”
	22 VAC 40-740-50D. “During an inspection or review, <u>staff from either the Department, DMAS or the local department of social services may initiate a change in level of care for any assisted living facility for whom it is determined that the resident’s Uniform Assessment Instrument is not reflective of the resident’s current status.</u> ” What about private pay assessors?	The Department, DMAS, and local departments of social services may initiate a reassessment when they are reviewing or inspecting a private pay assisted living facility by arranging for private pay assessors. The additional regulation does not preclude a change in care for private pay residents
	22 VAC 40-745-90A.4. Change: “4. Clients of a community services board shall be assessed and reassessed by <del>staff of [a case manager or qualified assessor employed by]</del> <u>the community services board.</u> ”	Unsure of the position titles used by CSB to make UAI assessments. Changed to: 4. Clients of a community services board shall be assessed and reassessed by <del>[staff of]</del> <u>qualified assessors employed by] the community services board.</u> ”
Judy McGreal, VDSS Division of Licensing Programs	22 VAC 40-745-20 “Whenever there is a significant change...that appears to be permanent.” This seems to conflict with the definition of significant change in 22 VAC 40-745-10. Is the significant change more than 30 days or “permanent?”	22 VAC 40-745-20 changed to: ...using the Uniform Assessment Instrument prior to admission, at least annually, and <u>whenever there is a significant change in the resident’s condition</u> <del>[that appears to be permanent]</del> .
	22 VAC 40-745-10. Definition of “assisted living.” This is now known, due to a Code change, as “assisted living care.” Same with “residential living,” which is now known as “residential living care.” Also see 22 VAC 40-745-20 C and 22 VAC 40-745-100 A for adding the word “care.”	Changed “assisted living” to “assisted living care” in VAC 40-745-10, VAC 40-745-20 C, and VAC 40-745-100 A in regulation revision version July 20, 2004. Changed “residential living” to “residential living care” in VAC 40-745-10, VAC 40-745-20 C and VAC 40-745-100 A.

<p>Judy McGreal, VDSS Division of Licensing Programs, cont.</p>	<p>22 VAC 40-745-20 B The wording of the second sentence is somewhat awkward. I suggest instead “Qualified staff of the assisted living facility is an employee of the facility with documented completion of a state-approved course on the Uniform Assessment Instrument for either public or private pay assessments.” I also suggest that the word “successful” be inserted before the word “completion.”</p>	<p>Changed to: <u>Qualified staff of the assisted living facility is an employee of the facility who has successfully completed state-approved training on the Uniform Assessment Instrument for either public or private pay assessments. The assisted living care facility maintains documentation of the completed training.</u></p>
	<p>22 VAC 40-745-20 B It does not appear that the physician has to have the training. But under the definition of qualified assessor in 22 VAC 40-745-10, the last sentence indicates that the physician does have to be trained in the completion of the UAI. Needs to be consistent, one way or the other.</p>	<p>The section referring to the independent physician having to be trained in completing the Uniform Assessment Instrument was deleted. Qualified assessor...<u>For private pay individuals, a qualified assessor is staff of the assisted living facility or an independent private physician [trained in the completion of the Uniform Assessment Instrument.]</u></p>
	<p>22 VAC 40-745-20 C Has a grandfather clause for public human services agency assessors. Why doesn't this also apply to staff of the assisted living facility in B? I'm not sure I would want it to, but I think there should be a good reason for it applying to one and not the other. If there is not a good reason, I think it should apply to ALF staff as well.</p>	<p>Public human service agency staff <i>are</i> trained to complete the Uniform Assessment Instrument. The intent of the regulation is to require both human service agency and assisted living facility staff to complete training. Public service staff should not be required to attend training when they received UAI training during their initial employment and they have been completing the assessment instruments for a long time.</p>
	<p>22 VAC 40-745-30 A Still includes the term “adult care residences.”</p>	<p>Changed “adult care residences” to “assisted living facilities” and did a Find/Replace to double-check other sections.</p>
	<p>22 VAC 40-745-40 The notification probably doesn't apply to private pay residents, but this isn't clear.</p>	<p>Changed to: “Staff of the <u>ACR assisted living facility</u> must plan for post-discharge services when the <u>[public pay]</u> resident is returned...”</p>
	<p>22 VAC 40-745-110 Does this apply to private pay residents also? It is not clear.</p>	<p>The issue of pay is not relevant here as the section refers to appealing the assessment, not payment concerns.</p>

**All changes made in this regulatory action**

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

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 Code changes.
		Code was referenced as § 63.1.	Code 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 Code 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 should complete assessments, reassessments, and changes in level of care for CSB clients who reside in an ALF.

**Family impact**

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

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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.